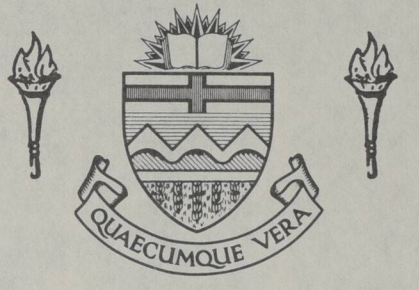
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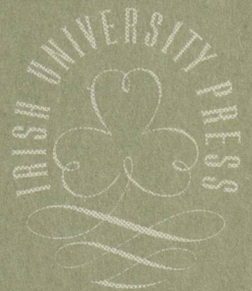
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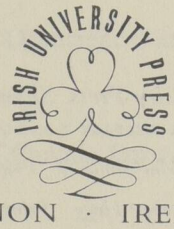
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RESPECTING THE

HALIFAX FISHERIES COMMISSION.

Presented to both Houses of Parliament by Command of Her Majesty.
1878.

LONDON:
PRINTED BY HARRISON AND SONS.

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Correspondence respecting the Halifax Fisheries Commission.

No. 1.

The Earl of Derby to Sir A. Galt.

Sir, *Foreign Office, August* 27, 1875.

THE Queen having been graciously pleased to appoint you to be Her Majesty's High Commissioner at the Commission to be appointed to meet at Halifax, Nova Scotia, under the provisions of the XXIInd and following Articles of the Treaty of Washington of the 8th May, 1871, I transmit to you herewith Her Majesty's Commission to that effect, under the Royal Sign-Manual.

I also inclose a copy of the Treaty, from which you will see the nature of the duties entrusted to you.

The XXIIIrd Article of the Treaty provides that one Commissioner shall be named by Her Britannic Majesty, one by the President of the United States, and a third by Her Britannic Majesty and the President of the United States conjointly; and in case the third Commissioner shall not have been so named within a period of three months from the date when this Article shall take effect, then the third Commissioner shall be named by the Representative at London of His Majesty the Emperor of Austria and King of Hungary.

Her Majesty's Government are not yet informed of the appointment of a Commissioner on the part of the United States, nor have arrangements yet been concluded for the appointment of the third Commissioner; but full information will be afforded to you in regard to these and other matters relating to the proceedings of the Commission as soon as Her Majesty's Government are in a position to render it.

I have to add that Mr. F. C. Ford, Her Majesty's Chargé d'Affaires at Darmstadt, has been named to attend the Commission as Her Majesty's Agent in accordance with the XXIIIrd Article of the Treaty.

I am, &c.
(Signed) DERBY.

No. 2.

The Earl of Derby to Mr. Ford.

Sir, *Foreign Office, August* 27, 1875.

THE Queen having been graciously pleased to appoint you to be Her Majesty's Agent to attend the Commission on the Fisheries, about to be appointed to meet at Halifax, Nova Scotia, under the provisions of the XXIInd and XXIIIrd Articles of the Treaty between Great Britain and the United States of the 8th May, 1871, I transmit to you herewith Her Majesty's Commission to that effect.

I also transmit to you a copy of the Treaty, from which you will see the object of the Commission, and the nature of your duties in attendance upon it.

The date at which the Commission will meet is at present uncertain; but, in order that you may possess a full knowledge of the subjects to which you will have to direct your attention, it will be desirable that you should at once place yourself in communication with the proper Departments of this Office and of the Colonial Office, who will have directions to afford you access to all the information and correspondence with which it may be useful to you to be made acquainted.

The XXIVth Article of the Treaty states that the proceedings shall be conducted in such order as the Commissioners shall determine; and contemplates that either Government may offer oral or written testimony, and also present a Case for the consideration of the Commissioners.

The Case on the part of Her Majesty's Government has been drafted in Canada, and, when finally settled and approved by Her Majesty's Government, it will be given to you for presentation.

Her Majesty's Government, relying upon the judgment and ability which you have shown in the discharge of your diplomatic duties, and on all other occasions when your services have been called for, do not consider it necessary to give you more specific instructions at present; and have only to add that it is their desire, as they feel confident it will be your wish, that you should co-operate, in all matters connected with the Commission, in the most cordial manner with the Canadian Government, and with all the Colonial Authorities with whom you may be brought in contact.

I am, &c.
(Signed) DERBY.

No. 3.

The Earl of Derby to Mr. Ford.

Sir, *Foreign Office, August* 27, 1875.

I HAVE to acquaint you that I have appointed Mr. J. H. G. Bergne, of this Office, to be Secretary to Her Majesty's Agency at Halifax, and to assist you generally in any business connected with the Fishery Commission in which you may think proper to employ his services.

I am, &c.
(Signed) DERBY.

No. 4.

Mr. Ford to the Earl of Derby.—(*Received August* 30.)

My Lord, *Worthing, August* 28, 1875.

I HAVE the honour to acknowledge the receipt of your Lordship's despatch of the 27th instant, informing me that the Queen has been graciously pleased to appoint me to be Her Majesty's Agent to attend the Commission on the Fisheries about to be appointed to meet at Halifax, Nova Scotia, under the provisions of the XXIInd and XXIIIrd Articles of the Treaty between Great Britain and the United States of the 8th May, 1871.

I have likewise the honour to acknowledge the receipt of Her Majesty's Commission to that effect inclosed in your Lordship's despatch.

I have, &c.
(Signed) FRANCIS CLARE FORD.

No. 5.

Mr. Ford to the Earl of Derby.—(*Received August* 30.)

My Lord, *Worthing, August* 28, 1875.

I HAVE the honour to acknowledge the receipt of your Lordship's despatch of the 27th instant, informing me that your Lordship had appointed Mr. J. H. G. Bergne to be Secretary to Her Majesty's Agency at Halifax, and to assist me generally in any business connected with the Fishery Commission in which I may think it proper to employ his services.

I have, &c.
(Signed) FRANCIS CLARE FORD.

No. 6.

Sir A. Galt to the Earl of Derby.—(*Received October* 13.)

My Lord, *Ottawa, September* 29, 1875.

I HAVE the honour to acknowledge the receipt of your Lordship's despatch dated the 27th ultimo, informing me that the Queen has been graciously pleased to appoint me to be Her Majesty's Commissioner at the Commission to meet at Halifax, Nova Scotia, under the provisions of the XXIInd and following Articles of the Treaty of Washington of May 8th, 1871; and transmitting to me Her Majesty's Commission to that effect, under the Royal Sign Manual.

In expressing to your Lordship my thanks for this mark of Her Majesty's favour, I beg leave to say that, in obedience to Her Majesty's command, I shall hold myself in readiness to undertake the duties entrusted to me at whatever time may be fixed for the meeting of the Commission.

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

No. 7.

Identic Note addressed to Count Beust by Lord Derby and the United States' Minister in London.

M. l'Ambassadeur, *Foreign Office, March* 1, 1877.

ARTICLES XVIII, XIX, and XXI of the Treaty of Washington of the 8th May, 1871, of which I have the honour herewith to inclose a copy, provide for certain privileges in respect to fisheries, and remissions of Customs duties to be granted by Great Britain and the United States respectively; and in the XXIInd and XXIIIrd Articles of the Treaty it is further provided that—

"Inasmuch as it is asserted by the Government of Her Britannic Majesty that the privileges accorded to the citizens of the United States under Article XVIII of this Treaty are of greater value than those accorded by Articles XIX and XXI of this Treaty to the subjects of Her Britannic Majesty, and this assertion is not admitted by the Government of the United States; it is further agreed that Commissioners shall be appointed to determine, having regard to the privileges accorded by the United States to the subjects of Her Britannic Majesty, as stated in Articles XIX and XXI of this Treaty, the amount of any compensation which, in their opinion, ought to be paid by the Government of the United States to the Government of Her Britannic Majesty in return for the privileges accorded to the citizens of the United States under Article XVIII of this Treaty; and that any sum of money which the said Commissioners may so award shall be paid by the United States' Government, in a gross sum, within twelve months after such award shall have been given.

"XXIII. The Commissioners referred to in the preceding Article shall be appointed in the following manner, that is to say:—One Commissioner shall be named by Her Britannic Majesty, one by the President of the United States, and a third by Her Britannic Majesty and the President of the United States conjointly; and in case a third Commissioner shall not have been so named within a period of three months from the date when this Article shall take effect, then the third Commissioner shall be named by the Representative at London of His Majesty the Emperor of Austria and King of Hungary. In case of the death, absence, or incapacity of any Commissioner, or in the event of any Commissioner omitting or ceasing to act, the vacancy shall be filled in the manner hereinbefore provided for making the original appointment, the period of three months in case of such substitution being calculated from the date of the happening of the vacancy.

"The Commissioners so named shall meet in the City of Halifax, in the Province of Nova Scotia, at the earliest convenient period after they have been respectively named, and shall, before proceeding to any business, make and subscribe a solemn declaration that they will impartially and carefully examine and decide the matters referred to them to the best of their judgment, and according to justice and equity; and such declaration shall be entered on the record of their proceedings.

"Each of the High Contracting Parties shall also name one person to attend

the Commission as its agent, to represent it generally in all matters connected with the Commission."

The period of three months specified in the Article last above quoted having elapsed, it has become necessary to take steps for the appointment of the third Commissioner, in accordance with its provisions; and with this view, an application has already been addressed to His Imperial and Royal Majesty's Minister of Foreign Affairs at Vienna, that His Majesty may be graciously pleased to instruct your Excellency to undertake the duty of selecting some gentleman properly qualified to act as third Commissioner, to which His Majesty has been pleased to give his assent. I have therefore the honour, on behalf of Her Majesty's Government, to request your Excellency to undertake this duty and to select some person properly qualified to act in that capacity.

In consideration of the fact that the proceedings of the Commission will be conducted in the English language, and that the evidence, documents, and testimony will also be in English, it appears to Her Majesty's Government to be a necessary qualification that the third Commissioner should possess an accurate knowledge of that language.

The Commissioner appointed by Her Britannic Majesty is Sir Alexander T. Galt, K.C.B., &c., &c.; and the Commissioner appointed by the President of the United States is the Honourable Ensign H. Kellogg.

The arrangements for the composition of the Commission being otherwise complete, I have the honour to suggest that the third Commissioner should be so named by your Excellency as soon as shall be convenient.

A smilar request will be preferred to you on behalf of the Government of the United States.

I have, &c.
(Signed) DERBY.

No. 8.

Count Beust to the Earl of Derby.—(*Received March* 2.)

M. le Comte, *Belgrave Square, le* 2 *Mars*, 1877.

EN me référant à la note que votre Excellence a bien voulu m'adresser à la date du 1er du courant, j'ai l'honneur de l'informer qu'en vertu de l'Article XXIII du Traité du 8 Mai, 1871, je viens de nommer M. Delfosse, Ministre de Sa Majesté le Roi des Belges à Washington, troisième Commissaire pour la Commission siégeant à Halifax. J'ai encore l'honneur d'ajouter, que je n'ai pas manqué de porter cette nomination à la connaissance des Ministres des Etats Unis et de Belgique à Londres.

Veuillez, &c.
(Signé) BEUST.

(Translation.)

M. le Comte, *Belgrave Square, March* 2, 1877.

WITH reference to the note which your Excellency was good enough to address me on the 1st instant, I have the honour to inform you that in virtue of the XXIIIrd Article of the Treaty of the 8th May, 1871, I have just named M. Delfosse, the Belgian Minister at Washington, the third Commissioner to the Commission to sit at Halifax. I have likewise the honour to add that I have not failed to bring this nomination to the knowledge of the Ministers of the United States and of Belgium in London.

Receive, &c.
(Signed) BEUST.

No. 9.

Lord Tenterden to Mr. Herbert.

Sir, *Foreign Office, March* 2, 1877.

I AM directed by the Earl of Derby to transmit to you, to be laid before the Earl of Carnarvon, a copy of a note from the Austrian Ambassador at this Court, appointing M. Delfosse to act as third Commissioner at the approaching Fisheries Commission at Halifax.*

I am, &c.
(Signed) TENTERDEN.

No. 10.

Mr. Ford to the Earl of Derby.—(Received April 9.)

My Lord, *Foreign Office, April* 7, 1877.

I HAVE the honour to report that I have been privately informed by Sir A. Galt that he has suggested the 15th June next as a convenient time for the first meeting of the Fisheries Commission at Halifax.

This date has not as yet been definitively fixed, but as the Dominion Government have intimated to me their wish that I should proceed to Canada as soon as possible to assist in completing the necessary arrangements, I propose, with your Lordship's sanction, to start by the Cunard steamer of the 5th May next.

I have, &c.
(Signed) FRANCIS CLARE FORD.

No. 11.

Lord Tenterden to Mr. Herbert.

Sir, *Foreign Office, April* 12, 1877.

WITH reference to previous correspondence, I am directed by the Earl of Derby to transmit to you, for the information of the Earl of Carnarvon, the accompanying copy of a despatch from Mr. Ford,† announcing his intention of proceeding to America, should there be no objection thereto, by the Cunard steamer of the 5th May next, to enter upon his duties in connexion with the Halifax Fisheries Commission, and I am to state to you that his Lordship has sanctioned the adoption of this course.

I am, &c.
(Signed) TENTERDEN.

No. 12.

Lord Tenterden to Mr. Ford.

Sir, *Foreign Office, April* 12, 1877.

I AM directed by the Earl of Derby to acknowledge the receipt of your letter of the 7th instant, stating that you propose, should there be no objection thereto, to start for America by the Cunard steamer of the 5th May next, to enter upon

* No. 8.

† No. 10.

your duties in connexion with the Halifax Fisheries Commission, and I am to inform you in reply that his Lordship sanctions your adopting this course.

I am, &c.
(Signed) TENTERDEN.

No. 13.

Mr. Ford to the Earl of Derby.—(*Received April* 17.)

My Lord, *Foreign Office, April* 16, 1877.

WITH reference to my despatch of the 7th instant I have the honour to inform your Lordship that I have received a telegram from the Canadian Minister of Marine and Fisheries, stating that the Halifax Commission will meet on the 15th June.

I have, &c.
(Signed) FRANCIS CLARE FORD.

No. 14.

The Earl of Derby to Sir A. Galt.

Sir, *Foreign Office, May* 2, 1877.

I HAVE to inform you that Commissioners have been appointed to act, conjointly with yourself, under Articles XVIII to XXV and XXXII to XXXIII, inclusive, of the Treaty of Washington of the 8th of May, 1871, as follows:—

Honourable Ensign H. Kellogg, by the President of the United States; and
M. Delfosse, the Belgian Minister at Washington, by the Austrian Ambassador in London;

To determine, having regard to the privileges accorded by the United States to the subjects of Her Britannic Majesty, as stated in Articles XIX and XXI of the Treaty, the amount of any compensation which in their opinion ought to be paid by the Government of the United States to the Government of Her Britannic Majesty, in return for the privileges accorded to the citizens of the United States under Article XVIII of the Treaty.

The Honourable Dwight Foster has been appointed Agent to the Commission on the part of the United States.

Mr. F. C. Ford has been appointed in the same capacity on the part of Her Majesty's Government, and he will be assisted generally in the business of the Commission by Mr. J. H. G. Bergne, of this Office.

You will see from the instructions I have given to Mr. Ford, and of which a copy is inclosed, that he has been directed to proceed to Canada in time to make, in conjunction with the Dominion Government, all the necessary arrangements in connection with t e Commission; and I do not doubt that he will place himself in communication with you in order to arrange any matters of detail. He is to attend the meetings of the Commissioners, as required by the Treaty, and he will present to the Commissioners the "Cases" on behalf of Her Majesty's Government.

In case of any difficulty occurring in conducting the business of the Commission, Mr. Ford will consult with you, and, if necessary, apply to Her Majesty's Government for instructions.

I have been informed that Counsel have been appointed by the Governments of the Dominion of Canada and of Newfoundland to argue the Cases laid before the Commissioners.

I have every confidence that they will discharge their duties with the greatest efficiency; but Her Majesty's Government cannot be held internationally responsible for any arguments they may use in support of the claim of Great Britain.

You have been already acquainted, by my despatch dated the 27th August, 1875, in which was forwarded Her Majesty's Commission, with the general nature of the duties entrusted to you, and I have now therefore only to add the following special instructions:—

Article XXIII of the Treaty provides that the Commissioners shall meet in the city of Halifax, Nova Scotia, at the earliest convenient period after they have been respectively named, and Her Majesty's Government would wish that you should place yourself in communication with M. Delfosse and Mr. Kellogg in order to make arrangements with them for proceeding thither at an early date. You will inform me of the time fixed for the first meeting of the Commission.

Article XXIV provides that the proceedings shall be conducted in such order as the Commissioners shall determine, and Her Majesty's Government willingly leave this to be settled by them, in the full assurance that their own good feelings and knowledge of business will enable them to arrive at such an understanding on the subject as will best conduce to the speedy dispatch of the matters which may come before them, and afford satisfaction to their respective Governments.

I have, however, to call your especial attention to the provisions of the same Article, to the effect that the Commissioners shall be bound to receive such oral or written testimony as either Government may present; and that the case on either side shall be closed within a period of six months from the date of the organization of the Commission, unless in the case of any vacancy occurring among the Commissioners, when the aforesaid period of six months may be extended for three months; having regard to which latter provision I do not doubt that you will be careful to make suitable arrangements to prevent unnecessary delay.

Article XXV of the Treaty states that the Commissioners are to keep an accurate record and correct minutes of all their proceedings; and I would suggest that, for this purpose, the minutes of each meeting of the Commissioners, after having been agreed upon by them, should invariably be entered in a book and signed by the Commissioners at their next meeting.

The same Article empowers the Commissioners to appoint and employ a secretary, and any other necessary officer or officers to assist them in the transaction of the business which may come before them.

The appointment of Secretary being vested in the Commissioners, and his duties being purely ministerial, I have no desire to interfere with their free choice by making any suggestion as to the person to be employed.

I am, &c.
(Signed) DERBY.

No. 15.

The Earl of Derby to Mr. Ford.

Sir, *Foreign Office, May* 2, 1877.

I HAVE to inform you that Commissioners have been appointed, under Articles XVIII to XXV and XXXII to XXXIII inclusive of the Treaty of Washington of the 8th May, 1871, as follows:—

Sir A. T. Galt, K.C.M.G., by Her Majesty the Queen;
Honourable Ensign H. Kellogg, by the President of the United States; and
M. Delfosse, the Belgian Minister at Washington, by the Austrian Ambassador in London:

To determine, having regard to the privileges accorded by the United States to the subjects of Her Britannic Majesty, as stated in Articles XIX and XXI of the Treaty, the amount of any compensation which in their opinion ought to be paid by the Government of the United States to the Government of Her Britannic Majesty, in return for the privileges accorded to the citizens of the United States under Article XVIII of the Treaty.

The Honourable Dwight Foster has been appointed Agent to the Commission on the part of the United States.

You have already been acquainted, in my despatch of the 27th August,

1875, with the general nature of the duties intrusted to you, and, relying on the ability which you have always displayed in the discharge of your diplomatic duties, and on the knowledge which you have already acquired of the Fisheries question, I have only now to add the following special instructions with regard to your proceedings in connection with the Commission.

You will be duly informed as to the precise date on which the Commission is to meet, and you will then proceed to Canada in time to make, in consultation with the Dominion Government, all the preliminary arrangements which you may think necessary.

The Commissioners will meet at Halifax, Nova Scotia, and you will proceed thither and present to them the "Case" of Her Majesty's Government, which is already in your possession; and it will be your duty to watch the proceedings generally, and to require that the Commissioners shall receive such oral or written testimony as Her Majesty's Government may think necessary to present, under the terms of Article XXIV of the Treaty.

The proceedings will be conducted in such order as the Commissioners shall determine; but should any difficulty occur in the course of the business of the Commission, you should endeavour to consult the wishes of Her Majesty's Commissioner, and, if necessary, apply to Her Majesty's Government for instructions.

You will also correspond with this Office on all matters on which you may require to report, and upon which you think it necessary to ask for special instructions. Counsel have been retained by the Government of the Dominion of Canada and of Newfoundland, who will argue the Cases presented on behalf of Her Majesty's Government; and you will to the best of your ability supply them with any information which you may think likely to be useful, and assist them in the preparation of the "Counter Case" and any other papers which it may be found necessary to prepare.

You will be accompanied by Mr. J. H. G. Bergne of this Office, who will assist you generally in any business connected with the Commission in which you may think proper to employ his services.

You will keep an account of your own and Mr. Bergne's expenditure whilst employed on this service.

I am, &c.
(Signed) DERBY.

No. 16.

Sir A. Galt to the Earl of Derby.—(*Received June* 5.)

My Lord, *Ottawa, May* 21, 1877.

I HAVE the honour to acknowledge the receipt of your Lordship's letter of instructions dated 2nd instant.

I have written M. Delfosse and Mr. Kellogg, informing them that I was instructed to place myself in communication with them for the purpose of fixing the date for the first meeting of the Fisheries Commission at Halifax, and proposing that such date should be the 15th day of June. As this date has already been informally agreed to, I presume it may be assumed as settled; but I shall duly inform your Lordship of their replies.

My careful attention shall be given to the special instructions with which I have been honoured; and my best efforts will be directed to bring the labours of the Commission to a conclusion satisfactory to Her Majesty's Government.

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

No. 17.

Mr. Ford to the Earl of Derby.—(*Received June* 12.)

My Lord, *Ottawa, May* 30, 1877.

I HAVE the honour to inform your Lordship that I was officially notified this day, by Sir A. T. Galt, of the fact that Mr. Kellogg, the United States' Commissioner, and M. Delfosse, the third Commissioner to the Halifax Commission, have agreed to Sir A. T. Galt's proposition that the first meeting of the Halifax Commission should be held on the 15th of June next.

I purpose proceeding to Halifax next week, and arriving in that city on the 11th of June, in order to confer preliminarily with Judge Foster, the United States' Agent.

I have, &c.
(Signed) FRANCIS CLARE FORD.

No. 18.

Sir A. Galt to the Earl of Derby.—(*Received June* 12.)

My Lord, *Montreal, June* 1, 1877.

I HAVE the honour to state that having, in obedience to your Lordship's instructions, put myself in communication with M. Delfosse and Mr. Kellogg, the 15th day of June instant has been formally agreed upon as the day when the Fisheries Commission under the Washington Treaty shall meet at Halifax.

I have duly informed Mr. Ford, and have requested him to notify the Governor-General of the day appointed.

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

No. 19.

Mr. Ford to the Earl of Derby.—(*Received July* 3.)

(Extract.) *Halifax, June* 16, 1877.

SINCE writing my last despatch, I have been engaged at Ottawa, in communication with Mr. Whitcher, in making preparations for the Commission. On the 7th instant I found that I had done all that could be accomplished at Ottawa towards arranging and classifying the documentary evidence relied on in the case, and I therefore started for Halifax, arriving in that city on the morning of the 9th instant, and taking up my quarters at the Waverley Hotel, where I shall probably remain during the whole of my stay here.

All the Counsel retained on behalf of the Dominion, and Mr. Whiteway from Newfoundland, arrived here on the 11th, and I was, therefore, able to consult with them as to the rules of procedure to be adopted by the Court and other necessary matters before the arrival of the Commissioners and of the United States' Agent.

Sir A. T. Galt, Mr. Delfosse, and Mr. Kellogg, the three Commissioners, arrived in Halifax on the 13th. Judge Foster, the United States' Agent, reached the city the same day, and I lost no time in submitting, for his consideration, the draft of Rules which I had drawn up in consultation with the British Counsel.

The first meeting of the Commission was fixed for June 15 at 2 P.M., and at the hour appointed the Commissioners Agents and Counsel assembled at the Legislative Council Chamber, which has been placed at our disposal during the sittings of the Commission.

I propose to defer submitting to your Lordship the complete Protocols of the proceedings until I shall be able to embody them in a general Report at the close of the sittings, unless I receive your Lordship's instructions to the contrary; in the meanwhile I may briefly state the result of the proceedings so far as they have gone:—

The Commissioners having exchanged and examined their respective powers, elected M. Delfosse as the President of the Commission, who, at the request of Sir A. T. Galt that a Secretary should be appointed, named Mr. Bergne as a suitable person to act as Secretary to the Commission.

The respective Agents having produced and submitted to the Commissioners their respective commissions, Judge Foster produced the draft of Rules which I had submitted to him, and stated that although in the main he was prepared to agree to them, he objected to certain portions which contemplated that Counsel on either side, as well as the respective Agents, should be allowed to address the Court. To this he objected, stating that, in his opinion, this duty should, under the terms of the Treaty, devolve upon the Agents alone.

I submitted that this contention could not be maintained, having in view the wording of the Articles referred to; and Judge Foster having replied in support of his contention, the Commissioners retired to deliberate.

On their return, M. Delfosse announced that the Commissioners had decided that the Agents on either side should be permitted to be heard either personally or by Counsel, but that in the case of the British Agent, he should be limited to five, as representing the maritime Provinces of the Atlantic Coast of British North America, and in the case of the Agent of the United States, he should be allowed a similar number.

The Court was thus fully constituted as follows:—

M. Maurice Delfosse, President;

The Honourable Ensign H. Kellogg and Sir A. T. Galt, K.C.M.G., Commissioners appointed respectively by the United States and Great Britain;

Judge Foster, United States' Agent, and myself in a similar capacity on the part of Great Britain;

Mr. J. H. G. Bergne, Secretary and Protocolist;

Mr. Joseph Doutre, Q.C., of Montreal, representing the Province of Quebec;

Mr. S. R. Thomson, Q. C., of St. John, representing the Province of New Brunswick;

Honourable W. V. Whiteway, Q.C., of St. John's, representing the Colony of Newfoundland;

Honourable Louis H. Davies of Charlottetown, representing the Province of Prince Edward Island; and

Mr. R. L. Weatherbe, Q.C., of Halifax, representing the Province of Nova Scotia,

—as Counsel on the part of Great Britain.

Judge Foster stated that he would request permission to name such Counsel as might be employed on behalf of the United States after the adjournment to be made after the delivery of the Case of Her Britannic Majesty.

I have the honour to inclose herewith a copy of the Rules which were eventually adopted by the Commissioners,* from which your Lordship will learn the course of procedure which it is proposed to follow; and I also inclose a copy of a solemn Declaration which was made and signed in duplicate by the three Commissioners.*

The question of the admissibility of *ex parte* affidavits having been previously fully discussed between myself and our Counsel, we had come to the conclusion that it would be desirable to exclude this class of written testimony if possible, and I therefore proceeded to challenge a decision of the Commissioners on this point. Judge Foster maintained a contrary view, and the Commissioners, after consultation decided that such affidavits should be admitted under the terms of Article XXIV of the Treaty.

I then presented to the Commissioners, and to the United States' Agent, copies of the "Case" of Her Majesty's Government,† together with a schedule of the documents to be filed with the Secretary in support of it.

The Commission then adjourned until to-day, when the full minutes of yesterday's proceedings were read and approved, and the Commission thereupon adjourned until the 28th of July.

It has been decided by arrangement that such persons whose presence may be required by either side shall attend the sittings of the Commission. Otherwise the proceedings will be strictly private, and the representatives of the press will be entirely excluded.

I may add that the proceedings thus far have been conducted with the utmost harmony and amicable feeling, and I see no reason to doubt that the inquiry will be conducted in a straightforward and impartial manner, so as to arrive at an equitable solution of the long-pending question under discussion.

Judge Foster proposes, I believe, to return to the United States whilst engaged

* See Protocol I.—Record of Proceedings.

† See Appendix A.—Record of Proceedings.

in the preparation of the "Counter Case," and I shall probably stay in this city to arrange materials for the "Reply" of Her Majesty's Government, and to assist in the marshalling of evidence, &c., on the British side.

Trusting that my proceedings will meet with your Lordship's approval, I have, &c.

Inclosure 1 in No. 19.

Rules for the Procedure of the Halifax Commission.

[See Protocol I.—Record of Proceedings.]

Inclosure 2 in No. 19.

Declaration.

[See Protocol I.—Record of Proceedings.]

Inclosure 3 in No. 19.

Case of Her Majesty's Government.

[See Appendix A.—Record of Proceedings.]

Inclosure 4 in No. 19.

List of Documents to be filed with the Secretary of the Commission in support of the Case of Her Majesty's Government.

[Attached to Appendix A.—Record of Proceedings.]

No. 20.

Sir A. Galt to the Earl of Derby.—(Received July 3.)

My Lord, *Halifax, June* 18, 1877.

I HAVE the honour to state, for the information of Her Majesty's Government, that the Commissioners appointed under the Fisheries' Clauses of the Washington Treaty, met in this city on the 15th instant, and organized by the appointment of M. Delfosse as President.

Mr. Bergne, of the Foreign Office, was thereafter selected to act as Secretary of the Commission.

Mr. Ford will no doubt keep your Lordship fully informed of the proceedings had before the Commissioners.

I have, &c.

(Signed) A. T. GALT,

Her Majesty's Commissioner.

No. 21.

Lord Tenterden to Mr. Malcolm.

Sir, *Foreign Office, July* 10, 1877.

I AM directed by the Earl of Derby to transmit to you, to be laid before the Earl of Carnarvon, the accompanying copy of a despatch from Mr. Ford,*

* No. 19.

together with its inclosures, reporting what took place at the first sittings of the Halifax Fisheries' Commission, and I am to request that in laying these papers before his Lordship you will state to him that Lord Derby proposes, with Lord Carnarvon's concurrence, to approve Mr. Ford's proceedings.

I am, &c.
(Signed) TENTERDEN.

No. 22.

Mr. Ford to the Earl of Derby.—(Received July 20.)

(Extract.) *Halifax, July 9, 1877.*

I HAVE the honour to inform your Lordship that, in compliance with the rules adopted for the procedure of the Halifax Commission, the United States' Agent has filed the Answer of the United States to the Case of Her Britannic Majesty's Government, accompanied by a Brief upon the question of the extent and limits of the inshore fisheries and territorial waters on the Atlantic coast of British North America.

These documents reached Halifax this morning by steamer from Boston, and I have not yet had sufficient time to study them completely; but I avail myself of the mail which leaves to-morrow to send duplicate copies, for your Lordship's information, in order that I may be in a position later to ask for instructions by telegraph if I find necessity to do so.

Inclosure 1 in No. 22.

Answer on behalf of the United States of America to the Case of Her Britannic Majesty's Government.

[See Appendix B, Record of Proceedings.]

Inclosure 2 in No. 22.

Brief on behalf of the United States, before the Commission convened at Halifax in June, 1877, pursuant to the Treaty between the United States and Great Britain, concluded at Washington, May 8, 1871; upon the question of the Extent and Limits of the Inshore Fisheries and Territorial Waters on the Atlantic Coast of British North America.

[See Appendix C, Record of Proceedings.]

No. 23.

Lord Tenterden to Mr. Malcolm.

Sir, *Foreign Office, July 21, 1877.*

I AM directed by the Earl of Derby to transmit to you, to be laid before the Earl of Carnarvon, for any observations that he may have to offer thereon, a copy of a despatch from Mr. Ford,* inclosing a copy of the Answer which has been filed by the Agent of the United States at Halifax, in reply to the Case of Her Majesty's Government, and which is accompanied by a Brief upon the "Headland Question," claiming six miles as the limit of the territory of bays.

I am, &c.
(Signed) TENTERDEN.

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* No. 22.

No. 24.

Mr. Bramston to Lord Tenterden.—(*Received July* 25.)

Sir, *Downing Street, July* 24, 1877.

I AM directed by the Earl of Carnarvon to acknowledge the receipt of your letter of the 10th instant, inclosing a copy of a despatch from Mr. Ford, reporting the proceedings at the first sittings of the Halifax Fisheries Commission on the 15th and 16th June, and forwarding a copy of the Case of Her Majesty's Government, as laid before the Commission.

Lord Carnarvon concurs in the approval of Mr. Ford's proceedings which the Earl of Derby proposes to express; and I am to request that two additional copies of Mr. Ford's despatch, and of its inclosures, may be furnished to this Department, in order that they may be transmitted, officially, to the Governments of Canada and Newfoundland.

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

No. 25.

The Earl of Derby to Mr. Ford.

(No. 13.)

Sir, *Foreign Office, July* 28, 1877.

I HAVE had under my consideration, in communication with Her Majesty's Secretary of State for the Colonies, your despatch of the 16th ultimo, together with its inclosures; and I have to convey to you the approval of Her Majesty's Government of your proceedings at the sittings of the Fisheries Commission on the 15th and 16th June, as reported by you.

I am, &c.
(Signed) DERBY.

No. 26.

Mr. Ford to the Earl of Derby.—(*Received August* 7.)

My Lord, *Halifax, July* 26, 1877.

WITH reference to my despatch of the 9th instant, I have the honour to inclose copies of the Reply to the Answer of the United States, which I have drawn up in consultation with my Counsel.

I delivered copies of it yesterday to the Secretary of the Commission, in compliance with the second rule adopted for the procedure of the Court, and it is now in the hands of the Commissioners and the United States' Agent.

Considerable difficulty presented itself as to the manner in which to meet the contention of the United States with regard to the Headland question; and as I calculated that the United States' Answer, forwarded in my despatch of the 9th instant, could not possibly reach your Lordship before the 20th, I deemed it useless to telegraph for instructions until your Lordship should be in a position to judge of the circumstances under which the point had been raised. I therefore telegraphed on that day, having in the meantime framed the reply which I inclose in this despatch, and which I was obliged, according to the rules, to present on the 25th instant.

I should infinitely have preferred the question not having been raised *in limine* by the United States' Government; but when once it was forced upon us, I entertained no doubt in my own mind as to the proper—indeed, the only—manner in which it could be met. I felt that, in the interests of Her Majesty's Government, and of her Colonial possessions on this Continent, the only course to pursue under the circumstances was to adopt the language employed in the first section of the reply, and which your Lordship will perceive is framed so as not to commit Her Majesty's Government to any expression of opinion on abstract principles of International Law; the position taken being merely to affirm that, for the purposes of

this Commission, and with regard to the exclusive right of fishing in bays, the literal and obvious construction of Article 1 of the Convention of 1818 must be adopted.

The view consistently maintained by successive Governments of Great Britain has been that, under that Convention, the United States renounced for ever the right to fish in any bays, whether large or small, of Her Majesty's North American Possessions; and I have accordingly elaborated this view in a Brief which I am drawing up with Counsel, and which I propose to submit to the Commissioners.

The line taken in this Brief is, that although Her Majesty's Government have from time to time granted certain indulgences to American fishermen with regard to fishing in bays, the right to exclude them has ever been expressly reserved; a slight distinction being drawn, however, in the case of the Bay of Fundy, which, for various reasons with which your Lordship is acquainted, has been practically thrown open to citizens of the United States.

I am anxious to be able to lay this paper before the Commissioners at as early a date as possible, inasmuch as, although I do not contemplate inviting them to give any open decision on the Headland question, their judgment of the merits of the case will doubtless be materially affected by the arguments which can be brought forward in support of the contention of either side.

I trust that your Lordship will approve of my proceedings in this important matter; and I can only repeat that I shall be most careful to guard against making any statements which might be construed as binding Her Majesty's Government for the future to any line of policy with regard to the general question of maritime jurisdiction or international law, upon which, as has been expressly stated both in the United States' Answer and in the British Reply, the Commissioners have no power to decide.

The arguments advanced to refute the several assertions on other important points treated in the United States' Answer are so fully expressed in the Reply, that I deem it unnecessary to trouble your Lordship with any observations with regard to them.

I have, &c.
(Signed) FRANCIS CLARE FORD.

Inclosure in No. 26.

Reply on behalf of Her Britannic Majesty's Government to the Answer of the United States.

[See Appendix D.—Record of Proceedings.]

No. 27.

Mr. Lister to Mr. Herbert.

Sir, *Foreign Office, August* 7, 1877.

I AM directed by the Earl of Derby to transmit to you, to be laid before the Earl of Carnarvon, a further despatch from Mr. Ford, inclosing a copy of the Reply to the "Answer" of the United States, which he has delivered to the Secretary of the Halifax Fishery Commission, and reporting his views with regard to the Brief on the Headlands question, which he is drawing up, and which he is anxious to lay before the Commissioners as soon as possible.*

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* No. 26.

No. 28.

Mr. Ford to the Earl of Derby—(*Received August* 14.)

My Lord, *Halifax, August* 2, 1877.

I HAVE the honour to report that the Halifax Commission resumed its sittings on Saturday, the 28th ultimo.

The first meeting after the adjournment was confined to reading the Minutes and other matters of a formal character.

On Monday, the 30th, the British Case was opened by reading the "Case of Her Britannic Majesty's Government," the "Answer of the United States," and the "Reply on behalf of Great Britain."

The documents alluded to in the British Case, which had been filed with the Secretary, were also read; and I have the honour to forward herewith copies of a reprint of the extracts and portions relied on, which has been arranged by Mr. Bergne for the use of the Commission and for preservation in the archives.*

The Commission then proceeded to take evidence in support of the British Case, and I propose to send your Lordship copies of the short-hand writers' notes occasionally, when they may be collected in a convenient form for transmission home. These notes will be certified in duplicate by the reporters taking the same, and will form part of the records of the Commission.

I should add that Mr. Richard H. Dana, jun., of Boston, and Mr. W. H. Trescot, of Washington, have been named as Counsel on behalf of the United States, in addition to Mr. Foster, and these gentlemen are now in daily attendance at the sittings. Mr. Alfred Foster, of Boston, Mr. J. S. D. Thompson, of Halifax, and Mr. H. A. Blood, of Washington, attend the Commission to perform such duties as may be assigned to them on the United States' side.

I have, &c.

(Signed) FRANCIS CLARE FORD.

No. 29.

Mr. Herbert to Mr. Lister.—(*Received August* 18.)

Sir, *Downing Street, August* 17, 1877.

I AM directed by the Earl of Carnarvon to acknowledge the receipt of your letter of the 7th instant, inclosing a copy of a despatch from Mr. Ford, with a copy of the Reply to the Answer of the United States, which he has delivered to the Secretary of the Halifax Fishery Commission, and reporting his views with regard to the Brief on the Headlands question which he is drawing up, and which he is anxious to lay before the Commissioners as soon as possible.

Lord Carnarvon desires me to request that you will state to the Earl of Derby that, subject to the opinion of the Law Officers of the Crown, who appear to have been co sulted on these papers, his Lordship concurs generally in the course taken by Mr. Ford and in the views expressed in his despatch.

I am, &c.

(Signed) ROBERT G. W. HERBERT.

No. 30.

The Earl of Derby to Mr. Ford.

Sir, *Foreign Office, August* 31, 1877.

I HAVE had under my consideration, in communication with Her Majesty's Secretary of State for the Colonies and the Law Officers of the Crown, your despatch of the 26th ultimo, inclosing a copy of the Reply to the "Answer" of the United States delivered by you to the Secretary of the Halifax Commission, and reporting your views with regard to the Brief on the Headlands question which you were drawing up, and which you were anxious to lay before the Commissioners as soon as possible, as well as your despatch No. 15 of the 9th ultimo, together with the previous correspondence relating to these matters.

* See Appendix E.—Record of Proceedings. (Statistical matter not reprinted in this Volume.)

I have now to inform you that Her Majesty's Government concur in your views and in the course taken by you, as reported in your despatch above referred to, and that they approve throughout the Reply which you have presented on their behalf to the "Answer" of the United States.

I am, &c.
(Signed) DERBY.

No. 31.

Mr. Ford to the Earl of Derby.—(Received September 18.)

(Extract.) *Halifax, September 3, 1877.*

I HAVE the honour to transmit herewith, for your Lordship's information, duplicate copies of the "Brief on behalf of Her Majesty's Government, in reply to the Brief for the United States on the Headland question,"* which I presented this day to the Commission.

I may add that I have been particular in directing the weight of evidence adduced before the Commission to bear on the fact of fishing done actually within three miles of the shore, irrespective of the question of bays; and as it appears from the testimony already taken that the fish taken in the centre of such bays along the whole coast amounts to a very insignificant quantity, I do not anticipate that the Headland question will be pressed upon the Commission, unless, indeed, the United States' evidence should point to a different conclusion as to the quantity of fish taken in the centre of the bays, which, however, I regard as improbable.

No. 32.

Lord Tenterden to Mr. Herbert.

Sir, *Foreign Office, September 22, 1877.*

WITH reference to your letter of the 1st ultimo, I am directed by the Earl of Derby to transmit to you, to be laid before the Earl of Carnarvon, the accompanying copy of a despatch from Mr. Ford, together with its inclosure, relative to the Headland question,† and I am to request that, in laying these papers before his Lordship, you will state to him that Lord Derby proposes to approve Mr. Ford's proceedings should there be no objection thereto.

I am, &c.
(Signed) TENTERDEN.

No. 33.

Mr. Ford to the Earl of Derby.—(Received September 27.)

My Lord, *Halifax, September 10, 1877.*

THE period allowed for the evidence in support of the British Case before the Halifax Commission closed on the 7th instant, and I take this opportunity of reporting to your Lordship briefly the result of the proceedings, so far as they have gone.

The evidence on the British side was commenced on the 30th of July, and has been continued during the whole of the six weeks available under the Rules adopted for the procedure of the Commission. Both oral and written testimony has been adduced, the records of which form a voluminous mass of printed matter, which I shall transmit for your Lordship's information as soon as completed and arranged. In the meanwhile I may call your Lordship's attention to the salient points established.

The mackerel fishery, being that most extensively pursued by Americans in British waters, is the branch of the inquiry to which the greatest attention was devoted. These fish first appear on the coasts of the British North American Provinces about the month of April, travelling northward as the season advances, until about the end of the month of October, when they commence to leave the

* See Appendix K.—Record of Proceedings. † No. 31.

Gulf of St. Lawrence and return southward to the coasts of the New England States, where it seems they disappear late in the year until about March or April the next season. The mackerel fishery on the Canadian coasts thus commences about April and generally ends about the 1st November, while that off the United States' coasts commences a little earlier and ends a little later than these dates; but it is scarcely probable that during the months when the large body of mackerel appears to travel northward, the catch on the American coast can, as a rule, be equal in quantity or value to that taken in British waters north of the State of Maine.

The fish taken in the spring are poor, and for this quality, termed in the trade "No. 3," 5 dollars to 6 dollars per barrel is a fair average price. The summer mackerel improve in size and price, and these, which are called "No. 2," realize from 8 dollars to 14 dollars a barrel. The "Fall" (autumn), or "No. 1," mackerel is the best quality of the season's catch, and is taken during the months of September and October, and in some years in the latter portion of August. The average price of this class would be, taking one year with another, about 13 dollars a barrel; and within the last seven years it has reached as high as 18 dollars. The price this year in this city is exceptionally high, as much as 24 dollars per barrel being offered at the present moment.

It is estimated that of a whole season's catch one-half would be "No. 1," and the remainder "No. 2" and "No. 3" in about equal proportions.

According to the evidence adduced on the British side, it seems beyond doubt that at least three-quarters of the mackerel taken on the British North American coasts is caught within the three mile limit; while, owing probably to the existence of sandy shoals at some distance from the shore, the catch of this fish in United States' waters, north of the 39th parallel of north latitude, is principally beyond that distance.

I give this as the result of the testimony of a large number of witnesses of undoubted position and integrity, whose practical knowledge of the subject has enabled them to speak with authority; but I must add that I anticipate considerable conflict of testimony on this particular point, if I may judge from the evidence given by two witnesses called, by my permission, on behalf of the United States, during the period allotted to the reception of evidence on the British side.

The herring, invariably taken close inshore, is another very important business from which Americans derive large profits. This fishery is chiefly carried on in the Bay of Fundy, in the vicinity of Grand Manan, and at the Magdalen Islands, as well as to a certain extent along the shores of Cape Breton and the Gulf of St. Lawrence. No claim can, however, be made on account of the fishery at the Magdalen Islands, unless proved to be pursued actually from the shore, as United States' citizens previously, under the Convention of 1818, enjoyed the privilege of fishing, although not of landing, on the coasts of these islands.

The cod fishery is pursued to a limited extent only by United States' fishermen within British territorial waters, and this is probably the case with regard to hake, haddock, pollock, &c.

The halibut fishery has been, and is still, a profitable branch of United States' enterprise; but is not now so extensively pursued as formerly.

With regard to the numbers of United States' vessels engaged in these various branches of the fishing business, it is obviously difficult to arrive at a very satisfactory estimate. The weight of testimony at present adduced appears, however, to point to the following facts:—

Taking an average for the past twenty or thirty years, the number of United States' mackerelmen annually resorting to British North American waters would be about 400 to 600 sail, ranging from 50 to 120 tons each. During the Reciprocity Treaty the numbers were no doubt greater than that given above, but for the past four years they have much declined; and this is a particularly unfortunate circumstance, as these are the first four years of the period for which payment has now to be assessed. It is, however, fair to assume that, as has happened at previous periods, this fishery, like all others, is subject to fluctuations, and that advices of a good catch in British waters may, any year, attract a large number of United States' mackerelmen to these coasts.

The probable annual average catch of each vessel, taking the smaller with the larger tonnage, would be from 600 to 700 barrels.

The herring fishery at Grand Manan is pursued both by vessels and boats from the adjacent United States' coasts, and the average annual catch secured by them

has been estimated by reliable witnesses as worth upwards of 500,000 dollars. To this estimate must be added the very considerable value of the herrings caught by United States' fishermen on other parts of the British North American coasts, not inclusive of the greater portion taken at the Magdalen Islands.

About 100 sail would apparently be a fair estimate of the average number of United States' cod-fishing vessels frequenting British North American waters, not inclusive of those pursuing the fishery on the Grand Banks outside of British jurisdiction.

The evidence is somewhat vague as to the proportion of cod-fish taken by Americans in British inshores, and it does not probably amount to anything considerable, except on certain portions of the north shore of the Gulf of St. Lawrence.

The evidence on the British side is unanimous, and, I think, conclusive, that United States' waters are never resorted to by British fishermen. The catch of mackerel, however, by Americans off their own coasts, which had fallen off to a great extent during the past many years, revived last year, but has again been a total failure during the present season, which will probably have the effect of bringing a larger number of United States' vessels to British waters for the "fall," or autumn fishing, this year.

The testimony as to the actual net profits accruing to United States' fishermen from their operations in British waters has been somewhat uncertain, but some competent witnesses speak to as much as 50 per cent. on the gross catch.

The above is a summary of the facts as to the chief points at issue, and it remains to notice the results arrived at with regard to the collateral advantages mentioned in the British "Case," such as transhipment, obtaining bait, supplies, &c.

Your Lordship will have observed that the United States' "Answer" denied the competence of the Commission to take these privileges into account at all in their estimate of compensation, alleging that as they were not specifically enumerated in the Treaty they do not come within the scope of the present inquiry. The view thus held by the United States' Government was brought forward in a very serious and pointed manner by Mr. Foster at the Conference held on the 1st instant, and after the matter had been very fully discussed by the Counsel on both sides, the Commissioners decided that it was not within their competence to award compensation for the privileges of purchasing bait, ice, supplies, or of transshipping cargoes in British waters.

The decision thus arrived at was unanimous, but was accompanied by a declaration from Sir Alexander Galt of his views on the subject, which will be found in the report of the speeches made, which I have the honour to inclose herewith.*

Your Lordship will not fail to observe the importance of this decision for the following reasons:—

1. It eliminates from the consideration of the tribunal a very important element in the assessment of compensation to Canada.

2. Very serious inconveniences may arise from the point so ably stated by Sir A. Galt in his speech, viz., that by the interpretation thus placed on the Treaty by the United States, the right of their fishermen to any use of Canadian ports or shores for any purposes save those of fishing, landing to dry their nets, and curing their fish is distinctly renounced and abandoned.

Were any dissatisfaction to arise in these colonies, particularly in Newfoundland, with regard to the eventual award, the Colonial authorities may, not unnaturally, feel that whilst United States' fishermen have for some years already enjoyed the benefit of all privileges without question, advantage has been taken of a rigid construction of the Treaty of Washington by the United States' Government to escape the payment which was probably contemplated by that Treaty; and it might well happen that a disposition should be shown to re-enforce the suspended statutes against any use of their coasts by United States' fishermen, except for the specified purposes, thus debarring them from the privilege of purchasing bait, ice, and supplies, and especially of transhipping their cargoes, which last is a most valuable advantage. It is needless for me to point out the very grave difficulties to which any restrictive policy in this direction might give rise.

The decision, however, removes any reasons which the United States might advance for repudiating the award on the ground of the Commissioners having acted *ultra vires*.

* See No. 3 in Appendix J to Record of Proceedings.

Another point raised during the course of the proceedings was on a motion of the United States' Counsel to be allowed the right of reply orally as well as in writing. The full report of the discussion will be found in Section 2 of the Report of Speeches, above inclosed; and it is only necessary for me to remark that I thought it right to press the matter to a decision, in order to secure if possible that the final arguments should be made in writing, so as to obtain, without any question as to the accuracy of reporting, the actual and deliberate expression of the views of the Agents of either Government on a matter which will have a lasting historical interest with regard to the British North American colonies. It was also of considerable importance to the success of the British Case to maintain our right to the actual and final reply.

The foregoing is a brief indication of the points established in the British evidence; some matters still remain to be brought out, either in the rebuttal evidence, for which a period of two weeks is allowed to the British side, or during three days, which I shall be entitled to take out of the time allowed for the United States' evidence, in consideration of the time allowed for the examination of witnesses on the United States' side during the past six weeks, and the days devoted to the discussion of motions brought forward by the United States' Agent. Chief among such matters is the question of the free market for fish and fish oil which will no doubt form an important portion of the United States' Case.

At the conclusion of the Conference held on the 7th instant, the Commission adjourned until Monday the 17th instant, on the motion of Mr. Foster, who desired to avail himself of the recess for making arrangements with regard to witnesses, on the understanding that such adjournment should be deducted from the period allowed for the reception of testimony in support of the United States' Case.

I have, &c.

(Signed) FRANCIS CLARE FORD.

No. 34.

Mr. Herbert to Lord Tenterden.—(Received October 2.)

My Lord, *Downing Street, October 2, 1877.*

I AM directed by the Earl of Carnarvon to acknowledge the receipt of your letter of the 22nd September, inclosing a despatch from Mr. Ford, with a Brief drawn up by him on behalf of Her Majesty's Government, and presented to the Halifax Fishery Commission, in reply to the Brief on behalf of the Government of the United States relating to the Headland question.

Lord Carnarvon concurs in the approval which the Earl of Derby proposes to convey to Mr. Ford, and his Lordship has pleasure in taking this opportunity of expressing the satisfaction with which Lord Carnarvon has observed the ability and judgment displayed by Mr. Ford throughout his proceedings, so far as they have hitherto been reported.

I am to request that two additional copies of the Brief accompanying Mr. Ford's despatch may be supplied for transmission to the Governor-General of Canada and Governor of Newfoundland.

I am, &c.

(Signed) ROBERT G. W. HERBERT.

No. 35.

The Earl of Derby to Mr. Ford.

Sir, *Foreign Office, October 6, 1877.*

I REFERRED to Her Majesty's Secretary of State for the Colonies your despatch of the 7th ultimo, inclosing the Brief drawn up by you on behalf of Her Majesty's Government and presented to the Halifax Fisheries Commission, in reply to the Brief on behalf of the Government of the United States relative to the Headland question, and in conveying to you the approval of Her Majesty's

Government of the Brief in question, I take the opportunity of adding the expression of their satisfaction with the ability and judgment displayed by you throughout your proceedings.

I am, &c.
(Signed) DERBY.

No. 36.

Mr. Ford to the Earl of Derby.—(*Received November* 13.)

My Lord, *Halifax, October* 30, 1877.

I HAVE the honour to inform your Lordship that the evidence produced on behalf of the United States before the Halifax Commission closed on the 24th instant.

Seventy-eight witnesses, in all, have been examined, and 280 affidavits filed, on the United States' side; and, as was the case with the testimony on the British side, the main part of it has been directed to the mackerel fishery, with regard to which the United States' Counsel have sought to establish the following salient points:—

1. That the fishing grounds principally resorted to by the United States' fishermen in the Gulf of St. Lawrence are on the banks situated outside the three-mile limit, and at the Magdalene Islands, to which they had access previous to the conclusion of the Treaty of Washington.

2. That the fishing business is at the best an unprofitable one, as regards its net results to the owners or charterers of vessels.

A mass of statistics has been put in evidence with a view to prove this assertion, and to show that the Canadian in-shore fisheries can hardly be pursued by United States' citizens except at a loss; whilst those on their own shore yield a greater prospect of remunerative results.

3. That the remission of duties on Canadian fish is a great benefit to the producer, inasmuch as the chief market for mackerel is that of the United States.

With regard to the cod and halibut fisheries, the United States' evidence goes on to show that they are almost exclusively carried on outside the three-mile limit, in deep-sea water; and, as respects herring, certain witnesses have been called to refute the evidence brought forward on the British side as to the value to United States' citizens of the in-shore fisheries at Grand Manan and in other parts of the Bay of Fundy.

I inclose, for your Lordship's information, copies of the United States' evidence and affidavits; but I do not propose in this despatch to enter into the facts and arguments which may be advanced in denial of the points thus sought to be established by the United States' Counsel. These will be fully elaborated in the final argument to be presented to the Commission on behalf of Her Majesty's Government.

I may, however, observe that as it has never been denied, even by the British side, that a certain portion of the mackerel taken by United States' vessels in the Gulf of St. Lawrence is caught outside the three-mile limit, there could be no difficulty in producing a considerable number of fishermen who would truthfully depose that the majority of their successful trips had been made outside the limit of British territorial jurisdiction.

The main fact, however, remains practically intact, viz., that without access to the inshores it would be impossible for the general business of mackerel fishing by United States' vessels in the Gulf of St. Lawrence to be pursued with profitable results.

As regards the small profits, or even dead loss, alleged to be derived from fishing operations, the evidence and statistics produced by the United States has been of so vague a nature, when thoroughly sifted and analyzed, that I do not anticipate much difficulty in disposing of it in the closing argument.

Your Lordship may remember that a period of fourteen days was assigned for British evidence in rebuttal of that brought forward by the United States; but after consultation with my Counsel I do not think it will be necessary to avail myself of more than a short portion of this time; and I have, therefore, made the following arrangement with the United States' Agent with regard to the disposition of the time to be occupied by the remainder of the proceedings.

The Commission now stands adjourned until Thursday, November 1; and I have at present called one witness in rebuttal. The 1st and 2nd November I propose to devote to further rebuttal testimony, after which the Commission will adjourn until Wednesday, the 7th of November, when the closing arguments on the United States' side will be commenced, and will probably last until Tuesday, the 12th.

A further adjournment of one week will then be made for the preparation of the final arguments on behalf of Her Majesty's Government, which will be commenced on Tuesday, the 20th November, and will probably be concluded on the 22nd.

Then the Case on either side will be finally closed, and the Commissioners will at once proceed to consider their award, unless they may express a desire to hear further arguments in elucidation of any special points; and I trust that the decision will be given without loss of time.

I have, &c.
(Signed) FRANCIS CLARE FORD.

No. 37.

Mr. Herbert to Lord Tenterden.—(Received December 6.)

My Lord, *Downing Street, December 6, 1877.*

I AM directed to request that you will inform the Earl of Derby that the Queen has been pleased, on the recommendation of the Earl of Carnarvon, to give directions for the appointment of Francis Clare Ford, Esq., Her Majesty's Chargé d'Affaires at Darmstadt, and lately Her Majesty's Agent before the Fisheries Commission at Halifax, to be a member of the Third Class or Companions of the Most Distinguished Order of St. Michael and St. George, in recognition of the valuable services rendered by him in connection with that Commission.

The formal instrument of appointment, with the requisite insignia, will be transmitted to him in due course.

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

No. 38.

Sir A. Galt to the Earl of Derby.—(Received December 7.)

My Lord, *Halifax, November 24, 1877.*

I HAVE the honour to state that the proceedings of the Halifax Commission were yesterday concluded by an award in favour of Her Majesty's Government of 5,500,000 dollars in gold, rendered by M. Delfosse and myself, the American Commissioner being dissentient.

I regret that the award could not be made unanimous, but the difference of opinion was so great as to render it wholly impracticable, and I can only express the hope that the result will meet the approval of Her Majesty's Government.

I should be wanting in my duty if I omitted to state in the strongest terms my appreciation of the manner in which the British Case has been conducted by Mr. F. C. Ford, to whose intelligence, zeal, and tact the measure of success obtained must be mainly attributed.

In all the proceedings Mr. Ford has been most ably supported by Mr. Albert J. Smith, Minister of Marine and Fisheries, who has constantly attended the Commission as representing the Dominion Government, and of whom it is difficult for me to speak in fitting terms of appreciation.

As Commissioner I have had an opportunity of observing the great value of the services of these two gentlemen, and I most respectfully bring them under the notice of Her Majesty's Government.

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

No. 39.

Mr. Ford to the Earl of Derby.—(*Received December* 7.)

My Lord, *Halifax, November* 26, 1877.

I HAVE the honour to inform your Lordship that the proceedings of the Halifax Commission were closed on the 23rd instant, when M. Delfosse, the President, having first expressed the thanks of the Commissioners to Mr. Foster and myself for the able manner in which we had conducted the proceedings, and his best wishes for the welfare of all those who had been connected with the inquiry, read the following award:—

"The Undersigned, Commissioners appointed under Articles XXII and XXIII of the Treaty of Washington, of the 8th of May, 1871, to determine, having regard to the privileges accorded by the citizens of the United States to the subjects of Her Britannic Majesty, as stated in Articles XIX and XXI of said Treaty, the amount of any compensation which, in their opinion, ought to be paid by the Government of Her Britannic Majesty in return for the privileges accorded to the citizens of the United States under Article XVIII of the said Treaty; having carefully and impartially examined the matters referred to them, according to justice and equity, in conformity with the solemn declaration made and subscribed by them on the 15th day of June, 1877;

"Award the sum of 5,500,000 dollars in gold to be paid by the Government of the United States to the Government of Her Britannic Majesty, in accordance with the provisions of the said Treaty."

This award was signed by M. Maurice Delfosse and Sir Alexander T. Galt, and dated Halifax, the 23rd day of November, 1877.

To this award was appended the following statement, signed by the United States' Commissioner:—

"The United States' Commissioner is of opinion that the advantages accruing to Great Britain under the Treaty of Washington are greater than the advantages conferred on the United States by said Treaty, and he cannot, therefore, concur in the conclusions announced by his colleagues. And the American Commissioner deems it his duty to state further that it is questionable whether it is competent for the Board to make an award under the Treaty except with the unanimous consent of its members."

Mr. Foster, the United States' Agent, then addressed the Commission as follows:—

"Gentlemen of the Commission, I have no instructions from the Government of the United States as to the course to be pursued in the contingency of such a result as has just been announced. But if I were to accept in silence the paper signed by two Commissioners, it might be claimed hereafter that, as Agent of the United States, I had acquiesced in considering it as a valid award. Against sueh an inference it seems to be my duty to guard. I, therefore, make this statement, which I desire to have placed on the Record."

Mr. Kellogg then expressed his thanks and those of Sir A. Galt to M. Delfosse for the manner in which he had fulfilled the duties of President of the Commission.

The President then announced that the Commission was adjourned *sine die*.

I have, &c.

(Signed) FRANCIS CLARE FORD.

No. 40.

Lord Tenterden to Mr. Herbert.

Sir *Foreign Office, December* 10, 1877.

I AM directed by the Earl of Derby to transmit to you, to be laid before the Earl of Carnarvon, the accompanying copies of despatches from Sir A. Galt and Mr. Ford, reporting that the proceedings of the Halifax Commission were concluded on the 23rd ultimo by an award in favour of Her Majesty's Government of 5,500,000 dollars in gold, rendered by M. Delfosse and Sir A. Galt, the American Commissioner being dissentient.*

* Nos. 38 and 39.

Sir A. Galt bears warm testimony to the zeal, intelligence, and tact displayed by Mr. Ford in conducting the British Case; and I am also to transmit the accompanying drafts of despatches which, if Lord Carnarvon concurs, Lord Derby proposes to address to those gentlemen, conveying the thanks of Her Majesty's Government to Sir A. Galt for his services, and expressing their high appreciation of Mr. Ford's zeal and ability as shown in his conduct of the proceedings before the Commission.

I am further to suggest, for Lord Carnarvon's consideration, that an approval of Mr. Albert Smith's services should be conveyed to that gentleman by the Colonial Office.

I am, &c.
(Signed) TENTERDEN.

No. 41.

The Earl of Derby to Mr. Ford.

Sir, *Foreign Office, December* 14, 1877.

I HAVE much satisfaction in acquainting you that the Queen has been graciously pleased, on the recommendation of the Earl of Carnarvon, to signify her intention of appointing you a Member of the Third Class or Companions of the Most Distinguished Order of St. Michael and St. George, in recognition of the valuable services rendered by you in connection with the Fisheries Commission at Halifax.

I have, at the same time, much pleasure in expressing to you my satisfaction at this well-merited recognition of your services.

I am, &c.
(Signed) DERBY.

No. 42.

Lord Tenterden to Mr. Herbert.

Sir, *Foreign Office, December* 14, 1877.

WITH reference to your letter of the 6th instant, on the subject of the appointment of Mr. Ford as a Member of the Third Class of the Most Distinguished Order of St. Michael and St. George, I am directed by the Earl of Derby to transmit to you, for the information of the Earl of Carnarvon, copy of a letter which his Lordship has addressed to that gentleman, acquainting him with Her Majesty's intention of conferring that honour upon him.

I am, &c.
(Signed) TENTERDEN.

No. 43.

Mr. Ford to the Earl of Derby.—(Received December 19.)

My Lord, *Foreign Office, December* 17, 1877.

IN my despatch of the 16th June last I informed your Lordship that Mr. Bergne had been appointed to act as Secretary to the Halifax Commission, and I have now the honour to report that, on the termination of the proceedings, the thanks of the Commissioners were tendered to him, as will be found in the record of the seventy-seventh Conference. The President also addressed to me a letter stating that the sum of 2,500 dollars in gold (or about 500*l.* sterling) had been assigned to Mr. Bergne in recognition of the able manner in which he had fulfilled the duties of Secretary and Protocolist, and I have accordingly authorized him to receive that amount.

I hope I may be allowed, in bringing these facts to your Lordship's knowledge, to express my sense of the valuable assistance that was rendered by Mr. Bergne

during the protracted sessions of the Halifax Commission, the labours and anxieties of which were materially lightened by his unceasing attention, zeal, and energy; and I cannot but speak in the highest terms of the services he rendered to me personally in connection with the business of the Fishery Commission during the whole period for which it has been my good fortune to have enjoyed the benefit of his services.

I have, &c.
(Signed) FRANCIS CLARE FORD.

No. 44.

Mr. Ford to the Earl of Derby.—(Received December 19.)

My Lord, *Foreign Office, December 17, 1877.*

AT the close of the proceedings of the Halifax Commission, I feel I should not be doing my duty were I not to acknowledge in fitting terms the services of those gentlemen at Halifax from whom I received the most valuable assistance.

I do not desire to speak of the signal services rendered by the Counsel retained on behalf of Her Majesty's Government, notably those of the Honourable Mr. Whiteway, Mr. S. R. Thomson, and the Honourable L. H. Davies, as I presume the able manner in which they performed their arduous and responsible duties will be brought to the notice of Her Majesty's Government by the Governor-General of Canada, and by the Governor of the Colony of Newfoundland.

I would beg more especially to speak of the advantages derived through the services of Mr. Edward Miall, Mr. Whitcher, and Mr. John Galt.

Mr. Miall is an English gentleman at present holding a high situation in the Department of Internal Revenue at Ottawa, and to his uniform willingness to assist me in every way in which his services might be made available or his talents turned to account I wish to speak in terms of the highest recognition. To his knowledge of statistics and accuracy in dealing with them, I ascribe in a great degree the success of that important part of the British Case which depended on a true and clear exposition of figures, and I feel greatly indebted to the Canadian Government for having placed that gentleman's services at my disposal.

Mr. Whitcher is the Canadian Commissioner of Fisheries. His intimate acquaintance with the subject, and his long official experience in all matters connected with it, proved of high value during the progress of the late inquiry.

To Mr. John Galt, son of Sir Alexander Galt, my best thanks are due for the zealous manner in which he offered me his services, and for the marked ability with which he performed such duties as I had occasion to entrust to him.

I have, &c.
(Signed) FRANCIS CLARE FORD.

No. 45.

Mr. Ford to the Earl of Derby.—(Received December 19.)

My Lord, *Foreign Office, December 18, 1877.*

I HAVE the honour to acknowledge the receipt of your Lordship's despatch of the 14th instant, acquainting me that the Queen had been graciously pleased, on the recommendation of the Earl of Carnarvon, to signify her intention of appointing me a Member of the Third Class or Companions of the Most Distinguished Order of St. Michael and St. George.

I beg to convey herewith to your Lordship the high sense I entertain of the honour that has been conferred upon me, and I am the more gratified with this mark of distinction, as your Lordship has been good enough to express your satisfaction at my having received this recognition of the services I was able to render in connection with the Fisheries Commission at Halifax.

I have, &c.
(Signed) FRANCIS CLARE FORD.

No. 46.

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

Sir, *Downing Street, December* 21, 1877.

I AM directed by the Earl of Carnarvon to acknowledge the receipt of your letter of the 10th instant, inclosing copies of despatches from Sir A. Galt and Mr. Ford, reporting that the proceedings of the Halifax Fisheries Commission were concluded on the 23rd ultimo, by an Award in favour of Her Majesty's Government of 5,500,000 dollars, rendered by M. Delfosse and Sir A. Galt, the American Commissioner being dissentient.

Lord Carnarvon desires me to request that you will state to the Earl of Derby that his Lordship entirely concurs in the draft despatches proposed to be addressed to Sir A. Galt and Mr. Ford respectively, and his Lordship has conveyed through the Governor-General to Mr. Albert Smith, the Minister of Marine and Fisheries of Canada, the thanks of Her Majesty's Government for the valuable assistance rendered by him in connection with the business of the Commission.

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

No. 47.

Lord Tenterden to Mr. Herbert.

Sir, *Foreign Office, December* 22, 1877.

WITH reference to my letter of the 10th instant and to previous correspondence, I am directed by the Earl of Derby to transmit to you, to be laid before the Earl of Carnarvon, the accompanying copy of a despatch from Mr. Ford,* bearing testimony to the valuable assistance rendered to him by Messrs. Whiteway, Thomson, and Davies, the Counsel retained for Her Majesty's Government at the late Halifax Fisheries Commission, as well as by Messrs. Miall, Whitcher, and Galt, in the several capacities in which they were employed; and I am to request that in laying this despatch before his Lordship, you will suggest to him the advisability of causing to be conveyed to those gentlemen the high appreciation by Her Majesty's Government of their valuable services.

I am, &c.
(Signed) TENTERDEN.

No. 48.

The Earl of Derby to Mr. Ford.

Sir, *Foreign Office, December* 27, 1877.

I HAVE received with much satisfaction your despatch of the 26th ultimo, reporting that the proceedings of the Halifax Commission were closed on the 23rd ultimo, when an award was given in favour of Her Majesty's Government of 5,500,000 dollars in gold, signed by M. Delfosse and Sir H. Galt, the American Commissioner being dissentient.

It has also given me much satisfaction to receive Sir A. Galt's testimony to the intelligence, zeal, and tact displayed by you in conducting the British Case, to which Sir A. Galt considers that the measure of success obtained must be mainly attributed; and I have great pleasure in expressing to you the high appreciation entertained by Her Majesty's Government of your services.

I am, &c.
(Signed) DERBY.

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* No. 44.

No. 49.

The Earl of Derby to Sir A. Galt.

Sir, *Foreign Office, December* 27, 1877.

I HAVE received with much satisfaction your despatch of the 24th ultimo, reporting that the proceedings of the Halifax Commission were concluded on the 23rd ultimo by an award in favour of the Government of Her Majesty of 5,500,000 dollars in gold, rendered by M. Delfosse and yourself, the American Commissioner being dissentient; and I have great pleasure in conveying to you the thanks of the Queen and of Her Majesty's Government, for your services as Commissioner.

It has also given me much satisfaction to receive your testimony to the intelligence, zeal, and tact with which Mr. Ford has conducted the British Case, and I shall with great pleasure express to him the high appreciation entertained by Her Majesty's Government of his zeal and ability, as shown by his conduct of the proceedings before the Commission.

I have communicated your despatch to Her Majesty's Secretary of State for the Colonies, who will likewise convey to Mr. Albert Smith the approval of Her Majesty's Government of his services.

I am, &c.
(Signed) DERBY.

No. 50.

The Earl of Derby to Mr. Ford.

Sir, *Foreign Office, December* 28, 1877.

I HAVE much satisfaction in acquainting you that the Prime Minister has, upon my recommendation, submitted your name to the Queen for a Companionship of the Bath, and Her Majesty has been graciously pleased to approve of your receiving that honour as a mark of Her Majesty's approbation of the manner in which you performed the duties of British Agent before the Fisheries Commission at Halifax.

I am, &c.
(Signed) DERBY.

No. 51.

Lord Tenterden to Mr. Herbert.

Sir, *Foreign Office, December* 28, 1877.

WITH reference to my letter of the 24th instant, I am directed by the Earl of Derby to transmit to you, to be laid before the Earl of Carnarvon, the accompanying copy of a despatch from Mr. Ford,* bearing testimony to the valuable services rendered by Mr. Bergne whilst employed in connection with the Halifax Fisheries Commission, and stating that the sum of 2,500 dollars in gold, equivalent to about 500*l.* sterling, had been assigned to that gentleman by the Commissioners in recognition of the able manner in which he had performed the duties of Secretary and Protocolist to the Commisson, which sum Mr. Ford had authorized him to accept; and I am to request that in laying these papers before Lord Carnarvon you will inform his Lordship that Lord Derby proposes to approve Mr. Ford's proceedings in the matter, should there be no objection thereto.

I am, &c.
(Signed) TENTERDEN.

No. 52.

Mr. Ford to the Earl of Derby.—(Received December 29.)

My Lord, *Foreign Office, December* 29, 1877.

IN acknowledging receipt of your Lordship's despatch of the 28th instant, informing me that the Prime Minister had submitted my name to the Queen

* No. 43.

for a Companionship of the Bath, and that Her Majesty had been graciously pleased to approve of my receiving that honour as a mark of Her Majesty's approbation of the manner in which I had performed the duties of British Agent before the Fisheries Commission at Halifax, I have the honour to convey to your Lordship the high appreciation I entertain of the honour that has been conferred upon me, and the expression of my most respectful thanks for the gracious act of Her Majesty towards me.

I have, &c.
(Signed) FRANCIS CLARE FORD.

No. 53.

Mr. Herbert to Lord Tenterden.—(Received January 7.)

Sir, *Downing Street, January 5, 1878.*

I AM directed by the Earl of Carnarvon to transmit to you, to be laid before the Earl of Derby, a copy of a despatch from the Governor of Newfoundland, inclosing the Report of the Solicitor-General of the Island on the proceedings of the Halifax Fisheries Commission, together with a Minute of the Executive Council, recording their high appreciation of the services rendered by Mr. F. C. Ford.

Lord Derby will observe that Mr. Whiteway's Report also bears testimony to the efficient manner in which Mr. J. H. G. Bergne discharged the duties devolving upon him in connection with the business of the Commission.

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

Inclosure 1 in No. 53.

Governor Sir J. Glover to the Earl of Carnarvon.

My Lord, *Government House, December 13, 1877.*

I HAVE the honour to inclose, for your Lordship's information, the Report of the Honourable the Solicitor-General on the proceedings of the Halifax Fishery Commission, together with a Minute of the Executive Council, recording their high appreciation of the services of Mr. F. C. Ford, and which my Ministers respectfully desire may be communicated to the Foreign Office.

I have, &c.
(Signed) JOHN H. GLOVER.

Inclosure 2 in No. 53.

Report of Hon. Mr. Whiteway, Q.C.

Sir, *St. John's, Newfoundland, December 3, 1877.*

In the Matter of the Halifax Fishery Commission under the Washington Treaty, 8th May, 1877.

I HAVE the honour to report that, pursuant to the instructions received by me from your Excellency, I left St. John's on the 9th day of June last for Halifax, Nova Scotia. Upon my arrival there I placed myself in communication with Mr. Francis C. Ford, the agent of Her Majesty's Government.

The Commissioners met on the 15th day of June, and having subscribed a declaration in conformity with the terms of the Treaty, general rules of proceeding, to the preparation of which our attention had been devoted, were adopted, and Counsel were nominated by the Agents respectively of Great Britain and the United States. I then returned to St. John's for the purpose of collecting additional testimony and securing the personal attendance at Halifax of competent witnesses to sustain the case for Newfoundland.

Proceeding forthwith again to Halifax, I was constantly engaged in the

discharge of the duties incumbent upon me until my return to St. John's on the 29th ultimo.

On the 23rd ultimo an award was made by the majority of the Commissioners granting to Great Britain the sum of 5,500,000 dollars in gold.

I have the honour to transmit herewith a copy of the proceedings of the Commission, so far as the same have been printed and handed to me.

I have requested that 50 copies of the proceedings shall be forwarded to your Excellency as soon as they are printed.

In making this Report, I desire to record my appreciation of the valuable services rendered by Mr. Ford, as well to Her Majesty's Government as to the Dominion of Canada and this Island. His thorough knowledge of the subject, combined with a well directed, indefatigable energy, has been brought to bear with great judgment. To the ability with which he has discharged the important and delicate duties devolving upon him in the management of this case, is attributable to a great degree, in my judgment, not only the successful result, but the harmony which has peculiarly characterised this important and complicated investigation.

I have also much pleasure in bearing testimony to the very great zeal and efficiency with which Mr. J. H. G. Bergne discharged the duties devolved upon him in connection with our proceedings.

I have, &c.

(Signed) W. V. WHITEWAY, Q.C., *Solicitor-General, Newfoundland, Counsel for the British Government, Halifax Fishery Commission.*

Inclosure 3 in No. 53.

Minute of Executive Council of Newfoundland of December 12, 1877.

IN the Report of the Hon. Mr. Whiteway, Counsel for Newfoundland at the Halifax Fisheries Commission, to his Excellency the Governor, dated 3rd December instant, the Executive note makes special mention of the services rendered by Mr. Francis Clare Ford, British Agent.

Previous knowledge of Mr. Ford, acquired during his stay in St. John's last year, had led the Executive to anticipate advantages of high importance from his management of the British Colonial Case.

In the preparation of the Newfoundland portion he gave valuable aid, and impressed the Executive in marked degree with his zeal, judgment, and ability. This impression has been confirmed by information subsequently received of his conduct of the proceedings before the Commission at Halifax.

The Executive have, therefore, great pleasure in being able to record their entire concurrence in the estimate formed by Mr. Whiteway of Mr. Ford's labours, and regard it as but a just tribute to his merits.

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

No. 54.

Mr. Herbert to Lord Tenterden.—(Received January 11.)

Sir, *Downing Street, January* 9, 1878

I AM directed by the Earl of Carnarvon to acknowledge the receipt of your letter of the 24th December, inclosing a despatch received from Mr. Ford, bearing testimony to the valuable assistance rendered by the Counsel for Her Majesty's Government at the late Halifax Fisheries Commission, as well as by Messrs. Miall, Whitcher, and Galt.

I am desired to transmit to you, to be laid before the Earl of Derby, copies of despatches which have been addressed upon this subject to the Governor-General of Canada and to the Governor of Newfoundland.

I am, &c.

(Signed) ROBERT G. W. HERBERT.

Inclosure 1 in No. 54.

The Earl of Carnarvon to the Earl of Dufferin.

My Lord, *Downing Street, January* 9, 1878.

I HAVE the honour to transmit to your Lordship a copy of a despatch received through the Foreign Office from Mr. Ford, bearing testimony to the valuable assistance rendered by the Counsel for Her Majesty's Government at the late Halifax Fisheries' Commission, as well as by Messrs. Miall, Whitcher, and Galt.

A communication will be addressed to the Government of Newfoundland with respect to Mr. Whiteway, and as regards the rest of the gentlemen above-named.

I request that you will be so good as to convey to them the high appreciation entertained by Her Majesty's Government of their valuable services.

I have, &c.
(Signed) CARNARVON.

Inclosure 2 in No. 54.

The Earl of Carnarvon to Governor Sir J. Glover.

Sir, *Downing Street, January* 7, 1878.

I HAVE the honour to acknowledge the receipt of your despatch of the 13th December, inclosing the Report of the Solicitor-General on the proceedings of the Halifax Fisheries Commission, together with a Minute of your Executive Council, relating to the services rendered by Mr. F. C. Ford.

I have communicated your despatch and its inclosures to the Secretary of State for Foreign Affairs, and I have to inform you that Her Majesty's Government have already made known to Mr. Ford the estimation in which they have held the services rendered by him in the conduct of the British Case.

I take this opportunity of inclosing a despatch from Mr. Ford, bearing testimony to the able assistance rendered by the Counsel for Her Majesty's Government who were engaged before the Commission, as well as by Messrs. Miall, Whitcher, and Galt, and I request that you will inform Mr. Whiteway that Her Majesty's Government have had much pleasure in receiving Mr. Ford's testimony to the ability and zeal with which he acted on the part of Newfoundland, and that you will convey to him the high appreciation in which Her Majesty's Government regard his services.

I have, &c.
(Signed) CARNARVON.

No. 55.

Mr. Malcolm to Lord Tenterden.—(Received January 16.)

Sir, *Downing Street, January* 14, 1878.

I AM directed by the Earl of Carnarvon to transmit to you, to be laid before the Earl of Derby, a copy of a despatch from the Governor-General of Canada, inclosing an Order in Council passed by the Privy Council of Canada expressive of the deep sense entertained by the Government of the Dominion of the zeal, ability, and energy with which Mr. Ford discharged his duties in connection with the late Fishery Commission at Halifax, and adding his own testimony to that of his Government in recognition of the services rendered by Mr. Ford.

I am also to inclose a copy of the reply which Lord Carnarvon has returned to the Governor-General's despatch.

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

Inclosure 1 in No. 55.

The Earl of Dufferin to the Earl of Carnarvon.

My Lord, *Government House, Ottawa, December* 21, 1877.

I HAVE very great pleasure in forwarding to your Lordship, under cover of this despatch, an Order in Council which has just been passed by the Privy Council of Canada, expressive of the deep sense my Government entertains of the zeal, ability, and energy with which Mr. Francis Clare Ford has discharged his duties in connection with the late Fishery Commission.

It is a great satisfaction to me to be able to have this opportunity of combining my own testimony with that of my Government in recognition of this gentleman's services. I have had ample opportunity of observing the great industry and intelligence which he displayed in the preparation of the British Case, and these qualities have, I have no doubt, tended in a great measure towards the satisfactory character of the award.

I have, &c.
(Signed) DUFFERIN.

Inclosure 2 in No. 55.

The Earl of Carnarvon to the Earl of Dufferin.

My Lord, *Downing Street, January* 12, 1878.

I HAVE the honour to acknowledge the receipt of your despatch of December 21, inclosing an Order in Council passed by the Privy Council of Canada expressive of the deep sense entertained by your Government of the zeal, ability, and energy with which Mr. Ford discharged his duties in connection with the late Fishery Commission at Halifax, and adding your own testimony to that of your Government in recognition of the services rendered by Mr. Ford.

Her Majesty has already marked her appreciation of Mr. Ford's services by conferring upon him a Companionship of the Bath as well as of the Order of St. Michael and St. George.

I am, &c.
(Signed) CARNARVON.

Inclosure 3 in No. 55.

Report of a Committee of the Honourable the Privy Council, approved by his Excellency the Governor-General, December 21, 1877.

THE Committee of Council have had under consideration the representations of the Honourable Mr. Smith, Minister of Marine and Fisheries, respecting the services of Francis Clare Ford, Esq., British Agent, before the Fishery Commission lately sitting at Halifax. Mr. Smith, who was present during the whole time attending to the case in behalf of the Canadian Government, states that Mr. Ford displayed the greatest zeal, energy, and devotion to his responsible duties in the preparation and management of the Case.

The Committee recommend that your Excellency should inform Her Majesty's Imperial Government of the great satisfaction felt by the Canadian Government with Mr. Ford's able and valuable services, and that any recognition of such services by Her Majesty's Government would be received with great pleasure by the Government of Canada.

Certified,
(Signed) H. A. HIMSWORTH,
Clerk, Privy Council.

No. 56.

Mr. Herbert to Lord Tenterden.—(Received January 17.)

Sir, *Downing Street, January 15, 1878.*

I AM directed by the Earl of Carnarvon to acknowledge the receipt of your letter of the 28th ultimo, inclosing a despatch from Mr. Ford, bearing testimony to the valuable services rendered by Mr. Bergne whilst employed in connection with the Halifax Fisheries Commission, and stating that he had authorized Mr. Bergne to accept the sum of 2,500 dollars in gold assigned to that gentleman by the Commissioners in recognition of the able manner in which he had performed the duties of Secretary and Protocolist.

Lord Carnarvon desires me to request that you will inform the Earl of Derby that he concurs in the proposed approval of Mr. Ford's proceedings in this matter, and his Lordship desires me to add that he has observed with much pleasure the high terms of approval in which Mr. Ford speaks of the services rendered by Mr. Bergne.

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

No. 57.

The Earl of Derby to Mr. Ford.

Sir, *Foreign Office, January 28, 1878.*

I REFERRED to Her Majesty's Secretary of State for the Colonies your despatch of the 17th ultimo, bearing testimony to the valuable services rendered by Mr. Bergne whilst employed in connection with the Halifax Fisheries Commission, and stating that you had authorized that gentleman to accept the sum of 2,500 dollars in gold, assigned to him by the Commissioners, in recognition of the able manner in which he had discharged the duties of Secretary and Protocolist to the Commission; and I have to state to you that your proceedings in the matter are approved.

I have to add that Lord Carnarvon has observed with much pleasure the high terms of approval in which you speak of Mr. Bergne's services.

I am, &c.
(Signed) DERBY.

No. 58.

Mr. Malcolm to Lord Tenterden.—(Received February 6.)

Sir, *Downing Street, February 4, 1878.*

WITH reference to your letter of the 10th December, and to the reply from this Department of the 21st of the same month, I am directed by the Secretary of State for the Colonies to transmit to you, for the information of the Earl of Derby, a copy of a despatch from the Governor-General of Canada, inclosing a letter from Mr. Albert J. Smith, Minister of Marine and Fisheries of the Dominion, acknowledging the intimation which has been conveyed to him of the appreciation entertained by Her Majesty's Government of his services in connection with the business of the Halifax Fisheries Commission.

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

Inclosure 1 in No. 58.

The Earl of Dufferin to the Earl of Carnarvon.

My Lord, *Ottawa, January 14, 1878.*

I HAVE the honour to inform your Lordship that in accordance with the instructions contained in your Lordship's despatch of the 27th ultimo, I

conveyed to Mr. Albert J. Smith an expression of the high appreciation entertained by Her Majesty's Government of the services rendered by him in connection with the business of the Halifax Fishery Commission, and their thanks for his co-operation and most valuable assistance. I have the honour now to transmit herewith to your Lordship, a copy of a letter from Mr. Smith acknowledging the receipt of my communication.

I have, &c.
(Signed) DUFFERIN.

Inclosure 2 in No. 58.

The Hon. A. J. Smith to the Earl of Dufferin.

My Lord, *Marine and Fisheries Department, Ottawa, January* 12, 1878.

I HAVE the honour to acknowledge receipt of your letter of the 8th instant, in which you say that you have been instructed by the Earl of Carnarvon to communicate to me the expression of the high appreciation entertained by Her Majesty's Government of the services rendered by me in connection with the business of the Halifax Fishery Commission, and their thanks for my co-operation and valuable assistance.

I have to thank your Excellency for this communication, and to request that you will inform Lord Carnarvon that I have experienced much pleasure by the assurance that my services in connection with the Halifax Commission have been appreciated by Her Majesty's Government.

I have, &c.
(Signed) A. J. SMITH.

No. 59.

Mr. Herbert to Lord Tenterden.—(*Received May* 31.)

My Lord. *Downing Street, May* 30, 1878.

I AM directed by the Secretary of State for the Colonies to transmit to you, for the information of the Marquis of Salisbury, a copy of the despatch Sir Michael Hicks Beach has addressed to Lord Dufferin, informing him that the Queen had conferred upon Sir A. Galt the dignity of Grand Cross, and upon Mr. Albert Smith that of Knight Commander of the Order of St. Michael and St. George, for their services in connection with the Halifax Fisheries Commission.

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

Inclosure in No. 59.

Sir M. Hicks Beach to the Earl of Dufferin.

My Lord, *Downing Street, May* 25, 1878.

AS you have been informed in a separate communication, the Queen has been pleased to confer upon Sir Alexander Galt, K.C.M.G., the dignity of Grand Cross of the Order of St. Michael and St. George, and upon Mr. Albert Smith that of Knight Commander of the same Order.

I had much satisfaction in bringing under the special notice of Her Majesty the valuable assistance rendered by these gentlemen to the Imperial Government and to that of the Dominion in connection with the Halifax Fisheries Commission; and I feel confident that the manner in which Her Majesty has been pleased to recognize their services will be highly appreciated by their fellow-subjects in Canada.

I have, &c.
(Signed) E. M. HICKS BEACH.

No. 60.

PROTOCOLS.

Protocol No. 1.

Record of the Proceedings of the Commission appointed under Articles XXII and XXIII of the Treaty of Washington, of the 8th May, 1871, at the first Conference held at Halifax, Nova Scotia, on the 15th day of June, 1877:—

THE Conference was convened at the Legislative Council Chamber, at Halifax, in accordance with an arrangement previously made between the three Commissioners.

The Commissioners who were present and produced their respective powers, which were examined and found to be in good and due form, were:—

His Excellency M. Maurice Delfosse, Envoy Extraordinary and Minister Plenipotentiary of His Majesty the King of the Belgians, at Washington, named by the Ambassador at London of His Imperial Majesty the Emperor of Austria-Hungary;

The Hon. Ensign H. Kellogg, named by the President of the United States; and

Sir Alexander T. Galt, K.C.M.G., named by Her Britannic Majesty.

The Hon. Dwight Foster attended the Conference as Agent of the United States, and Francis Clare Ford, Esq., attended as Agent of Her Britannic Majesty.

The Hon. Ensign H. Kellogg then proposed that M. Delfosse should preside over the labours of the Commission; and

M. Delfosse, having expressed his acknowledgments, assumed the Presidency.

Sir A. T. Galt then requested M. Delfosse to name some suitable person to act as Secretary of the Commission. M. Delfosse named J. H. G. Bergne, Esq., of the Foreign Office, London, who accepted the position.

The Commissioners thereupon proceeded to make and subscribe the following solemn Declaration, which was read by the Secretary and signed in duplicate by each of the Commissioners:—

The Undersigned, namely: His Excellency M. Maurice Delfosse, Envoy Extraordinary and Minister Plenipotentiary of His Majesty the King of the Belgians at Washington, &c., &c., &c., appointed by the Ambassador in London of His Imperial Majesty the Emperor of Austria-Hungary;

The Honourable Ensign H. Kellogg, &c., &c., &c., appointed by the President of the United States; and Sir Alexander Tilloch Galt, K.C.M.G., &c., &c., &c., appointed by Her Britannic Majesty, having met at Halifax as Commissioners under Article XXII of the Treaty of Washington of the 8th May, 1871, to determine, having regard to the privileges accorded by the United States to the subjects of Her Britannic Majesty, as stated in Articles XIX and XXI of the said Treaty, the amount of any compensation which, in our opinion, ought to be paid by the Government of the United States to the Government of Her Britannic Majesty, in return for the privileges accorded to the citizens of the United States, under Article XVIII of the said Treaty, do hereby solemnly declare that we will impartially and carefully examine and decide the matters referred to us to the best of our judgment, and according to justice and equity.

In witness whereof we have hereunto subscribed our names, this 15th day of June, 1877.

(Signed) MAURICE DELFOSSE.
E. H. KELLOGG.
A. T. GALT.

Mr. Ford then produced his commission as Agent of Her Britannic Majesty, which was found to be in due form. Mr. Foster also produced his commission as Agent of the United States, which was likewise found to be in due form.

Mr. Foster then produced a draft of Rules proposed for the procedure of the Commission, which had been submitted to him by Mr. Ford. To these, he said, that in the main he agreed, but took exception to certain of them which contemplated the appearance of Counsel on either side, as well as the accredited Agents. He submitted to the Commissioners that no person other than the Agent, on either side, should be permitted to address the Court.

Mr. Ford objected to this view, and contended that Counsel should be permitted to address the Court.

Mr. Foster, in reply, gave his reasons for maintaining his contention.

The Commissioners thereupon retired to deliberate, and on their return M. Delfosse announced the following decision :—

" The Commissioners having considered the statements made by the Agents of the respective Governments, decide : That each Agent may be heard personally or by Counsel, but in the case of the British Agent he shall be limited to *five*, as representing the maritime provinces on the Atlantic coast of British North America; and in the case of the Agent of the United States, he shall be allowed a similar number."

Mr. Ford then stated that he desired to raise an important point, viz., whether *ex parte* affidavits should be admitted as written testimony, under the terms of Article XXIV of the Treaty of Washington. He contended that such *ex parte* affidavits should not be admissible before the Commission.

Mr. Foster, on the other hand, contended that such *ex parte* affidavits should be admitted as written testimony, the Commissioners being left to attach to them such value as they might think fit.

Mr. S. R. Thomson, on the part of Great Britain, maintained the views expressed by Mr. Ford on this point.

The Commissioners then retired to deliberate, and, on their return, M. Delfosse announced that the Commissioners had decided that affidavits should be admitted.

The Commissioners then again retired for deliberation, and, on their return, M. Delfosse stated that the following rules had been adopted for the procedure of the Court; and directed them to be read by the Secretary :—

Rules for the Procedure of the Halifax Commission.

1. When the Commissioners shall have completed all necessary preliminary arrangements, the British Agent shall present a copy of the "Case" of Her Majesty s Government to each of the Commissioners, and duplicate copies to the United States' Agent.

2. The Court shall thereupon adjourn for a period of six weeks, on the expiration of one half of which period the United States' Agent shall deliver to the Secretary of the Commission at least twelve copies of the Counter Case of the United States' Government.

The British Agent shall, three days before the meeting of the Court after such adjournment, deliver to the Secretary of the Commission at least twelve copies of the Reply of Her Majesty's Government.

3. The evidence brought forward in support of the British "Case" must be closed within a period of six weeks after the case shall have been opened by the British Counsel unless a further time be allowed by the Commissioners on application.

The evidence brought forward in support of the United States' Counter Case must be closed within a similar period after the opening of the United States' case in answer, unless a further time be allowed by the Commissioners on application. A period of fourteen days shall then be allowed for the evidence in reply on the British side, unless a further time be allowed by the Commissioners on application. But as soon as the evidence in support of the British case is closed, that in support of the United States' shall be commenced, and as soon as that is closed, the evidence in reply shall be commenced. After which arguments shall be delivered on the part of the United States in writing within a period of ten days, unless a further time be allowed by the Commissioners on application; and arguments in closing on the British side shall be delivered in writing within a further period of ten days unless a further time be allowed by the Commissioners on application. Then the case on either side shall be considered as finally closed, unless the Commissioners shall

direct further arguments upon special points; the British Government having in such case the right of general reply, and the Commissioners shall at once proceed to consider their award. The periods thus allowed for hearing the evidence shall be without counting any days of adjournment that may be ordered by the Commissioners.

4. The Commissioners shall meet from day to day at the place appointed unless otherwise adjourned.

5. The Secretary shall keep a record of the proceedings of the Commission upon each day of its session, which shall be read at the next meeting, and signed, after approval, by the Commissioners, the Secretary, and the Agents.

6. The Secretary shall keep a notice book, in which entries may be made by the Agent or Counsel for either Government, and all entries in such book shall be due notice to the opposing Agent or Counsel.

7. The Minutes of proceedings and evidence shall be kept in duplicate, one of which will be delivered to the Agent of each Government at the close of the proceedings.

8. One Counsel only shall be allowed to examine a witness, and one Counsel only to cross-examine the same witness, unless otherwise allowed by the Commissioners.

9. The oral evidence shall be certified by the reporters taking the same.

10. The Secretary will have charge of all the books and papers of the Commission, and no papers shall be withdrawn from the files or taken from the office without an order of the Commission. The Agent or Counsel on either side shall, however, be allowed access to such books and papers for purposes of reference, and at the close of the proceedings books and papers filed shall be returned to the respective parties who may have produced them.

11. All witnesses shall be examined on oath or solemn affirmation, and *ex parte* affidavits are to be admitted.

12. The award shall be made out in duplicate, and copy be presented to the respective Agents of the two Governments.

13. The Commissioners shall have power to alter, amend, add to, suspend, or annul any of the foregoing Rules, as may seem to them expedient during the course of the proceedings.

Mr. Ford then proceeded to name the British Counsel, as follows:—

Joseph Doutre, Esq., Q.C., of Montreal.
S. R. Thompson, Esq., Q.C., of St. John, New Brunswick.
Hon. W. V. Whiteway, Q.C., of St. John's, Newfoundland.
Hon. Louis H. Davies, of Charlottetown, Prince Edward Island; and
R. L. Weatherbe, Esq., Q.C., of Halifax, Nova Scotia.

Mr. Foster stated that he would request permission to name the Counsel on the part of the United States, after such adjournment as might be decided on after the presentation of the "Case" of Her Majesty's Government; which request was acceded to by the Commissioners.

Mr. Ford then presented to each of the Commissioners a copy of the "Case" of Her Majesty's Government, and duplicate copies to the United States' Agent, accompanied by a list of the documents to be filed with the Secretary in support of the "Case." (See *Appendix A.*)

The Commission thereupon adjourned until next day, the sixteenth June, at noon.

(Signed) MAURICE DELFOSSE. (Signed) FRANCIS CLARE FORD.
E. H. KELLOGG. DWIGHT FOSTER.
A. T. GALT.

J. H. G. BERGNE.

Protocol No. 2.

Record of the Proceedings of the Fisheries Commission at the Second Conference, held at Halifax, Nova Scotia, on the 16th day of June, 1877:—

The Conference was held pursuant to adjournment.

The three Commissioners, and the Agents of the United States and of Great Britain respectively, were present.

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The President having directed the Secretary to read the records of the last Conference, these were approved and signed by the Commissioners, the Secretary, and the Agents.

The Commission was thereupon adjourned until Saturday, the 28th day of July, at 11 A.M.

(Signed) MAURICE DELFOSSE. (Signed) FRANCIS CLARE FORD.
E. H. KELLOGG. DWIGHT FOSTER.
A. T. GALT.

J. H. G. BERGNE

Protocol No. 3.

Record of the Proceedings of the Fisheries Commission at the Third Conference, held at Halifax, Nova Scotia, on the 28th day of July, 1877.

The Commission met pursuant to adjournment.

The three Commissioners, and the Agents of the United States and of Great Britain respectively, were present.

The Secretary reported that, during the adjournment, the United States' Agent had, in compliance with the Second Rule adopted for the procedure of the Commission, delivered to him twelve copies of the "Answer on behalf of the United States of America to the Case of Her Britannic Majesty's Government." (*Appendix B.*)

This "Answer" was accompanied by a "Brief for the United States upon the question of the extent and limits of the inshore fisheries and territorial waters on the Atlantic coast of British North America." (*Appendix C.*)

Copies of both documents were forwarded by the Secretary on Monday, the 9th July, to each of the Commissioners.

In conformity with the same Rule, the British Agent had delivered to the Secretary twelve copies of the "Reply on behalf of Her Britannic Majesty's Government to the Answer of the United States of America." (*Appendix D.*)

A copy of this document was forwarded by the Secretary to each of the Commissioners on the 26th day of July.

The Secretary, by direction of the President, then read the records of the last Conference, which were approved, and signed by the Commissioners, the Secretary, and the Agents.

Mr. Foster then proceeded to name the Counsel retained on behalf of the United States, as follows:—

Hon. William H. Trescot, of Washington; and
Richard H. Dana, Esq., Junr., of Boston.

Mr. Foster added that he might possibly, although not probably, name others at a later day.

The Secretary then informed the President that, subject to the approval of the Commissioners, the services of Mr. George B. Bradley and of Mr. John A. Lumsden had been secured as Stenographic Reporters of the proceedings of the Commission. The Commissioners were pleased to express their approval.

The President next requested the Secretary to record the fact that the proceedings of the Commission would be of a strictly private character.

Mr. Ford then proposed that the sittings of the Commission should, unless otherwise ordered, be held daily, from noon to 4 P.M., Saturdays and Sundays excepted.

Mr. Foster concurred in the proposed arrangement, which was agreed to by the Commissioners, on the understanding that, if time were found to press, the hours of the daily sittings should be lengthened.

The Commission then adjourned until Monday, the 30th July, at noon.

(Signed) MAURICE DELFOSSE. (Signed) FRANCIS CLARE FORD.
E. H. KELLOGG. DWIGHT FOSTER.
A. T. GALT.

J. H. G. BERGNE.

Protocol No. 4.

Record of the Proceedings of the Fisheries Commission at the Fourth Conference, held at Halifax, Nova Scotia, on the 30th day of July, 1877.

The Commission met at noon, as appointed.

The three Commissioners, and the Agents of the United States and of Great Britain respectively, were present.

By direction of the President, the Secretary read the records of the last Conference, which were approved, and signed by the Commissioners, the Secretary, and the Agents.

Mr. Foster then requested permission to introduce Mr. J. S. D. Thomson, of Halifax, and Mr. Alfred Foster, of Boston, who would attend the Commission to perform such duties on behalf of the United States as might be assigned to them. He added that Mr. Henry A. Blood, of Washington, would also attend to render clerical assistance.

Mr. S. R. Thomson, rising to open the Case of Her Britannic Majesty's Government, stated that he proposed to commence by reading the printed "Case" submitted to the Commissioners on behalf of Her Britannic Majesty's Government.

This he proceeded to do, and the documents therein referred to were read in due order by the Secretary. These will be found in a collective form in *Appendix E.*

Mr. Foster then proceeded to read the "Answer on behalf of the United States of America to the Case of Her Britannic Majesty's Government," printed copies of which had already been submitted to the Commissioners. He stated, however, that such reading formed no part of his opening, in course of which he proposed to quote extracts from the "Answer."

The reading of the "Answer" was unfinished at 4 P.M., when the Commission adjourned till next day at noon.

(Signed) MAURICE DELFOSSE.
E. H. KELLOGG.
A. T. GALT.

(Signed) FRANCIS CLARE FORD.
DWIGHT FOSTER.

J. H. G. BERGNE.

Protocol No. 5.

Record of the Proceedings of the Fisheries Commission, at the Fifth Conference, held at Halifax, Nova Scotia, on the 31st day of July, 1877.

The Conference met at noon, as appointed.

The three Commissioners, and the Agents of the United States and of Great Britain respectively, were present.

By direction of the President the Secretary read the records of the last Conference, which were approved, and signed by the Commissioners, the Secretary, and the Agents.

The Secretary next read an entry which had been made in the notice book by the United States' Agent, requesting the production of certain documents.

Mr. Foster then continued the reading of the "Answer on behalf of the United States of America to the Case of Her Britannic Majesty's Government.' on the conclusion of which Mr. S. R. Thomson read "The Reply on behalf of Her Britannic Majesty's Government to the Answer of the United States of America."

The Secretary read in due order "The Instructions to Her Majesty's High Commissioners, and Protocols of Conferences held at Washington between the 27th February and the 6th May, 1871, so far as this paper relates to the Fisheries." (*No. 15, Appendix E.*)

Mr. S. R. Thomson, on concluding the reading of the "Reply," said that the "Case of Her Majesty's Government," the "Answer of the United States," and the "Reply of Her Majesty's Government" having now been read, he would leave the case, as brought out in evidence, in the hands of the Commissioners, who, he was confident, would carefully and impartially decide upon it. By arriving at a fair

and equitable decision, they would remove a source of irritation between Great Britain and the United States, and earn a lasting title to the gratitude of two great and friendly nations.

The Commission then proceeded to take evidence in support of the "Case of Her Britannic Majesty's Government."

Simon Chivirie, a fisherman, residing at Souris, Prince Edward Island, was called, and gave evidence on oath on matters connected with the inquiry. (*No.* 1, *Appendix F.*)

The Commission adjourned at 4 P.M. until the following day, at noon.

(Signed) MAURICE DELFOSSE. (Signed) FRANCIS CLARE FORD.
E. H. KELLOGG. DWIGHT FOSTER.
A. T. GALT.
J. H. G. BERGNE.

Protocol No. 25.

Record of the proceedings of the Fisheries Commission, at the Twenty-fifth Conference, held at Halifax, Nova Scotia, on the 28th day of August, 1877.

The Commission met at noon, as appointed.

The three Commissioners, and the Agents of the United States and of Great Britain respectively, were present.

By direction of the President, the Secretary read the records of the last Conference, which were approved, and signed by the Commissioners, the Secretary, and the Agents.

Mr. William Macdonnell, of Argyll, Yarmouth County, Nova Scotia, a trader and formerly a fisherman, was called, and gave evidence on oath on matters connected with the inquiry. (*No.* 45, *Appendix F.*)

The witness was examined by Mr. Davies, and cross-examined by Mr. Dana.

Mr. John Holliday, of the City of Quebec, a partner in the firm of A. Fraser and Co., fish merchants, was called, and gave evidence on oath on matters connected with the inquiry. (*No.* 46, *Appendix F.*)

The witness was examined by Mr. S. R. Thomson, and cross-examined by Mr. Foster.

Mr. Davies then read affidavits made relative to the present inquiry by the following persons:—

Mr. Philip L. Montais, of Arichat. (*No.* 129, *Appendix G.*)
Mr. Christopher Smyth, of Port Hood. (*No.* 130, *Appendix G.*)
Mr. John Ingham Brand, of Pubnico. (*No.* 131, *Appendix G.*)
Mr. Edward Hirtle, of Lunenburg Town. (*No.* 132, *Appendix G.*)
Mr. Rufus Riser, of Rose Bay, County of Lunenburg. (*No.* 133, *Appendix G.*)
Mr. John Morien, of Port Medway. (*No.* 134, *Appendix G.*)
Mr. John Smeltzer, of Lunenburg Town. (*No.* 135, *Appendix G.*)
Mr. Elias Richards, of Getson's Cove, County of Lunenburg. (*No.* 136, *Appendix G.*)
Mr. James Getson, of Getson's Cove, County of Lunenburg. (*No.* 137, *Appendix G.*)
Mr. James Publicover, of New Dublin, County of Lunenburg. (*No.* 138, *Appendix G.*)
Mr. Donald McDonald, of Main-à-Dieu, Cape Breton. (*No.* 139, *Appendix G.*)
Mr. John Bagnall, of Gabarus, Cape Breton. (*No.* 140, *Appendix G.*)
Mr. Peter Bosdet, of West Arichat, Nova Scotia. (*No.* 141, *Appendix G.*)
Mr. James Marmean, of Arichat, Nova Scotia. (*No.* 142, *Appendix G.*)
Mr. David Grouchy, of Descousse, Nova Scotia. (*No* 143, *Appendix G.*)
Mr. Isidore Leblanc, of Arichat, Nova Scotia. (*No.* 144, *Appendix G.*)
Mr. Bryan Murphy, of Port Hood. (*No.* 145, *Appendix G.*)

Mr. Simon Ferris, of West Arichat, Nova Scotia. (*No.* 146, *Appendix G.*)
Mr. William Creighton, of West Arichat, Nova Scotia. (*No.* 147, *Appendix G.*)
Mr. Isaac Levesconte, of Arichat, Nova Scotia. (*No.* 148, *Appendix G.*)
Mr. William Wentzel, of Moose Harbour. (*No.* 149, *Appendix G.*)
Mr. Pardon Gardner, of Port Mouton. (*No.* 150, *Appendix G.*)
Mr. George McLeod, of Brooklyn, Queen's County. (*No.* 151, *Appendix G.*)
Mr. John Lloyd, of Port Mouton. (*No.* 152, *Appendix G.*)
Mr. J. McDonald, of Port Jollie, Queen's County. (*No.* 153, *Appendix G.*)
Mr. William Frehel, of Arichat. (*No.* 154, *Appendix G.*)
Mr. Philip Diggdon, of Port Medway. (*No.* 155, *Appendix G.*)
Mr. Michael McDonald, of Whitehaven, County of Guysboro. (*No.* 156, *Appendix G.*)
Mr. George Murphy, of Port Hood. (*No.* 157, *Appendix G.*)
Mr. James Phelan, of Arichat, Nova Scotia. (*No.* 158, *Appendix G.*)

Mr. Trescot then stated that he desired to make a motion for the consideration of the Commissioners, which he read in the following terms:—

"Mr. President and Gentlemen of the Commission,

"As the time is now approaching when the evidence in support of the British case will be closed, and we will be required to open the testimony in behalf of the United States, we would ask leave to make a slight change in the order of our proceeding as it has been at present arranged.

"According to the present arrangement it will be our duty to open our case in advance of the testimony, by laying before you the general scheme of our argument, and indicating the points upon which evidence will be submitted in its support.

"The character of the testimony which has been now submitted in support of the British Case, and the tenor of that which we will offer (as may be inferred from the evidence of the two witnesses whom we were allowed to examine out of order) have impressed us with the conviction that a practical discussion of the real issues will be more certainly secured, and the time and patience of the Commission will be more wisely economised, if we are allowed to submit such views as it may be our duty to maintain at the close, instead of in advance, of the examination of witnesses.

"As we understand the wish of both Governments to be that the whole discussion shall be as frank and full as possible, it has occurred to us that you might be disposed to allow us to adopt such an arrangement as would, in our judgment, best enable us to lay before you a complete presentment of the opinions of the Government we represent. And we feel more assured in that opinion, as this privilege deprives Counsel on the other side of no advantage which they now possess. For beside the right to reply to the printed Argument, which they now have, we would of course expect that they would also be allowed the right of oral reply, if they desired to exercise it.

"An opening speech is not necessary, as the Counsel for the other side have shown, but it would be obviously improper to submit this case without a careful review of the testimony which will have been offered on both sides. And this can be done with more convenience and thoroughness by an oral speech than by a written argument. To say all that it may be our duty to say in a printed argument would be impossible without swelling it into a volume of unreadable proportions.

"It is our purpose to make the printed Argument a complete but concise summary of the contention, a clear statement of the principles involved, and the authorities referred to, accompanied by an analysis of the leading facts of the testimony. This we can do, so as to make it an efficient help to you in your own examination of the case, if we are not compelled to overload it with all the discussion which the evidence and the case itself suggest, but which we could sufficiently dispose of in oral argument.

"We would therefore request permission so to distribute the argument on our side as to have the opportunity of submitting our views orally upon full comparison of all the testimony taken. It is no small inducement to make this request that we believe that upon the close of the testimony we will be able to dispense with much argument which we can scarcely avoid in the present imperfect condition of the testimony.

"Respectfully,

(Signed) "Rich. H. Dana, Jun.,
"Wm. Henry Trescot, } *Counsel for United States.*"

Mr. Foster supported the application.

Mr. Doutre stated that the matter should receive consideration, and requested permission to defer giving a definite answer until the next meeting.

The Commission then adjourned till the following day at noon.

(Signed) MAURICE DELFOSSE.
E. H. KELLOGG.
A. T. GALT.

(Signed) FRANCIS CLARE FORD.
DWIGHT FOSTER.

J. H. G. BERGNE.

Protocol No. 26.

Record of the Proceedings of the Fisheries Commission, at the Twenty-Sixth Conference, held at Halifax, Nova Scotia, on the 29th day of August, 1877.

The Commission met at noon, as appointed.

The three Commissioners, and the Agents of the United States and of Great Britain respectively, were present.

By direction of the President, the Secretary read the records of the last Conference, which were approved, and signed by the Commissioners, the Secretary, and the Agents.

Mr. James A. Tory, of Guysborough, Nova Scotia, Customs Officer, and formerly a fisherman, was called, and gave evidence on oath on matters connected with the inquiry. (*No.* 47, *Appendix F.*)

The witness was examined by Mr. Weatherbe, and cross-examined by Mr. Dana.

Mr. S. R. Thomson then rose to reply to the motion made at the last Conference by Mr. Trescot. He stated that the British Agent was willing to consent to the following arrangement with regard to the point in question, namely, that if the United States' Counsel desired to make oral arguments in closing, these must be submitted simultaneously with the written arguments on the United States' side, required by the rules adopted for the procedure of the Commission; after which it should be competent for the British side to reply, both orally and in writing, if both methods of reply were desired by them.

Mr. Trescot, in reply, said that the proposal of Mr. Thomson did not meet the approval of the Counsel of the United States, inasmuch as the object of their motion was to have the oral reply of the British Counsel to their oral arguments; then to file the United States' printed argument, leaving to the British Counsel their right of final printed reply to the printed Argument of the United States. What they desired was a full statement of the case as regarded by the British Counsel, and Mr. Thomson's proposal did not accomplish that, which they deemed a fair request.

Mr. S. R. Thomson replied, and Mr. Dana, Mr. Foster, and Mr. Doutre subsequently addressed the Commissioners. (*See No.* 2, *Appendix No. J.*)

At the conclusion of the debate, Mr. Trescot handed in the following amendment, which he proposed should be made in Rule III :—

"Ordered by the Commissioners that the third paragraph of the IIIrd Rule shall be amended, by inserting after the words "The evidence in reply shall be commenced," the following :—"When the whole evidence is concluded, either side may, if desirous of doing so, address the Commissioners orally, the British Government having the right of reply."

The President then announced that the Commissioners would take the matter into consideration, and give an early decision upon it.

Mr. Robert MacDougall, of Port Hood, High Sheriff of the county of Inverness, in Cape Breton, was next called, and gave evidence on oath on matters connected with the inquiry. (*No.* 48, *Appendix F.*)

The witness was examined by Mr. Weatherbe, and cross-examined by Mr. Foster.

Mr. Weatherbe then read affidavits made relative to the present inquiry by the following persons :—

Mr. J. E. Robinson, of Griffin's Cove, Province of Quebec. (*No.* 159, *Appendix G.*)

Mr. Daniel West, of Grand Grève, Province of Quebec. (*No.* 160, *Appendix G.*)

Mr. Michael McInnes, of Port Daniel, Province of Quebec. (*No.* 161, *Appendix G.*)

The Commission adjourned at 4 P.M. until the next day at noon.

(Signed) MAURICE DELFOSSE. (Signed) FRANCIS CLARE FORD.
E. H. KELLOGG. DWIGHT FOSTER.
A. T. GALT.
J. H. G. BERGNE.

Protocol No. 29.

Record of the Proceedings of the Fisheries Commission, at the Twenty-ninth Conference, held at Halifax, Nova Scotia, on the 1st day of September, 1877.

The Commission met at noon, pursuant to adjournment.

The three Commissioners, and the Agents of the United States and of Great Britain respectively, were present.

By direction of the President, the Secretary read the records of the last Conference, which were approved, and signed by the Commissioners, the Secretary, and the Agents.

The President then read the following decision :—

"The Comissioners having considered the motion submitted by Messrs. Dana and Trescot, decided that—

"Having due regard to the right of Her Majesty's Government to the general and final reply, the Commissioners cannot modify the Rules in such a manner as might impair or diminish such right. Each party will, however, within the period fixed by the Rules, be allowed to offer its concluding argument, either orally or in writing; and if orally, it may be accompanied by a written résumé or summary thereof, for the convenience of the Commissioners, such résumé or summary being furnished within the said period.

"Mr. Kellogg dissenting."

Mr. Foster then read the following notice of motion :—

"The Counsel and Agent of the United States move the Honourable Commissioners to rule and declare that—

"It is not competent for this Commissiou to award any compensation for commercial intercourse between the two countries, and that the advantages resulting from the practice of purchasing bait, ice, supplies, &c., &c., and from being allowed to transship cargoes in British waters, do not constitute good foundation for an award of compensation, and shall be wholly excluded from the consideration of this Tribunal."

The Commission then adjourned until Monday, the 3rd September, at noon.

(Signed) MAURICE DELFOSSE. (Signed) FRANCIS CLARE FORD.
E. H. KELLOGG. DWIGHT FOSTER.
A. T. GALT.
J. H. G. BERGNE.

Protocol No. 30.

Record of the Proceedings of the Fisheries Commission, at the Thirtieth Conference, held at Halifax, Nova Scotia, on the 3rd day of September, 1877.

The Commission met at noon, pursuant to adjournment.

The three Commissioners, and the Agents of the United States and of Great Britain respectively, were present.

By direction of the President, the Secretary read the records of the last Con-

ference, which were approved, and signed by the Commissioners, the Secretary, and the Agents.

Mr. Ford then presented to the Commissioners, and to the Agent of the United States, copies of the "Brief on behalf of Her Majesty's Government" in Reply to the "Brief for the United States upon the question of the extent and limits of the inshore fisheries and territorial waters on the Atlantic Coast of British North America." (*Appendix K.*)

Mr. Doutre next read affidavits made relative to the present inquiry by the following persons:—

(Here follows a list of 47 deponents.)

The Commission adjourned until the next day at noon.

(Signed) MAURICE DELFOSSE. (Signed) FRANCIS CLARE FORD.
E. H. KELLOGG. DWIGHT FOSTER.
A. T. GALT.
J. H. G. BERGNE.

Protocol No. 32.

Record of the Proceedings of the Fisheries Commission, at the Thirty-second Conference, held at Halifax, Nova Scotia, on the 5th day of September, 1877.

The Commission met at noon, as appointed.

The three Commissioners, and the Agents of the United States and of Great Britain respectively, were present.

By direction of the President, the Secretary read records of the last Conference, which were approved, and signed by the Commissioners, the Secretary, and the Agents.

Mr. Foster read the notice of motion which had been filed by him at the Conference of the 1st of September (see Protocol No. 29), and supported the application made therein on behalf of the United States.

Mr. S. R. Thomson, Mr. Doutre, Mr. Weatherbe, and Mr. Whiteway, answered on behalf of Her Majesty's Government. Mr. Trescot and Mr. Dana replied. (*No.* 3, *Appendix J.*)

The Commission then adjourned at 4 P.M. till the next day at noon.

(Signed) MAURICE DELFOSSE. (Signed) FRANCIS CLARE FORD.
E. H. KELLOGG. DWIGHT FOSTER.
A. T. GALT.
J. H. G. BERGNE.

Protocol No. 33.

Record of the Proceedings of the Fisheries Commission, at the Thirty-third Conference, held at Halifax, Nova Scotia, on the 6th day of September, 1877.

The Commission met at noon, as appointed.

The three Commissioners, and the Agents of the United States and of Great Britain respectively, were present.

By direction of the President, the Secretary read the records of the last Conference, which were approved, and signed by the Commissioners, the Secretary, and the Agents.

Mr. Foster read certain documents relative to the liability to confiscation of United States' vessels for obtaining supplies, trans-shipping cargoes, &c. (*No.* 3, *Appendix J.*)

The matter was discussed by Mr. Foster, Mr. S. R. Thomson, and Mr. Weatherbe.

Mr. Dana then resumed his speech left unfinished at the close of the proceedings of the previous day.

The Commission then retired to deliberate, and on their return, the President read the following decision:—

"The Commission having considered the motion submitted by the Agent of the United States, at the Conference held on the 1st instant, decide:

"That it is not within the competence of this Tribunal to award compensation for commercial intercourse between the two countries, nor for the purchasing of bait, ice, supplies, &c., &c., nor for the permission to trans-ship cargoes in British waters."

Sir Alexander Galt stated the reasons which had induced him to acquiesce in this decision, which was unanimous. (*See No.* 3, *Appendix J.*)

Mr. Marshal Paquet, of Souris, Prince Edward Island, a farmer and fisherman, was next called, and gave evidence on oath on matters connected with the inquiry. (*No.* 55, *Appendix F.*)

The witness was examined by Mr. Davies, and cross-examined by Mr. Foster.

Mr. Barnaby McIsaac, of East Point, Prince Edward Island, a farmer and fisherman, was called, and gave evidence on oath on matters connected with the inquiry. (*No.* 56, *Appendix F.*)

The witness was examined by Mr. Davies, and cross-examined by Mr. Dana.

Mr. Joseph Tierney, of Souris, Prince Edward Island, a master mariner and fisherman, was called, and gave evidence on oath on matters connected with the inquiry. (*No.* 57, *Appendix F.*)

The witness was examined by Mr. Davies, and cross-examined by Mr. Foster.

Mr. James McPhee, of East Point, Prince Edward Island, a farmer and fisherman, was called, and gave evidence on oath on matters connected with the inquiry. (*No.* 58, *Appendix F.*)

The witness was examined by Mr. Davies. No cross-examination was desired.

Mr. Whiteway read an affidavit made relative to the present inquiry by Mr. J. O. Fraser. (*No.* 274, *Appendix G.*)

Mr. Whiteway also handed in a certified copy of a despatch from the Earl of Kimberley to Governor Hill, dated the 7th July, 1871, relative to the admission of United States' fishermen to Newfoundland waters. (*Appendix N.*)

Mr. John MacDonald, of East Point, Prince Edward Island, a farmer and formerly a fisherman, was called, and gave evidence on oath on matters connected with the inquiry. (*No.* 59, *Appendix F.*)

The witness was examined by Mr. Davies. No cross-examination was desired

The Commission adjourned at 5 P.M. till the next day at noon.

(Signed) MAURICE DELFOSSE. (Signed) FRANCIS CLARE FORD.
E. H. KELLOGG. DWIGHT FOSTER.
A. T. GALT.
J. H. G. BERGNE.

Protocol No. 36.

Record of the Proceedings of the Fisheries Commission, at the Thirty-sixth Conference, held at Halifax, Nova Scotia, on the 18th day of September, 1877.

The Commission met at noon, as appointed.

The three Commissioners, and the Agents of the United States and of Great Britain respectively, were present.

By direction of the President, the Secretary read the records of the last Conference, which were approved, and signed by the Commissioners, the Secretary, and the Agents.

Mr. William H. Harrington, of Halifax, Nova Scotia, a commission and fish agent, was called, and gave evidence on oath on matters connected with the inquiry. (*No.* 78, *Appendix F.*)

The witness was examined by Mr. Davies, and cross-examined by Mr. Dana.

Mr. John Purney, of Sandy Point, Shelburne, Nova Scotia, a fish merchant, was

next called, and gave evidence on oath on matters connected with the inquiry. (*No.* 79, *Appendix F.*)

The witness was examined by Mr. S. R. Thomson, and cross-examined by Mr. Dana.

Mr. Robert G. Noble, of Halifax, Nova Scotia, a commission and fish agent, was called, and gave evidence on oath on matters connected with the inquiry. (*No.* 80, *Appendix F.*)

The witness was examined by Mr. Davies, and cross-examined by Mr. Dana.

Mr. James Barry, of the Customs Department, at Ottawa, was called, and gave evidence on oath on matters connected with the inquiry. (*No.* 81, *Appendix F.*)

The witness was examined by Mr. Davies.

Mr. Davies then read affidavits made relative to the present inquiry by the following persons:—

(Here follows a list of 18 deponents.)

This closed the Case of Her Majesty's Government, with the exception of a few witnesses, expected at a later date, permission to examine whom, during the course of the United States' evidence, was asked and obtained.

The Commission adjourned at 3·30 P.M. until the next day at noon.

(Signed) MAURICE DELFOSSE. (Signed) FRANCIS CLARE FORD.
E. H. KELLOGG. DWIGHT FOSTER.
A. T. GALT.
J. H. G. BERGNE.

Protocol No. 37.

Record of the Proceedings of the Fisheries Commission, at the Thirty-seventh Conference, held at Halifax, Nova Scotia, on the 19th day of September, 1877.

The Commission met at noon, as appointed.

The three Commissioners, and the Agents of the United States and of Great Britain respectively, were present.

By direction of the President, the Secretary read the records of the last Conference, which were approved, and signed by the Commissioners, the Secretary, and the Agents.

Mr. Foster, in commencing the Case of the United States, stated that he did not propose to make any formal opening, but that before proceeding to examining witnesses, he would hand in certain statistical documents relating to the fisheries, and the trade in fish between the United States and British North America.

These statistics were accompanied by an affidavit as to their correctness, by the compiler, Mr. Hamilton Andrews Hill, of Boston. (*Appendix O.*)

Mr. David Ingersoll, of Gloucester, Massachusetts, a fisherman, was then called, and gave evidence on oath on matters connected with the inquiry. (*No.* 4, *Appendix L.*)

The witness was examined by Mr. Foster, and cross-examined by Mr. S. R. Thomson.

Mr. Nathaniel E. Attwood, of Provincetown, Massachusetts, a manufacturer and dealer in cod-liver oil, and formerly a fisherman, was called, and gave evidence on oath on matters connected with the inquiry. (*No.* 5, *Appendix L.*)

The witness was examined by Mr. Foster.

The Commission adjourned at 4 P.M. until next day at noon.

(Signed) MAURICE DELFOSSE. (Signed) FRANCIS CLARE FORD.
E. H. KELKOGG. DWIGHT FOSTER.
A. T. GALT.
J. H. G. BERGNE.

Protocol No. 63.

Record of the Proceedings of the Fisheries Commission, at the Sixty-third Conference, held at Halifax, Nova Scotia, on the 24th day of October, 1877.

The Commission met at noon, as appointed.

The three Commissioners, and the Agents of the United States and of Great Britain respectively, were present.

By direction of the President, the Secretary read the records of the last Conference, which were approved, and signed by the Commissioners, the Secretary, and the Agents.

Mr. Fitz J. Babson, Collector of Customs at Gloucester, Massachusetts, was called, and gave evidence on oath on matters connected with the inquiry. (*No.* 78. *Appendix L.*)

The witness was examined by Mr. Trescot, and cross-examined by Mr. Davies.

Mr. Babson produced a statement collected by Inspector Blatchford of the results of fishing operations of certain Gloucester firms.

Upon the presentation of this paper, objection was made by Messrs. Thomson and Davies to its being received, upon the ground that the statements therein included were not sworn to.

Mr. Foster submitted that, under the Treaty, he had the right to file this return as evidence, to go for what it was worth before the Commissioners.

The Commissioners so decided, and the paper was accordingly filed. (*No.* 4, *Appendix O.*)

Mr. Foster then filed thirty-two affidavits made by various persons relative to the present inquiry. (*Nos.* 249 *to* 280, inclusive, *Appendix M.*)

Mr. Foster also handed in a statement of the mackerel inspected at Portsmouth and Newcastle for the years 1869 to 1877, inclusive. (*No.* 5, *Appendix O.*)

Also a summary of the Annual Returns of the Inspector-General of Fish for the State of Maine, for the years 1866 to 1873, inclusive. (*No.* 6, *Appendix O.*)

Mr. Foster then stated that the Case of the United States was now closed, with the exception of certain returns of the Inspector-General of Fish of Massachusetts, which by agreement were to be introduced when received.

Mr. Daniel M. Browne, of Halifax, Nova Scotia, a retired Navigating Lieutenant of the Royal Navy, and now a Clerk in the Marine and Fisheries Department of Canada, was then called on behalf of Her Majesty's Government, and gave evidence on oath on matters connected with the inquiry. (*No.* 83, *Appendix F.*)

The witness was examined by Mr. S. R. Thomson, and cross-examined by Mr. Foster.

This closed the direct evidence on behalf of Her Majesty's Government.

The Commission then adjourned until the next day at noon.

(Signed) MAURICE DELFOSSE.
E. H. KELLOGG.
A. T. GALT.

(Signed) FRANCIS CLARE FORD.
DWIGHT FOSTER.

J. H. G. BERGNE.

Protocol No. 64.

Record of the Proceedings of the Fisheries Commission, at the Sixty-fourth Conference, held at Halifax, Nova Scotia, on the 25th day of October, 1877.

The Commission met at noon, as appointed.

The three Commissioners, and the Agents of the United States and of Great Britain respectively, were present.

By direction of the President, the Secretary read the records of the last Conference, which were approved, and signed by the Commissioners, the Secretary, and the Agents.

The rebuttal evidence on behalf of Her Majesty's Government was commenced.

Mr. Henry Youle Hind, M.A., of Windsor, Nova Scotia, was called, and

gave evidence on oath on matters connected with the inquiry. (*No.* 1, *Appendix Q.*)

The witness was examined by Mr. S. R. Thomson and by Mr. Whiteway.

The Commission then adjourned till next day at noon.

(Signed) MAURICE DELFOSSE. (Signed) FRANCIS CLARE FORD.
E. H. KELLOGG. DWIGHT FOSTER.
A. T. GALT.
J. H. G. BERGNE.

Protocol No. 66.

Record of the Proceedings of the Fisheries Commission, at the Sixty-sixth Conference, held at Halifax, Nova Scotia, on the 1st day of November, 1877.

The Commission met at noon, as appointed.

The three Commissioners, and the Agents of the United States and of Great Britain respectively, were present.

By direction of the President, the Secretary read the records of the last Conference, which were approved, and signed by the Commissioners, the Secretary, and the Agents.

Mr. Whiteway read affidavits made relative to the present inquiry by the following persons, resident in Newfoundland:—

(Here follows a list of 7 deponents.)

Mr. Doutre then stated that the Case of Her Majesty's Government was now altogether closed.

Mr. Foster stated that he hoped to be prepared to address the Court on Monday, the 5th November, and the Commission accordingly adjourned until that day at noon.

(Signed) MAURICE DELFOSSE. (Signed) FRANCIS CLARE FORD.
E. H. KELLOGG. DWIGHT FOSTER
A. T. GALT.
J. H. G. BERGNE.

Protocol No. 67.

Record of the Proceedings of the Fisheries Commission, at the Sixty-seventh Conference, held at Halifax, Nova Scotia, on the 5th day of November, 1877.

The Commission met at noon, pursuant to adjournment.

The three Commissioners, and the Agents of the United States and of Great Britain respectively, were present.

By direction of the President, the Secretary read the records of the last Conference, which were approved, and signed by the Commissioners, the Secretary, and the Agents.

Mr. Foster commenced the Closing Argument on behalf of the United States. (*No.* 4, *Appendix J.*)

The Commission adjourned at 3·30 P.M. until the next day at noon.

(Signed) MAURICE DELFOSSE. (Signed) FRANCIS CLARE FORD.
E. H. KELLOGG. DWIGHT FOSTER.
A. T. GALT.
J. H. G. BERGNE.

Protocol No. 68.

Record of the Proceedings of the Fisheries Commission, at the Sixty-eighth Conference, held at Halifax, Nova Scotia, on the 6th day of November, 1877.

The Commission met at noon, as appointed.

The three Commissioners, and the Agents of the United States and of Great Britain respectively, were present.

By direction of the President, the Secretary read the records of the last Conference, which were approved, and signed by the Commissioners, the Secretary, and the Agents.

Mr. Foster resumed his address left unfinished the previous day.

On the conclusion of his speech, Mr. Foster requested permission to be absent for a few days on urgent private affairs. He suggested that during his absence the records should be signed on his behalf by Mr. R. H. Dana, Junr.

The proposal was accepted by the Commissioners.

The Commission then adjourned until Thursday, the 8th November, at noon.

(Signed) MAURICE DELFOSSE. (Signed) FRANCIS CLARE FORD.
E. H. KELLOGG. DWIGHT FOSTER.
A. T. GALT.

J. H. G. BERGNE.

Protocol No. 69.

Record of the Proceedings of the Fisheries Commission, at the Sixty-ninth Conference, held at Halifax, Nova Scotia, on the 8th day of November, 1877.

The Commission met at noon, as appointed.

The three Commissioners, and the Agents of the United States (Mr. R. H. Dana, Junr., acting) and of Great Britain respectively, were present.

By direction of the President, the Secretary read the records of the last Conference, which were approved, and signed by the Commissioners, the Secretary, and the Agents.

Mr. Trescot addressed the Commissioners in continuation of the closing arguments on behalf of the United States. (*No.* 5, *Appendix J.*)

On the conclusion of Mr. Trescot's address, the Commission adjourned until the next day at noon.

(Signed) MAURICE DELFOSSE. (Signed) FRANCIS CLARE FORD.
E. H. KELLOGG. DWIGHT FOSTER.
A. T. GALT.

J. H. G. BERGNE.

Protocol No. 70.

Record of the Proceedings of the Fisheries Commission, at the Seventieth Conference, held at Halifax, Nova Scotia, on the 9th day of November, 1877.

The Commission met at noon, as appointed.

The three Commissioners, and the Agents of the United States (Mr. R. H. Dana, Junr., acting) and of Great Britain respectively, were present.

By direction of the President, the Secretary read the records of the last Conference, which were approved, and signed by the Commissioners, the Secretary, and the Agents.

Mr. Dana addressed the Commissioners in continuation of the closing arguments on behalf the United States. (*No.* 6, *Appendix J.*)

The Commission adjourned at 4 P.M. until the next day at noon.

(Signed) MAURICE DELFOSSE. (Signed) FRANCIS CLARE FORD.
E. H. KELLOGG. DWIGHT FOSTER.
A. T. GALT.

J. H. G. BERGNE.

Protocol No. 71.

Record of the Proceedings of the Fisheries Commission, at the Seventy-first Conference, held at Halifax, Nova Scotia, on the 10th day of November, 1877.

The Commission met at noon, as appointed.

The three Commissioners, and the Agents of the United States (Mr. R. H. Dana, Junr., acting) and of Great Britain respectively, were present.

By direction of the President, the Secretary read the records of the last Conference, which were approved, and signed by the Commissioners, the Secretary, and the Agents.

Mr. Dana resumed his speech left unfinished the previous day.

This concluded the final arguments on behalf of the United States.

Mr. Thomson then stated that the British Counsel would be prepared to commence the closing arguments on behalf of Her Britannic Majesty's Government on Thursday, the 15th November; and the Commission accordingly adjourned until that day at noon.

(Signed) MAURICE DELFOSSE. (Signed) FRANCIS CLARE FORD.
E. H. KELLOGG. DWIGHT FOSTER.
A. T. GALT.
J. H. G. BERGNE.

Protocol No. 72.

Record of the Proceedings of the Fisheries Commission, at the Seventy-second Conference, held at Halifax, Nova Scotia, on the 15th day of November, 1877.

The Commission met at noon, as appointed.

The three Commissioners, and the Agents of the United States (Mr. R. H. Dana, Junr., acting) and of Great Britain respectively, were present.

By direction of the President, the Secretary read the records of the last Conference, which were approved, and signed by the Commissioners, the Secretary, and the Agents.

Mr. Whiteway commenced the closing arguments on behalf of Her Britannic Majesty's Government. (*No.* 7, *Appendix J.*)

The Commission then adjourned until the next day at noon.

(Signed) MAURICE DELFOSSE. (Signed) FRANCIS CLARE FORD.
E. A. KELLOGG. DWIGHT FOSTER.
A. T. GALT.
J. H. G. BERGNE.

Protocol No. 73.

Record of the Proceedings of the Fisheries Commission, at the Seventy-third Conference, held at Halifax, Nova Scotia, on the 16th day of November, 1877.

The Commission met at noon, as appointed.

The three Commissioners, and the Agents of the United States and of Great Britain respectively, were present.

By direction of the President, the Secretary read the records of the last Conference, which were approved, and signed by the Commissioners, the Secretary, and the Agents.

Mr. Doutre addressed the Commission in continuation of the closing arguments on behalf of Her Majesty's Government. (*No.* 8, *Appendix J.*)

The Commission adjourned until Saturday, the 17th November, at 3 P.M.

(Signed) MAURICE DELFOSSE. (Signed) FRANCIS CLARE FORD.
E. H. KELLOGG. DWIGHT FOSTER.
A. T. GALT.
J. H. G. BERGNE.

Protocol No. 74.

Record of the Proceedings of the Fisheries Commission, at the Seventy-fourth Conference, held at Halifax, Nova Scotia, on the 17th day of November, 1877.

The Commission met at 3 P.M., as appointed.

The three Commissioners, and the Agents of the United States and of Great Britain respectively, were present.

By direction of the President, the Secretary read the records of the last Conference, which were approved, and signed by the Commissioners, the Secretary, and the Agents.

Mr. Doutre resumed his speech left unfinished the previous day.

The Commission adjourned at 4·20 P.M., until Monday, the 19th of November, at noon.

(Signed) MAURICE DELFOSSE. (Signed) FRANCIS CLARE FORD.
E. H. KELLOGG. DWIGHT FOSTER.
A. T. GALT.
J. H. G. BERGNE.

Protocol No. 75.

Record of the Proceedings of the Fisheries Commission, at the Seventy-fifth Conference, held at Halifax, Nova Scotia, on the 19th day of November, 1877.

The Commission met at noon, as appointed.

The three Commissioners, and the Agents of the United States and of Great Britain respectively, were present.

By direction of the President, the Secretary read the records of the last Conference, which were approved, and signed by the Commissioners, the Secretary, and the Agents.

Mr. S. R. Thomson addressed the Commissioners in continuation of the closing arguments on behalf of Her Britannic Majesty's Government. (*No.* 9, *Appendix J.*)

The Commission adjourned at 4 P.M. until the next day at noon.

(Signed) MAURICE DELFOSSE. (Signed) FRANCIS CLARE FORD.
E. H. KELLOGG. DWIGHT FOSTER.
A. T. GALT.
J. H. G. BERGNE.

Protocol No. 76.

Record of the Proceedings of the Fisheries Commission, at the Seventy-sixth Conference, held at Halifax, Nova Scotia, on the 20th day of November, 1877.

The Commission met at noon, as appointed.

The three Commissioners, and the Agents of the United States and of Great Britain respectively, were present.

By direction of the President, the Secretary read the records of the last Conference, which were approved, and signed by the Commissioners, the Secretary, and the Agents.

Mr. S. R. Thomson resumed his address left unfinished the previous day.

The Commission adjourned until the next day at 11 A.M.

(Signed) MAURICE DELFOSSE. (Signed) FRANCIS CLARE FORD.
E. H. KELLOGG. DWIGHT FOSTER.
A. T. GALT.
J. H. G. BERGNE.

Protocol No. 77.

Record of the Proceedings of the Fisheries Commission, at the Seventy-seventh Conference, held at Halifax, Nova Scotia, on the 21st day of November, 1877.

The Commission met at 11 A.M., as appointed.

The three Commissioners, and the Agents of the United States and of Great Britain respectively, were present.

By direction of the President, the Secretary read the records of the last Conference, which were approved, and signed by the Commissioners, the Secretary, and the Agents.

Mr. S. R. Thomson resumed his address left unfinished the previous day; and on its conclusion stated that the Case on behalf of the United States having been concluded, that of Her Majesty's Government was now finally closed.

The President then requested the Secretary to enter on the minutes that the Commissioners desired to record their thanks to Mr. Bergne for his services as Secretary to the Commission; and their sense of the zeal, intelligence, and accuracy which had marked the discharge of his duties.

The Commission adjourned until Friday, the 23rd November, at 2 P.M.

(Signed) MAURICE DELFOSSE. (Signed) FRANCIS CLARE FORD.
E. H. KELLOGG. DWIGHT FOSTER.
A. T. GALT.
J. H. G. BERGNE.

Protocol No. 78.

Record of the Proceedings of the Fisheries Commission, at the Seventy-eighth Conference, held at Halifax, Nova Scotia, on the 23rd day of November, 1877.

The Commission met at 2 P.M., pursuant to adjournment.

The three Commissioners, and the Agents of the United States and of Great Britain respectively, were present.

By direction of the President, the Secretary read the records of the last Conference, which were approved, and signed by the Commissioners, the Secretary, and the Agents.

The President first expressed the thanks of the Commissioners to Mr. Foster and to Mr. Ford for the able manner in which they had conducted the proceedings, and his best wishes for the welfare of all those who had been connected with the inquiry.

The President then read the following Award :—

"The undersigned Commissioners appointed under Articles XXII and XXIII of the Treaty of Washington of the 8th May, 1871, to determine, having regard to the privileges accorded by the United States to the subjects of Her Britannic Majesty, as stated in Articles XIX and XXI of said Treaty, the amount of any compensation which in their opinion ought to be paid by the Government of the United States to the Government of Her Britannic Majesty, in return for the privileges accorded to the citizens of the United States, under Article XVIII of the said Treaty;

"Having carefully and impartially examined the matters referred to them according to justice and equity, in conformity with the solemn declaration made and subscribed by them on the fifteenth day of June, one thousand eight hundred and seventy-seven;

"AWARD THE SUM OF FIVE MILLIONS FIVE HUNDRED THOUSAND DOLLARS, IN GOLD, to be paid by the Government of the United States to the Government of Her Britannic Majesty, in accordance with the provisions of the said Treaty.

"Signed at Halifax, this twenty-third day of November, one thousand eight hundred and seventy-seven.

(Signed) "MAURICE DELFOSSE.
"A. T. GALT."

"The United States' Commissioner is of opinion that the advantages accruing to Great Britain under the Treaty of Washington are greater than the advantages conferred on the United States by said Treaty, and he cannot therefore concur in the conclusions announced by his colleagues.

"And the American Commissioner deems it his duty to state further that it is questionable whether it is competent for the Board to make an award under the Treaty, except with the unanimous consent of its members.

(Signed) "E. H. KELLOGG,
"*Commissioner.*"

Mr. Foster then addressed the Commission as follows :—

"Gentlemen of the Commission,

"I have no instructions from the Government of the United States as to the course to be pursued in the contingency of such a result as has just been announced.

"But if I were to accept in silence the paper signed by two Commissioners, it might be claimed hereafter that, as Agent of the United States, I had acquiesced in treating it as a valid Award. Against such an inference it seems my duty to guard. I therefore make this statement, which I desire to have placed upon record."

Mr. Kellogg next expressed his thanks, and those of Sir A. T. Galt, to M. Delfosse, for the manner in which he had fulfilled the duties of President of the Commission.

The President then announced that the Commission was adjourned *sine die*.

(Signed) MAURICE DELFOSSE.
E. H. KELLOGG.
A. T. GALT.

(Signed) FRANCIS CLARE FORD.
DWIGHT FOSTER.

J. G. H. BERGNE.

APPENDIX A.

Case of Her Majesty's Government.

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Introduction.

IN laying the case of Her Majesty's Government before the Commissioners, it will be desirable to commence by a brief history of the Fisheries Question since the outbreak of the War of Independence in 1775.

Before the commencement of this war all British colonists enjoyed equal privileges in matters connected with fishing, but at its close, and on the conclusion of peace, it became a question how far such privileges should be restored to those who had separated from the British Crown. The matter was very fully discussed in the negotiations which preceded the Treaty of the 3rd September, 1783, and though Great Britain did not deny the right of the American citizens to fish on the Great Banks of Newfoundland, or in the Gulf of St. Lawrence, or elsewhere in the open sea, she denied their right to fish in British waters, or to land in British territory for the purpose of drying or curing their fish. A compromise was at length arrived at, and it was agreed that United States' fishermen should be at liberty to fish on such part of the coast of Newfoundland as British fishermen could use, but not to dry or cure their fish on that Island; and they were also to be allowed to fish on the coasts, bays, and creeks of other British possessions in North America, and to dry and cure their fish in any of the unsettled bays, harbours, and creeks of Nova Scotia, the Magdalen Islands, and Labrador, so long as they should remain unsettled; but so soon as any of them became settled, the United States' fishermen were not to be allowed to use them without the previous permission of the inhabitants and proprietors of the ground.

Negotiations in 1783.

The IIIrd Article of the Treaty of Paris of the 3rd September, 1783, is as follows:—

Treaty of Paris, September 3, 1783.

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

Rights secured to United States' subjects by Treaty of 1783.

It should, however, be observed that the rights conceded to the United States' fishermen under this Treaty were by no means so great as those which, as British subjects, they had enjoyed previous to the War of Independence, for they were not to be allowed to land to dry and cure their fish on any part of Newfoundland, and only in those parts of Nova Scotia, the Magdalen Islands, and Labrador, where no British Settlement had been or might be formed, expressly excluding Cape Breton, Prince Edward Island, and other places.

Outbreak of war of 1812.

So matters stood until the war of 1812 broke out, when, of necessity, the right of American citizens to fish in British waters, and to dry and cure their fish on British territory, terminated. In the course of the negotiations which preceded the Peace of 1814, this question was revived, and the alleged right of American citizens to fish and cure fish within British jurisdiction was fully gone into by the British and American Commissioners, who were assembled at Ghent for the purpose of drawing up the Articles of Peace. At that time, however, the circumstances had very considerably changed since the Treaty of 1783 had been concluded. The British North American possessions had become more thickly populated, and there were fewer unsettled bays, harbours, and creeks in Nova Scotia than formerly. There was consequently greater risk of collision between British and American interests; and the colonists and English merchants engaged in the fisheries petitioned strongly against a renewal of the privileges granted by the Treaty of 1783 to the American fishermen.

Negotiations at Ghent, 1814.

It was under these circumstances that the negotiations for peace were entered into. At the first meeting, which took place on the 8th August, 1814, the British Commissioners stated "that the British Government did not intend to grant to the United States gratuitously the privileges formerly granted to them by Treaty, of fishing within the limits of British territory, or of using the shores of the British territories for purposes connected with the fisheries." They contended that the claim advanced by the United States of immemorial and prescriptive right

was quite untenable, inasmuch as the inhabitants of the United States had, until quite recently, been British subjects, and that the rights which they possessed formerly as such could not be continued to them after they had become citizens of an independent State.

After much discussion, it was finally agreed to omit all mention of this question from the Treaty, which was signed at Ghent on the 24th December, 1814, and which contains no reference to the Fisheries Question. Signature of Treaty of Ghent, 1814.

Orders were now sent out to the Governors of the British North American Colonies not to interfere with citizens of the United States engaged in fishing on the Newfoundland Banks, in the Gulf of St. Lawrence, or on the high seas, but to prevent them from using the British territory for purposes connected with the fishery, and to exclude their fishing-vessels from the harbours, bays, rivers, and creeks of all Her Majesty's possessions. Orders were also given to the British naval officers on the Halifax station to resist any encroachment on the part of American fishermen on the rights of Great Britain. The result was the capture of several American fishing-vessels for trespassing within British waters; and the President of the United States, in 1818, proposed to the Prince Regent that negotiations should be opened for the purpose of settling in an amicable manner disputed points which had arisen connected with the Fisheries. Commissioners were accordingly appointed by both parties to meet in London, and the Convention of 20th October, 1818, was eventually signed. Signature of Convention of 1818.

Article I of this Convention is in these words:—

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

Subsequent to the conclusion of this Convention, in consequence of numerous complaints on the part of Her Majesty's Government of encroachments on their waters by American fishermen, the United States' Government issued a notice warning their subjects that they were "to observe strictly the limits assigned for taking, drying, and curing fish by the fishermen of the United States, under the Ist Article of the Convention of the 20th October, 1818," a copy of which was annexed to the Circular Notice.

This was the state of affairs until the year 1847, when, in consequence of a Petition addressed to the Queen by the Canadian Parliament, negotiations were opened between the two Governments for the establishment of reciprocal free trade between Canada and the United States; and on the 1st of November, 1849, Sir H. Bulwer, who was then about to proceed to Washington as British Minister, was authorized to enter into a negotiation by which access to the fisheries of all the colonies (except Newfoundland, which refused to consent on any terms) should be given to the citizens of the United States, in return for reciprocity of trade with the United States, in all natural productions, such as fish, wheat, timber, &c. Negotiations for Reciprocity, 1847

The proposal was favourably received by the United States' Government, but some delay occurred owing to the death of General Taylor in 1850. The new President, however, doubted whether it was a proper subject for a Treaty, and thought that it should be done by legislation, and accordingly a Bill was brought

in for the purpose. The Bill was, however, thrown out, and from one cause or another nothing was done from that time until 1852, when a desire was evinced on the part of the United States' Government to come to an arrangement on the subject, and a draft Convention having been prepared, a copy thereof was sent home by the British Minister on the 19th December, 1852, together with remarks made by the President thereon.

A good deal of correspondence passed between the two Governments on the subject, but, owing to difficulties connected with the question of Tariff, the United States' Government appeared anxious to have the Fisheries Question dealt with separately, but to this the British Government would not assent. The fishing season of 1853 accordingly opened without any agreement having been come to with the United States, and fortunately, owing to the measures taken by both Governments for the preservation of British rights, came to a close without the occurrence of further causes of dissatisfaction.

In the meantime, negotiations for a Treaty had been continued by the two Governments ; and in the month of May, 1854, Lord Elgin, who was on his way to resume his duties as Governor-General of Her Majesty's North American Provinces, received instructions to visit Washington, and to ascertain the views of the United States' Government, and, if any favourable opportunity presented itself, to conclude a Treaty on the subject. So successfully were Lord Elgin's negotiations conducted, that in a letter dated 12th June, 1854, he was able to announce that he had executed a Treaty with Mr. Secretary Marcy, relative to fisheries and reciprocity of trade between the United States and the British provinces in North America. This was the Reciprocity Treaty signed on the 5th June, 1854, and confirmed by the United States' Senate on the 3rd August of the same year. Its main provisions were as follows :—

Signature of Reciprocity Treaty, 1854.

British waters on the east coast of North America were thrown open to United States' citizens, and United States' waters north of the 36th degree of north latitude were thrown open to British fishermen, excepting always the salmon and shad fisheries (which were exclusively reserved to the subjects of each country), and certain rivers and mouths of rivers to be determined by a Commission to be appointed for that purpose. Certain articles of produce of the British colonies and of the United States were admitted to each country respectively free of duty. The Treaty was to remain in force for ten years, and, further, for twelve months after either party should have given notice to the other of its wish to terminate the same.

Some difficulty was experienced in regard to Newfoundland, but at length a clause was agreed to, providing that if the Imperial Parliament of Great Britain, the Provincial Parliament of Newfoundland, and the Congress of the United States should agree that Newfoundland should be included, all the provisions and stipulations of the Treaty should apply to that colony.

The Commission for the designation of the places reserved to each country from the common right of fishing met subsequently, and was engaged for some years in determining the places to which the exclusive right of fishing applied. It is, however, unnecessary here to do more than notice this fact, as the reservations in question are expressly mentioned under Article XX of the Treaty of Washington, of 1871.

From the year 1854 until 1865 the Reciprocity Treaty continued in force, and no further difficulties appear to have arisen on questions connected with the fisheries; but on the 17th of March of that year, Mr. Adams, the United States' Minister in England, informed the British Government that he was instructed to give notice that at the expiration of twelve months from that day the Reciprocity Treaty was to terminate. This notice was given in pursuance of a Resolution of Congress approved by the President of the United States.

Termination of Reciprocity Treaty, and revival of Convention of 1818.

Efforts were made on the part of Her Majesty's Government towards a renewal of the Treaty, but these, from various reasons, proving unsuccessful, the Treaty came to an end on the 17th of March, 1866; and, as a consequence, the provisions of the Convention of 1818 revived on the same day, and remain in effect at the present moment, except in so far as they are affected by the stipulations of the Treaty of Washington of 1871.

In the meantime a notice had been issued by Lord Monck, warning the citizens of the United States that their right to fish in British waters would cease on the 17th of March, 1866; and it became necessary to consider what measures should be adopted for the protection of British rights. Her Majesty's Government were

very desirous to prevent, as far as possible, the injury and loss which must be inflicted upon citizens of the United States by a sudden withdrawal of the privileges enjoyed by them for twelve years ; but with every desire in this direction, they found themselves bound by Acts both of the Imperial and Colonial Legislatures to enforce severe penalties upon all persons, not being British subjects, who might be found fishing within British jurisdiction.

Licensing system adopted in 1866, and abandoned in 1870.

Eventually, however, on the suggestion of Lord Monck, it was decided that American fishermen should be allowed, during the year 1866, to fish in all provincia waters upon the payment of a nominal license fee, to be exacted as a formal recognition of right. This system, after being maintained for four years, was discontinued, owing to the neglect of American fishermen to provide themselves with licenses; and in 1870 it again became necessary to take strict measures for the enforcement of British rights. Orders were given to Admiral Wellesley to dispatch a sufficient force to Canadian waters to ensure the protection of Canadian fishermen and the maintenance of order, and to instruct the senior officer of such force to co-operate cordially with any United States' force sent on the same service. It was also found necessary to employ a local Marine Police Force for the same purpose.

The result of these measures was the capture and forfeiture of several American vessels for infringing the provisions of the Convention of 1818, both by fishing within British waters, and by frequenting Canadian ports for objects not permitted by the Convention; and notwithstanding the steps taken by the British Government to mitigate as far as possible the stringency of the orders given for the exclusion of American fishermen from British waters, it was found at the close of the season of 1870 that many seizures of American vessels had been made by cruizers both of the Imperial and Dominion Governments.

The difficulties caused by these untoward events subsequently led to the reopening of negotiations for the settlement of questions connected with the fisheries.

Joint High Commission in 1871.

It is unnecessary here to relate the circumstances which led to the appointment of the Joint High Commission in 1871 ; suffice it to say that, towards the end of 1870, Sir John Rose, having been commissioned to proceed in an unofficial character to Washington for the purpose of ascertaining the views of the United States on the subject, was able, in the month of February, 1871, to announce that the United States' Government were prepared to refer all questions between the two countries to a Joint High Commission.

The Commissioners held their first meeting at Washington on the 27th February, 1871, and the Treaty was signed on the 8th May of the same year.

Fishery Articles of the Treaty of Washington.

The Articles in this Treaty relating to the fisheries, and in virtue of which this Commission is constituted, are Articles XVIII, XIX, XX, XXI, XXII, XXIII, XXIV, XXV, XXXII, XXXIII. They are as follows:—

"ARTICLE XVIII.

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

"It is understood that the above-mentioned liberty applies solely to the sea fishery, and that the salmon and shad fisheries, and all other fisheries in rivers and the mouths of rivers are hereby reserved exslusively for British fishermen.

"ARTICLE XIX.

"It is agreed by the High Contracting Parties that British subjects shall have, in common with the citizens of the United States, the liberty, for the term of years mentioned in Article XXXIII of this

Treaty, to take fish of every kind, except shell-fish, on the eastern sea-coasts and shores of the United States north of the thirty-ninth parallel of north latitude, and on the shores of the several islands thereunto adjacent, and in the bays, harbours, and creeks of the said sea-coasts and shores of the United States and of the said islands, without being restricted to any distance from the shore, with permission to land upon the said coasts of the United States and of the islands aforesaid for the purpose of drying their nets and curing their fish; provided that, in so doing, they do not interfere with the rights of private property, or with the fishermen of the United States, in the peaceable use of any part of the said coasts in their occupancy for the same purpose.

"It is understood that the above-mentioned liberty applies solely to the sea fishery, and that salmon and shad fisheries, and all other fisheries in rivers and mouths of rivers, are hereby reserved exclusively for fishermen of the United States.

"ARTICLE XX.

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

"ARTICLE XXI.

"It is agreed that, for the term of years mentioned in Article XXXIII of this Treaty, fish-oil and fish of all kinds (except fish of the inland lakes and of the rivers falling into them, and except fish preserved in oil), being the produce of the fisheries of the United States, or of the Dominion of Canada, or of Prince Edward Island, shall be admitted into each country respectively free of duty.

"ARTICLE XXII.

"Inasmuch as it is asserted by the Government of Her Britannic Majesty that the privileges accorded to the citizens of the United States under Article XVIII of this Treaty are of greater value than those accorded by Articles XIX and XXI of this Treaty to the subjects of Her Britannic Majesty, and this assertion is not admitted by the Government of the United States, it is further agreed that Commissioners shall be appointed to determine, having regard to the privileges accorded by the United States to the subjects of Her Britannic Majesty, as stated in Articles XIX and XXI of this Treaty, the amount of any compensation which, in their opinion, ought to be paid by the Government of the United States to the Government of Her Britannic Majesty in return for the privileges accorded to the citizens of the United States under Article XVIII of this Treaty; and that any sum of money which the said Commissioners may so award shall be paid by the United States' Government, in a gross sum, within twelve months after such award shall have been given.

"ARTICLE XXIII.

"The Commissioners referred to in the preceding Article shall be appointed in the following manner, that is to say: One Commissioner shall be named by Her Britannic Majesty, one by the President of the United States, and a third by Her Britannic Majesty and the President of the United States conjointly; and in case the third Commissioner shall not have been so named within a period of three months from the date when this Article shall take effect, then the third Commissioner shall be named by the Representative at London of His Majesty the Emperor of Austria and King of Hungary. In case of the death, absence, or incapacity of any Commissioner, or in the event of any Commissioner omitting or ceasing to act, the vacancy shall be filled in the manner hereinbefore provided for making the original appointment, the period of three months in case of such substitution being calculated from the date of the happening of the vacancy.

"The Commissioners so named shall meet in the City of Halifax, in the Province of Nova Scotia, at the earliest convenient period after they have been respectively named, and shall, before proceeding to any business, make and subscribe a solemn declaration that they will impartially and carefully examine and decide the matters referred to them to the best of their judgment, and according to justice and equity; and such declaration shall be entered on the record of their proceedings.

"Each of the High Contracting Parties shall also name one person to attend the Commission as its agent, to represent it generally in all matters connected with the Commission.

"ARTICLE XXIV.

"The proceedings shall be conducted in such order as the Commissioners appointed under Articles XXII and XXIII of this Treaty shall determine. They shall be bound to receive such oral or written testimony as either Government may present. If either Party shall offer oral testimony, the other party shall have the right of cross-examination, under such rules as the Commissioners shall prescribe.

"If in the case submitted to the Commissioners either party shall have specified or alluded to any report or document in its own exclusive possession, without annexing a copy, such party shall be bound, if the other party thinks proper to apply for it, to furnish that party with a copy thereof; and either party

may call upon the other, through the Commissioners, to produce the originals or certified copies of any papers adduced as evidence, giving in each instance such reasonable notice as the Commissioners may require.

"The case on either side shall be closed within a period of six months from the date of the organization of the Commission, and the Commissioners shall be requested to give their award as soon as possible thereafter. The aforesaid period of six months may be extended for three months in case of a vacancy occuring among the Commissioners under the circumstances contemplated in Article XXIII of this Treaty.

"ARTICLE XXV.

"The Commissioners shall keep an accurate record and correct minutes or notes of all their proceedings, with the dates thereof, and may appoint and employ a Secretary and any other necessary officer or officers to assist them in the transaction of the business which may come before them.

"Each of the High Contracting Parties shall pay its own Commissioner and Agent or Counsel; all other expenses shall be defrayed by the two Governments in equal moities."

"ARTICLE XXXII.

"It is further agreed that the provisions and stipulations of Articles XVIII to XXV of this Treaty, inclusive, shall extend to the Colony of Newfoundland, so far as they are applicable. But if the Imperial Parliament, the Legislature of Newfoundland, or the Congress of the United States shall not embrace the Colony of Newfoundland in their laws enacted for carrying the foregoing Articles into effect, then this Article shall be of no effect; but the omission to make provision by law to give it effect, by either of the Legislative bodies aforesaid, shall not in any way impair any other Articles of this Treaty.

"ARTICLE XXXIII.

"The foregoing Articles XVIII to XXV, inclusive, and Article XXX of this Treaty, shall take effect as soon as the laws required to carry them into operation shall have been passed by the Imperial Parliament of Great Britain, by the Parliament of Canada, and by the Legislature of Prince Edward's Island, on the one hand, and by the Congress of the United States on the other. Such assent having been given, the said Articles shall remain in force for the period of ten years from the date at which they may come into operation; and further until the expiration of two years after either of the High Contracting Parties shall have given notice to the other of its wish to terminate the same; each of the High Contracting Parties being at liberty to give such notice to the other at the end of the said period of ten years, or at any time afterwards."

The Acts necessary to enable these Articles to be carried into effect were passed by the Imperial Parliament of Great Britain on the 6th August, 1872; by the Parliament of Canada on the 14th June, 1872; by the Legislature of Prince Edward Island (which did not at that time form part of the Dominion) on the 29th June, 1872; and by the United States' Congress on the 25th February, 1873. A Proclamation, dated Washington, 7th June, 1873, fixes the 1st of July of that year as the day on which these Articles should come formally into operation.

Some difficulties having arisen in the case of Newfoundland, it was not until the 28th March, 1874, that the necessary Act was passed by that Colony; and a Proclamation issued on the 29th May of the same year fixed the 1st day of June, 1874, as the day on which the Fishery Articles of the Treaty of Washington, so far as they relate to Newfoundland, should come into effect.

In the case of Canada, it was deemed advisable to admit American fishermen to the practical use of the privileges specified in the Treaty in advance of the formal Legislative Acts necessary for that purpose. An official communication to that effect was made early in 1873, and by a Circular from the United States' Treasury Department, dated 1st April, 1873, American fishermen at once availed themselves of the freedom of Canadian inshore waters. This was fitly acknowledged by the United States' Government as "a liberal and friendly" act on the part of the Dominion Government. A similar concession had been previously made by the Government of Prince Edward Island, who admitted American fishermen to the practical freedom of their waters on the 24th July, 1871.

The Treaty of Washington having been ratified, it became necessary to take steps for the constitution of the Commission appointed to meet at Halifax, in the manner prescribed by the Treaty, and in the meanwhile, Her Majesty's Government having appointed their Agent to the Commission, he proceeded to Washington, and some negotiations were entered into with a view to substitute an arrangement with respect to reciprocal free trade between Canada and the United States, for the award of the Commissioners as provided under Article XXII of the Treaty, it being always distinctly understood that in case of the failure of such negotiations,

the rights of Her Majesty's Government with respect to the appointment of the Commission, should in no way be prejudiced. These negotiations having led to no result, it became necessary to revert to the terms of the Treaty and to take steps for the constitution of the Commission in the manner prescribed by it.

Having thus stated the circumstances which led to the conclusion of the Fishery Articles of the Treaty of Washington, having recited those Articles, and enumerated the legislative enactments which have been passed for the purpose of rendering them effective; it is submitted that in order to estimate the advantages thereby derived respectively by subjects of the United States and of Great Britain, the following basis is the only one which it is possible to adopt under the terms of the first portion of Article XVIII of the Treaty of Washington, of 1871, viz:—That the value of the privileges granted to each country respectively by Articles XVIII, XIX, and XXI of that Treaty, *which were not enjoyed under the Ist Article of the Convention of the 20th October*, 1818, is that which this Commission is constituted to determine.

Article I of the Convention of the 20th October, 1818, provides that—

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

Such was the respective position of each country under the Convention of 1818 on matters connected with the Fisheries; and it now remains to state precisely what additional liberties are acquired by each under the Treaty of Washington.

Articles XVIII and XXI of the Treaty of Washington superadd to the privileges conferred upon United States' citizens by the Convention of 1818:—

(1.) "The liberty to take fish of every kind, except shell-fish, on the sea-coasts and shores, and in the bays, harbours, and creeks of the provinces of Quebec, Nova Scotia, and New Brunswick, and the Colony of Prince Edward Island and of the several islands thereunto adjacent, without being restricted to any distance from the shore, with permission to land upon the said coasts and shores and islands and also upon the Magdalen Islands, for the purpose of drying their nets or curing their fish; provided that in so doing they do not interfere with the rights of private property or with British fishermen in the peaceable use of any part of the said coasts in their occupancy for the same purpose.

"It is understood that the above-mentioned liberty applies solely to the sea fishery, and that the salmon and shad fisheries, and all other fisheries in rivers and the mouths of rivers are hereby reserved exclusively for British fishermen.

(2.) "The admission into Canada of fish oil and fish of all kinds (except fish of the inland lakes and of the rivers falling into them, and except fish preserved in oil) being the produce of the fisheries of the United States, free of duty.

(3.) "The enjoyment of these privileges to continue during a period of twelve years certain.

"Similar privileges are granted by Article XXXII in regard to the Colony of Newfoundland."

Articles XIX and XXI confer the following privileges upon British subjects:—

(1.) "The liberty to take fish of every kind, except shell-fish, on the eastern sea-coasts and shores of the United States north of the 39th parallel of north latitude and on the shores of the several islands thereunto adjacent, and in the bays, harbours, and creeks of the said sea coast and shores of the United States and of the said islands without being restricted to any distance from the shore, with permission to land upon the said coasts of the United States and of the islands aforesaid for the purpose of drying their nets and curing their fish; provided that in so doing they do not interfere with the rights of private property or with the fishermen of the United States in the peaceable use of any part of the coast in their occupancy for the same purpose.

"It is understood that the above-mentioned liberty applies solely to the sea fishery, and that

salmon and shad fisheries and all other fisheries in rivers and mouths of rivers are hereby reserved exclusively for fishermen of the United States."

(2.) The admission into the United States of "fish-oil and fish of all kinds (except fish of the inland lakes and of the rivers falling into them, and except fish preserved in oil) being the produce of the fisheries of the Dominion of Canada, or of Prince Edward Island," free of duty.

(3.) The enjoyment of these privileges to continue during a period of twelve years certain.

Article XXXII extends the above-mentioned privileges, so far as they are applicable, to the Colony of Newfoundland.

Upon this basis Great Britain asserts that the privileges specified in Article XVIII of the Treaty of Washington, of 8th May, 1871, exceed in value the privileges specified in Articles XIX and XXI. This assertion is made upon the following grounds, which, for convenience of argument, have been divided into two parts. Part I deals exclusively with the case of the Dominion of Canada. Part II deals exclusively with the case of the Colony of Newfoundland.

Part I.

CANADA.

Chapter I.—*Extent and Value of Canadian Fisheries.*

It will probably assist the Commission in arriving at a just estimation of the intrinsic worth of the concurrent fishing privileges accorded to United States' citizens by the Treaty of Washington, to refer briefly to the extent and value of the sea-coast fisheries of the Maritime Provinces of Canada, as evidenced in part by the profitable operations of British fishermen.

The districts within which British subjects carry on fishing on the coasts, and in the bays, harbours, and creeks of Canada, extend from the Bay of Fundy to the Gulf of St. Lawrence inclusive. The superficial area of these extensive fishing grounds, as shown on the accompanying map, comprises many thousands of square miles, forming the home of a great variety of the most prolific and valuable of sea-fish, the capture of which contributes in an important degree to British and American commerce, and supplies vast quantities of food to several millions of people. The chief of these fish, in the pursuit of which British subjects and United States' citizens now participate in common, under Treaty arrangements, are mackerel, codfish, herring, halibut, haddock, hake, pollack, and many of the smaller varieties taken principally for bait.

It appears by the subjoined statement (Annex A) that the produce of these fisheries caught by British subjects has greatly increased during seven years past. Their steady development and increasing wealth, as shown by this Return, proves that a very considerable amount of industry and enterprise is embarked therein, and also that they are capable of still further expansion. This marked improvement in their condition and yield for the period specified in the Table, is an important circumstance in relation to the present inquiry. It shows that, in an article of commerce and a source of food, their actual productiveness keeps pace with the yearly increasing demands made on them for all the purposes of foreign and domestic trade, and of local consumption. Also, they are now of much greater value than they were during the existence of the Reciprocity Treaty. The admission of American fishermen to concurrent rights under the Treaty of Washington, is therefore, in every respect, highly advantageous to the United States' citizens.

Chapter II.—*Advantages derived by United States' Citizens.*

1. *Liberty of fishing in British waters.*

Liberty to prosecute freely the sea fisheries "on the coasts and shores, and in the bays, harbours, and creeks" of Canada, is in itself a very valuable concession to United States' citizens. It concedes the common use of extensive and productive fishing grounds, which are readily accessible to American fishermen, and are advantageously situated as regards their home market. The full value of

this important concession can be but imperfectly determined by reference merely to the precise number of vessels and fishermen engaged in the business of fishing in these waters, or to the exact quantity of fish taken therefrom in the course of each successive season. Doubtless the amount of capital thus invested, the employment afforded, the trade and industry thereby promoted, and the necessary food supplied, will be justly regarded by the Commission as forming material elements in the calculation of probable benefits derived by the American nation. But, as it is desirable to refer to such specific data as may fairly establish the equitable foundation and practical character of the present claim, we propose to show, by such evidence as the case admits,—

(1.) The number of United States' fishing vessels frequenting these waters;

(2.) The kinds and quantities of fish it is customary for them to take, and the profits accruing to them thereby;

(3.) The amount of capital embarked in these operations, and other advantages accruing to United States' citizens thereby.

First.—The official records of the United States' Government show that in 1868 the "enrolled and licensed" vessels engaged in the cod and mackerel fisheries numbered 2,220; in 1869 there were 1,714 vessels so employed; in 1870 their numbers were 2,292; in 1871 there were 2,426 vessels thus engaged; and in 1872 there were 2,385.

The classification of decked fishing vessels in the United States is confined nominally to the cod and mackerel fisheries, but no doubt includes such vessels as embark also in the herring, halibut, haddock, hake, pollack, and bait fisheries on the coast of Canada. There are, certainly, fluctuations from year to year in the number of vessels engaged, as well as in the success of their respective voyages, but there is a remarkable concurrence in the statements made by various informants that an average number, ranging between 700 and 1,200, of the United States' vessels have annually resorted to British waters for fishing purposes for many years past.

These vessels are variously occupied on the shores of Canada throughout each season. Some of them resort to the Gulf of St. Lawrence from early spring time to late autumn in pursuit of cod, mackerel, herrings, and halibut. Others frequent the western coast of Nova Scotia and the Bay of Fundy throughout the season. During the existence of the Reciprocity Treaty, when free access was afforded to British waters, it was admitted by an American authority, Mr. E. H. Derby, that about 600 of these vessels fished every year for mackerel alone on the Gulf coasts of Canada; and it is probable that as many more fished along the Atlantic coasts of Canada, and also on the banks and ledges off shore. Captain Scott, R.N., commanding the Marine Police, and Captain Nickerson, of the same force, both state that as many as 1,200 United States' fishing vessels have been known to pass through the Gut of Canso in a single season. Inspector Venning states that, during the existence of the Reciprocity Treaty the annual number was from 1,200 to 1,500. The Executive Council of Prince Edward Island, in a Minute dated 17th February, 1874, states that 1,000 sail of United States' vessels were engaged in the mackerel fishery alone in the year 1872. The former commander of the Government cruizer "La Canadienne," in his Report of 1865, estimates that there were in that year from 1,050 to 1,200 American vessels engaged exclusively in the mackerel fishery of the Gulf of St. Lawrence. Subsequently, in 1866, the actual number of United States' vessels duly licensed by the Canadian Government on passing through the Gut of Canso for the inshore mackerel fisheries was 454, as shown by official returns of the local Collectors of Customs. The exact number of other vessels which then refused to take out licenses, on the pretext that they intended fishing in outside waters, was not, of course, recorded; but we are justified in assuming from the observations of qualified persons, whose oral or written testimony will be offered to the Commission if required, that at least 600 more were also engaged in the mackerel and other fisheries in British waters.

It is stated in the Annual Report of the United States Secretary of the Treasury for 1871 that "The district of Gloucester is most extensively engaged in this occupation. Her cod and mackerel fleet amounting to 548 vessels, 28,569 tons, showing an increase of 97 vessels since June 30, 1870." The same authority states in the Annual Report for 1872 that "the tonnage employed in the cod and mackerel fisheries has increased somewhat for the past three years."

Thirty-nine new fishing vessels were built at the port of Gloucester, Massachusetts, alone, in 1874, and about fifty more were to be built in the next following year; and as there are several other important outfitting ports in the same State,

besides many others in the States of Maine, New Hampshire, Rhode Island, Connecticut, and New York, it is fair to infer that a corresponding increase in the fishing fleet from these numerous ports will also take place now that the Canadian fisheries are reopened to their vessels. These five States added 243 schooners to their fishing fleet in 1866, when the inducements to build were less certain. There is, therefore, good reason to anticipate that in the course of the twelve years stipulated in the present Treaty a still greater impetus will be given to the fishing industry and commerce of the United States. Such a result may be more confidently expected in consequence of the rapid increase of population and extension of settlements, the more numerous markets opened up by railway enterprises, and the growing demand for fish food from the seaboard to replace the failing supplies from inland waters.

The withdrawal of New England tonnage from the whale fishery, in consequence of the rapid decline of that pursuit as a paying adventure, will most likely have the effect of engaging other sail in the more lucrative branches of marine industry. Mr. R. D. Cutts, in an able Report to the United States' Government on the political importance and economic conditions of the Fisheries, expresses some apprehension of the imminent failure of the cod and other fisheries on the Grand Banks. Should such ensue, it would probable engage additional tonnage in the in-shore fisheries around the coasts of Canada.

We are, therefore, warranted in reckoning a yearly average number of vessels as availing themselves of the privileges accorded to United States' citizens by the Treaty of Washington at about 1,000, reserving the right to show the probability of a still larger number being so engaged.

Second.—American fishermen pursue their calling around the islands and in the harbours of the Bay of Fundy, and along parts of the coasts of Nova Scotia and New Brunswick bordering the said bay; down the south coast of Nova Scotia, and around the Island of Cape Breton; thence through the Strait of Canso, along the northern coast of Nova Scotia and New Brunswick; thence through the Strait of Northumberland, and all around Prince Edward Island, particularly on its western, northern, and eastern coasts, resorting especially to the bays and harbours of the southern shore to transship cargoes and procure supplies; thence into Miramichi Bay, the Bay of Chaleur and Gaspé Bay; thence around the Magdalen Islands and Anticosti Island; thence up the south shore of the River St. Lawrence to Father Point, and down the north shore of the River and Gulf of St. Lawrence from Point des Monts to Blanc Sablon Bay. These localities abound with codfish, mackerel, herrings, halibut, haddock, pollack, hake, and a variety of other and smaller fishes used expressly for bait, such as spring-herring, capelin, smelts, sandlaunce, gaspereaux, also such bait as squid and clams. These are the principal descriptions of fish captured by United States' citizens in British waters. They generally frequent the inshores, and are there caught in the largest quantities and of the finest quality, and with greater certainty and facility than elsewhere. A considerable portion of the codfish taken by American fishermen is doubtless caught on the banks and ledges outside, such as Green, Miscou, Bradelle, and Orphan Banks; and within Treaty limits around the Magdalen Islands, and on the southern coast of Labrador. Latterly it has been the practice to use cod seines close inshore, and to fish with trawls and lines near the coast of Nova Scotia, New Brunswick, Quebec, and Anticosti; there is also a small portion of the other fishes named taken at various distances from the shore.

A majority of the fishing fleet frequenting British waters being fitted almost exclusively for the mackerel fishery, that pursuit will be first considered as to the quantity taken by each vessel. In an ordinary voyage or "trip" from an American port to the Gulf fishing grounds and back, without the liberty of resorting freely to the bays, creeks, and harbours, and the inshores generally, to fish, refit, tranship, &c., but with only illicit opportunities to use these privileges, the profits of each vessel would be comparatively insignificant; but being privileged to fish, and to land and refit, and to transfer each fare to steamers or railways in Canada, and afterwards to replenish stores and resume operations, the vessels would return immediately while the fishing was good, to catch a second fare, which is similarly disposed of, and would often make a third trip before the season closes. Captain P. A. Scott, R.N., of Halifax, Nova Scotia, states that these facilities, combined with freedom of inshore fishing, enable each mackerelman to average about 800 barrels per season, worth 12,100 dollars. Captain D. M. Brown, R.N., of Halifax, makes the same statement. Captain J. A. Tory, of Guysboro,

Nova Scotia, states that it is common, with such advantages, for each vessel to catch from 1,000 to 1,500 barrels of mackerel in three trips. Mr. E. H. Derby estimates the catch of vessels "in the mackerel business from 500 to 700 barrels." Mr. William Smith, late Controller of Customs at St. John, New Brunswick, now Deputy Minister of Marine and Fisheries, computes the catch of mackerel by American vessels at 10 barrels per ton. The late Mr. M. H. Perley, Her Majesty's Commissioner under the Treaty of 1854, reports in 1849 having accosted five United States' vessels actively fishing about three miles from Paspebiac, in Chaleur Bay, and several in Miramichi Bay, having upwards of 900 barrels of mackerel each. It appears from a return made by the Collector of Customs at Port Mulgrave, in the Gut of Canso, that among 135 vessels of the American mackerel fleet which were casually spoken at that port, in 1873, the names of which he gives, there were 33 having over 300 barrels a-piece; 55 having over 400 barrels each; 28 having over 500 barrels each; 12 having over 600 barrels each; and 7 having over 700 barrels a-piece. Probably these were not the largest fares secured, as the vessels were reported before the fall fishery (usually the best) had taken place. In the year 1874, 164 United States' fishing vessels took, at the east point of Prince Edward Island, 383 barrels per vessel. The catch of mackerel in that season by the Island fishermen, who are few in numbers, and fish mostly in open boats and with seines, was altogether inshore, and amounted to 27,317 barrels.

We may confidently state that at a very moderate computation each American fishing vessel frequenting British waters, obtains through the privileges conferred by the Treaty, a catch of at least 300 barrels of mackerel alone, worth 12 dollars per barrel, at each trip,—or a gross value of 3,600 dollars per vessel.

The proportion of codfish taken and forming part of mixed fares would be comparatively small when distributed amongst a large number of vessels fishing principally for mackerel and herrings. It is estimated that vessels fishing for cod, herrings, and other fish during the intervals of mackereling, usually take of herrings 300 barrels; codfish, 100 quintals; halibut, 200 quintals; haddock, pollack, and hake, 100 quintals; and bait fishes (exclusive of herrings, used fresh), 200 dollars' worth; each vessel averaging about 2,000 dollars' worth in all. Many of these vessels, or others of smaller tonnage, are engaged in fishing around the western coasts of Nova Scotia, and in the Bay of Fundy, both before and after their regular voyages to the eastern and Gulf fishing grounds. But the maximum number of vessels and the value of catch reckoned in this claim, for the purpose of stating a basis of computation, without prejudice, however, to whatever addition to the number of vessels engaged, and the quantity and value of fish caught, may be substantiated in further evidence, does not specifically include the catch of those smaller vessels, which are constantly occupied in the inshore fishings of the western coasts of the Maritime Provinces for other kinds besides mackerel. This reservation is necessarily due, if not to the moderation of the claim involved, at all events to the obvious difficulty of ascertaining with exactness the movements and operations of a fleet of foreign vessels, of varied tonnage, numbering between 1,000 and 3,000, besides the many small boats attached, which are continually moving about in different and distant localities, or frequenting throughout each season the countless indentations of a sinuous coast nearly 4,000 miles in lineal extent.

In recapitulation of the above, it is estimated that each United States' fishing vessel will, on a moderate computation, take within British Canadian waters 3,600 dollars' worth of mackerel, and 2,000 dollars' worth of other fish; or a total of 5,600 dollars' worth of fish of all kinds as an average for each trip. This estimate is, however, made, as stated in the case of the number of vessels engaged, without prejudice to any larger catch per vessel, which we may be able to substantiate in evidence before the Commission.

Third.—The estimated amount of capital embarked in this business by United States' citizens exceeds 7,000,000 dollars. Mr. Lorenzo Sabine, formerly President of the Boston Board of Trade, estimates it at 7,280,000 dollars. It employs about 16,000 men afloat, besides many others ashore. That the investment is a profitable one, is proved by the large amount of vessels and men engaging in it, and also the more costly appliances which are provided in these fishing pursuits. If the construction and equipment of vessels for the various fisheries which United States' citizens so persistently follow in British waters was not proved to be highly advantageous, it is reasonable to assume that it would cease to engage a large amount of capital, for the use of which so many other attractive enterprizes exist. It must be

concluded, therefore, that the inshore fisheries afford never-failing occupation for men and money preferable to many other lucrative industries.

The advantages resulting to the commerce and supply of United States' citizens generally from the privileges to which American fishermen are admitted by this Treaty are most important. The demand for fish food in all parts of the American Union is yearly increasing, and immense efforts are now being made to supply this want. A population already exceeding 40,000,000, constantly augmenting in numbers by immigration from foreign countries, and where the people consume the products of the sea to a very large extent, requires much more of this kind of food than the failing fisheries of the United States can now produce. Their productive power is no longer equal to the consumptive capacity of the nation. The rapid means of transport, and the improved methods of preservation now available, are fast bringing the inhabitants of the interior practically within easy reach of the seaboard; and fish of all kinds, even the most inferior descriptions, and qualities not hitherto saleable, are required to supply the public want. The magnitude of the present fish trade of the United States is hardly conceivable from the meagre and partial statements derived from official returns. These Tables publish only the "products of American fisheries received into the Customs districts," which form but a small proportion of the enormous quantities of fish landed from United States' boats and vessels, and much of which is obtained from the sea-coasts of Canada.

We have referred elsewhere to reports made by American officials regarding the deteriorated condition of the fisheries on the coasts of the New England States. They affirm that, owing to such decline, "the people are obliged to resort to far-distant regions to obtain the supply which formerly could be secured almost within sight of their homes." The above state of things already renders it necessary for United States' citizens to secure access to Canadian fisheries; and the growing demand for local consumption before-mentioned, apart from the requirements of their foreign trade, must tend greatly to increase this necessity.

Were United States' citizens unable to supply such an extensive demand in consequence of being precluded from fishing in British Canadian waters, it would no doubt be supplied through British subjects, who would also catch more fish in their own exclusive waters than if fishing in the same limits concurrently with American fishermen. This consideration, therefore, forms an additional reason for the compensation which we now claim.

2. *Liberty to land for the purposes of drying nets, curing fish, &c.*

The privileges secured to United States' subjects in this respect by the Treaty of Washington are—the liberty to land for purposes connected with fishing on the coasts of Labrador, the Magdalen Islands, and the other portions of the seaboard of the Dominion of Canada. As the rights thus secured to United States' fishermen for a period of twelve years vary somewhat in the different localities above named, it will be well to consider them separately.

Under the Convention of 1818, United States' citizens were privileged to fish on certain parts of the coast of Labrador, but were restricted in the liberty of drying and curing fish to unsettled places. Such districts as were then occupied, or might subsequently become settled, were reserved for the exclusive use of British fishermen, and rights and properties possessed by the Hudson's Bay Company were likewise reserved from common user. Gradual settlement during fifty years past has filled up nearly all available landing-places along the southern coast of Labrador, between Blanc Sablon and Mount Joly; and the establishments maintained by the Hudson's Bay Company, whose rights and privileges are now acquired by Canada, have confirmed the exclusive occupancy contemplated by the Convention. Under such altered circumstances, United States' fishermen might have been excluded under the terms of the Convention from using these landings, without the free use of which the fisheries cannot be profitably pursued. The fish taken in these waters include herrings, cod-fish, and sometimes mackerel, which are seined on the main shore, and among the islands throughout that region, and the famous "Labrador herring," which abounds there.

The Convention of 1818 entitled United States' citizens to fish on the shores of the Magdalen Islands, but denied them the privilege of landing there. Without such permission, the practical use of the inshore fisheries was impossible. Although such permission has tacitly existed, as a matter of sufferance, it might at any moment have been withdrawn, and the operations of United States' fishermen in that locality would thus have been rendered ineffectual. The value of these inshore

fisheries is great: mackerel, herring, halibut, capelin, and launce abound, and are caught inside of the principal bays and harbours, where they resort to spawn. Between 300 and 400 United States' fishing vessels yearly frequent the waters of this group, and take large quantities of fish, both for curing and bait. A single seine has been known to take at one haul enough of herrings to fill 3,000 barrels. Seining mackerel is similarly productive. During the spring and summer fishery of the year 1875, when the mackerel were closer inshore than usual, the comparative failure of American fishermen was owing to their being unprepared with suitable hauling nets and small boats, their vessels being unable to approach close enough to the beaches.

In the case of the remaining portions of the seaboard of Canada, the terms of the Convention of 1818 debarred United States' citizens from landing at any part for the pursuit of operations connected with fishing. This privilege is essential to the successful prosecution of both the inshore and deep sea fisheries. By it they would be enabled to prepare their fish in a superior manner in a salubrious climate, as well as more expeditiously, and they would be relieved of a serious embarrassment as regards the disposition of fish offals, by curing on shore the fish which otherwise would have been dressed on board their vessels, and the refuse thrown overboard.

All the advantages above detailed have been secured for a period of twelve years to United States' fishermen. Without them fishing operations on many parts of the coast would be not only unremunerative, but impossible; and they may, therefore, be fairly claimed as an important item in the valuation of the liberties granted to the United States under Article XVIII of the Treaty of Washington.

3. *Transshipping cargoes and obtaining supplies, &c.*

Freedom to transfer cargoes, to outfit vessels, buy supplies, obtain ice, engage sailors, procure bait, and traffic generally in British ports and harbours, or to transact other business ashore, not necessarily connected with fishing pursuits, are secondary privileges which materially enhance the principal concessions to United States' citizens. These advantages are indispensable to the success of foreign fishing on Canadian coasts. Without such facilities, fishing operations, both inside and outside of the inshores, cannot be conducted on an extensive and remunerative scale. Under the Reciprocity Treaty these conveniences proved very important, more particularly as respects obtaining bait and transferring cargoes. The American fishermen then came inshore everywhere along the coast and caught bait for themselves, instead of requiring, as previously, to buy, and preserve it in ice, saving thereby much time and expense. They also transshipped their fish and returned with their vessels to the fishing ground; thus securing two or three fares in one season. Both of these, therefore, are distinct benefits. There are other indirect advantages attending these privileges; such as carrying on fishing operations nearer the coasts, and thereby avoiding risks to life and property, as well whilst fishing as in voyaging homeward and back; also having always at command a convenient and commodious base of operations. They procure cheap and regular supplies without loss of time, enabling them always to send off their cargoes of fish promptly by rail and steamers to meet the current market demand for domestic consumption or foreign export, instead of being compelled to "beat up" to Gloucester or Boston with each cargo, seldom returning for a second; and it may be remarked that all their freight business in fish from provincial ports is carried on in American bottoms, thus creating a profitable business for United States' citizens.

The advantages above described of being able to make second and third full fares, undoubtedly, in most instances, doubles the catch which can be made in British Canadian waters by a vessel during one season, and it, therefore, may be reasonably estimated that it enables United States' fishermen to double their profits.

4. *Formation of fishing establishments.*

The privilege of establishing permanent fishing stations on the shores of Canadian bays, creeks, and harbours, akin to that of landing to dry and cure fish, is of material advantage to United States' citizens. Before the Treaty the common practice with American vessels was to take away their cargoes of codfish in a green state, and to dry them at home. Those codfish caught on the banks off-shore are usually fine, well-conditioned fish, but, being cured in bulk instead of being cured or packed ashore, are of inferior value. Apart from the fishing facilities and business conveniences thus afforded to Americans for prosecuting both the deep-sea and inshore fisheries, there are climatic advantages connected with this privilege of a

peculiar nature, which attach to it a special value. It is a fact universally known and undisputed, that codfish, for example, cured on our coasts, command a much higher price in foreign markets than those cured in the United States. This is due in a great measure to the salubrity of the climate and the proximity of the fishing grounds. Permanent curing establishments ashore also enable the fishermen to obtain more frequent "fares," and the dealers to carry on the business of curing and shipping on a much more extensive and economic scale, than if their operations were conducted afloat. There are further advantages derivable from permanent establishments ashore, such as the accumulation of stock and fresh fish preserved in snow or ice, and others kept in frozen and fresh state by artificial freezing; also, the preservation of fish in cans hermetically sealed. The great saving of cost and of substance, and the rapid preparation of a more saleable, more portable, and more nutritive article of food, which commend these improved methods of treating edible fishes to general adoption, will, undoubtedly, induce enterprizing dealers to avail themselves very extensively of the remarkable opportunities which free access, and an assured footing on Canadian coasts, are calculated to afford. The broad effect of these increased facilities is to be found in the abundant and increasing supply to the American public of cheap and wholesome fish, which supply would certainly diminish or fail without the advantages secured by the Treaty of Washington.

5. *Convenience of reciprocal free market.*

A reciprocal free market for any needful commodity, such as fish, entering extensively into daily consumption by rich and poor, is so manifest an advantage to everybody concerned, the producer, the freighter, the seller and consumer alike, that the remission of Canadian duties on American-caught fish imported into Canada, cannot, in our opinion, form a very material element for consideration. The benefits conferred by a cheap and abundant supply of food are evident, especially to countries where, as in the United States and Canada, the chief necessaries of life are expensive, and it is so desirable to cheapen the means of living to the working classes.

6. *Participation in improvements resulting from the Fisheries Protection Service of Canada.*

In addition to the statutory enactments protecting the Canadian Fisheries against foreigners, and regulating participation in them by the United States' citizens, under Treaty stipulations, the Provincial Governments have for many years past applied an organized system of municipal protection and restriction, designed to preserve them from injury and to render them more productive. A marked increase in their produce during the last decade attests the gratifying results of these measures.

A large number of fishery officers is employed by the Government of the Dominion in the Maritime States at an annual cost of about 75,000 dollars. This staff is actively engaged, under an organized system controlled by the Department of Marine and Fisheries, in fostering and superintending fish culture in the rivers and estuaries. Regulations are enforced for the protection of these nurseries, and considerable expense has been incurred in adapting and improving the streams for the reproduction of river fish.

The intimate connection between a thriving condition of river and estuary fishings and an abundant supply in the neighbouring deep-sea fisheries has not, perhaps, as yet been sufficiently appreciated. It is, however, obvious that the supply of bait fishes thus produced attracts the deep-sea fish in large numbers. Their resort is consequently nearer inshore than formerly, and the catch of the fishermen who have the privilege of inshore fishing is proportionately increased, whilst they pursue their operations in safer waters, and within easier reach of supplies. In addition to the measures above described for the increase of the fisheries, special care has been devoted to the protection of the spawning grounds of sea fishes, and the inshores now swarm with valuable fish of all kinds, which, owing to the expense incurred by the Canadian Government, are now abundant in places hitherto almost deserted.

It will also be necessary for the proper maintenance of these improvements and for the preservation of order in the fishing grounds, as well in the interest of the United States as of the Canadian fishermen, to supplement the existing Fisheries Service by an additional number of officers and men, which will probably entail an increase of at least 100,000 dollars on the present expenditure.

In all these important advantages, produced by the restrictions and taxation

imposed on Canadians, United States' fishermen will now share to the fullest extent, without having as yet in any way contributed towards their cost: it may then fairly be claimed that a portion of the award to be demanded of the United States' Government shall be in consideration of their participation in the fruits of additional expenditure borne by Canadians to the annual extent, as shown above, of nearly 200,000 dollars.

Summary.

The privileges secured to United States' citizens under Article XVIII of the Treaty of Washington, which have been above described particularly and in detail, may be summarized as follows:—

1. The liberty of fishing in all inshore waters of the Dominion; the value of which is shown by the kinds, quantity, and value of the fish annually taken by United States' fishermen in those waters, as well as by the number of vessels, hands, and capital employed.

2. The liberty to land for the purpose of drying nets and curing fish, a privilege essential to the successful prosecution of fishing operations.

3. Access to the shores for purposes of bait, supply, &c., including the all-important advantage of transferring cargoes, which enables American fishermen to double their profits by securing two or more full fares during one season.

4. Participation in the improvements resulting from the Fisheries Service maintained by the Government of the Dominion.

The above privileges may be considered as susceptible of an approximate money valuation, which it is respectfully submitted should be assessed as well with reference to the quantity and value of fish taken, and the fishing vessels and fishermen employed, as to other collateral advantages enjoyed by United States' citizens.

It has been stated in the preceding portions of this chapter that an average number of at least 1,000 United States' vessels annually frequent British Canadian waters. The gross catch of each vessel per trip has been estimated at 5,600 dollars, a considerable proportion of which is net profit, resulting from the privileges conferred by the Treaty.

These privileges profitably employ men and materials representing in industrial capital several millions of dollars; the industries to the advancement of which they conduce, support domestic trade and foreign commerce of great extent and increasing value; they also serve to make a necessary and healthful article of food plentiful and cheap for the American nation. It is not merely the value of "raw material" in fish taken out of British Canadian waters which constitutes a fair basis of compensation; the right of this fishery was an exclusive privilege, the sole use of which was highly prized, and for the common enjoyment of which we demand equivalents to be measured by our just estimation of its worth; we enhance the main concession on this point by according kindred liberties and indispensable facilities, all of which are direct advantages; and, in order to illustrate the assessable value of the grant, we adduce certain data relating to the number of United States' fishing vessels more immediately interested, and the gross quantity and value of their catch in British Canadian waters.

In addition to the advantages above recited, the attention of the Commissioners is respectfully drawn to the great importance attaching to the beneficial consequences to the United States of honourably acquiring for their fishermen full freedom to pursue their adventurous calling without incurring constant risks, and exposing themselves and their fellow countrymen to the inevitable reproach of wilfully trespassing on the rightful domain of friendly neighbours. Paramount, however, to this consideration is the avoidance of irritating disputes, calculated to disquiet the public mind of a spirited and enterprising people, and liable always to become a cause of mutual anxiety and embarrassment.

It was repeatedly stated by the American members of the Joint High Commission at Washington, in discussing proposals regarding the Canadian fisheries, "that the United States desired to secure their enjoyment, not for their commercial or intrinsic value, but for the purpose of removing a source of irritation." This commendable desire evidently was reciprocated by the British Commissioners in assenting to the proposition that the matter of disagreement as regards a money-equivalent "should be referred to an impartial Commission." It should not be lost sight of that an offer for the reciprocal free admission of coal, salt, fish, and lumber, had previously been made by the United States' Commissioners, "entirely in the

interest of a peaceful settlement," but was declined by the British Commissioners as inadequate. It is now shown that the contention of the British Commissioners regarding the "great value" of these fisheries was well founded, and that the privileges subsequently accorded by the Treaty of Washington as in part compensatory are of no appreciable value.

It must be admitted, therefore, that the concessions made by Great Britain in the interests of American fishermen, quite irrespective of their commercial value, are indeed extremely valuable to the United States. Probably, it will be said that in this respect, there is an international gain. But it seems impossible for British subjects, if unmolested in their rights and privileges, to occasion any such irritation as the United States' Commissioners expressed their anxiety to avoid. The provocation would be confined entirely to foreign intruders, seeking their own gains at the cost and injury of British fishermen, thereby, perhaps, involving both nations in serious difficulties and incalculable expense. The duty (with its attendant cost) of guarding against any such vexations on the part of United States' citizens, devolves solely on the American Government. If, to avoid the onerous responsibility of fulfilling it, and at the same time to secure for the inhabitants and trade of the country the concurrent use of these valuable privileges, the Government of the United States requires to pay fair equivalents, it certainly cannot be expected that Great Britain would abate the just estimation placed on them because of a mere assertion by the United States, as beneficiary, "that their value is over-estimated," or that any further measure of concession is due to international amity. Great Britain claims to have fully reciprocated the desire expressed by the United States' Commissioners; and being in possession of proprietary rights of special importance and value to herself, the mutual enjoyment of which was voluntarily sought on behalf of United States' citizens, we are justified in asking the present Commission to consider these circumstances in determining the matter thus referred to equitable assessment under the present Treaty.

Chapter III.—*Advantages derived by British Subjects.*

1. *Liberty of fishing in United States' waters, and other privileges connected therewith.*

The privileges granted to British subjects by Article XIX of the Treaty of Washington are the same right of fishing and landing, for purposes connected with fishing, in United States' waters, north of the 39th parallel of north latitude, as are granted to United States' citizens in British North American waters. It may at the outset be stated that this concession is absolutely valueless.

That the several kinds of sea fishes formerly abundant on the north-eastern sea-coasts of the United States have not merely become very scarce, but are in some localities almost extinct, is an unquestionable fact. An exhaustive investigation into the causes of their decline was commenced in 1871 by Professor Baird, the Chief of the United States' Fisheries Commission, and is still in progress. This eminently thorough and scientific investigator reports, substantially, that the failing supply of edible coast fishes is mainly due to overnetting and incessant fishing by other means. These causes, joined to continuous havoc made by predaceous fishes, have considerably exhausted the coast fisheries along the southern and north-eastern seaboard of the United States. The Fishery Commissioners of the State of Maine, in their Reports for 1872-4, endorse the official statements of the Federal Commissioner, that the sea fishes on the coasts of New England have "almost entirely disappeared," and that "the people are obliged to resort to far distant regions to obtain the supply which formerly could be secured almost within sight of their homes."

The following extracts from Professor Baird's Report, published in 1873, are conclusive:—

"In view of the facts adduced in reference to the shore fisheries, there can be no hesitation in accepting the statement that there has been an enormous diminution in their number, although this had already occurred to a considerable degree, with some species, by the beginning of the present century."

"The testimony everywhere, with scarcely an exception, both from line-men and trappers, was that the whole business of fishing was pretty nearly at an end, and that it would scarcely pay parties to attempt to continue the work on a large scale in 1873."

When the above statements are fairly considered, and when we also consider that the only remedy for this state of decline is to diminish the numbers and restrict

the catchment powers of fishing engines in use, it is highly improbable that any foreigner will resort to these waters for fishing purposes.

In a geographical sense, the fishery grounds thus formally opened to British subjects comprise about 2,000 square miles, distant and unproductive, and which, for these and other reasons, are practically unavailable to the British fisherman. It is shown above that the best United States' authorities concur in opinion that these fisheries are rapidly becoming exhausted, affording scarcely remunerative employment for American fishermen, who have been themselves obliged to abandon these grounds, and resort in large numbers to the more productive waters of Canada. It is as impossible to conceive in theory that British fishermen should forsake their own abundant waters to undertake a long and arduous voyage to those distant and unremunerative fisheries, as it is an undisputed matter of fact that they do not, and in all probability never will, do so.

A similar concession embodied in the Reciprocity Treaty of 1854, which embraced 3 degrees more in a southerly direction, extending along the coasts of Delaware, Maryland, Virginia, and part of North Carolina, to the 36th parallel of north latitude, proved during the twelve years it existed of no practical value whatsoever, not a single British fisherman having utilized it.

The question of bait must now be considered, as some importance may, perhaps, be attached by the United States to the supposed advantages derived in this respect by British subjects. It might appear at first sight that the privilege of resorting to the inshores of the Eastern States to procure bait for mackerel fishing was of practical use. Menhaden are said to be found only in United States' waters, and are used extensively in the mackerel fishing, which is often successfully pursued with this description of bait, especially by its use for feeding and attracting the shoals. It is, however, by no means indispensable; other fish baits, plentiful in British waters, are quite as successfully used in this particular kind of fishing business, and very generally in other branches, both of deep-sea and inshore fishing, as, for example, fresh herrings, alewives, capelin, sandlaunce, smelts, squids, clams, and other small fishes caught chiefly with seines close inshore. British fishermen can thus find sufficient bait at home; and can purchase from American dealers any quantities they require much cheaper than by making voyages to United States' waters in order to catch it for themselves. It is a remarkable fact that for six years past, American fishermen have bought from Canadians more herring bait alone than all the menhaden bait imported into Canada during the same period. The menhaden bait itself can also be bred and restored to places in the Bay of Fundy, on the western coast of Nova Scotia, where it existed up to the time of its local extermination.

It is notorious that the supply, both of food and bait fishes, has become alarmingly scarce along the United States' coast. At Gloucester alone some thirty vessels are engaged during about six months in each year catching menhaden for bait. They sell about 100,000 dollars' worth annually, and, by catching them immoderately in nets and weirs for supplying bait and to furnish the oil mills, they are rapidly exterminating them. The Massachusetts Fishery Commissioners, in their report for 1872, state that "It takes many hands working in many ways to catch bait enough for our fishing fleet, which may easily be understood when it is remembered that each George's man takes 15 or 20 barrels for a trip; and that each mackereler lays in from 75 to 120 barrels, or even more than that." One of the principal modes for the capture of bait and other fishes on the New England Coast is by fixed traps or pounds on the shore. By means of these, herrings, alewives, and menhaden are caught as bait for the sea fishery, besides merchantable fish for the markets, and the coarser kinds for the supply of the oil factories. There are upwards of sixty of these factories now in operation on the New England Coast. The capital invested in them approaches 3,000,000 dollars. They employ 1,197 men; 383 sailing vessels, and 29 steamers, besides numerous other boats. The fish material which they consume yearly is enormous, computed at about 1,191,100 barrels, requiring whole fishes to the number of about 300,000,000. These modes of fishing for menhaden and other bait are furthermore such as to preclude strangers from participating in them without exceeding the terms of the Treaty; and even without this difficulty, it must be apparent that such extensive native enterprises would bar the competition, and suffice to ensure the virtual exclusion of foreigners.

The attention of the Commissioners is therefore respectfully drawn to the following points:—

1. The "sea fishery" is distant and unproductive.

2. The inshores are occupied to the fullest possible extent, and the supply especially in the matter of bait, is rapidly becoming exhausted.

3. British fishermen have not, either during the Reciprocity Treaty or the Treaty of Washington, availed themselves of the freedom of fishing in United States waters.

A careful consideration of these points will, we believe, lead to the conviction that in this respect no advantage whatever accrues to British subjects.

2. *Customs remissions by United States in favour of Canada.*

The privilege of a free market in the United States for the produce of the fisheries of the Dominion of Canada, excepting fish of the inland lakes and tributary rivers, and fish preserved in oil, remains to be considered. It forms the only appreciable concession afforded by the Treaty for the right of free fishery in British waters, and the collateral advantages derived by United States' citizens. We have already adverted in paragraph 5 of chapter 2 of this Case to the mutual benefit of a reciprocal free market for fish. This is so clearly an advantage to all concerned, and particularly to the nation comprising the largest number of fishermen, traders, and consumers, that it cannot be contended that in this respect any advantage is conceded to Canada which is not participated in by the United States.

Conclusion.

For these and other reasons Her Majesty's Government, for the concession of these privileges in respect of the Dominion of Canada, claim, over and above the value of any advantages conferred on British subjects under the Fishery Articles of the Treaty of Washington, a gross sum of 12,000,000 dollars, to be paid in accordance with the terms of the Treaty.

Part II.

NEWFOUNDLAND.

Chapter I.—*Introduction and Description of Newfoundland Fisheries.*

It has been already submitted, on page 62 of the Introductory portion of this Case, that the following basis is the only one which it is possible to adopt under the terms of the first part of Article XVIII of the Treaty of Washington, 1871, namely, that the value of the privileges granted to each country respectively by Articles XVIII, XIX, and XXI of that Treaty, *which were not enjoyed under the Ist Article of the Convention of the 20th of October,* 1818, is that which this Commission is constituted to determine.

The position occupied by Newfoundland, in regard to the right of fishing enjoyed by the United States' citizens on her coasts is, however, in many points distinct from that of Canada, and it is desirable to state precisely how the case stands.

By Article I of the Convention of 1818 the inhabitants of the United States acquired "for ever the liberty to take fish of every kind on that part of the southern coast of Newfoundland which extends from Cape Ray to the Rameau Islands, on the western and northern coast of Newfoundland, from the said Cape Ray to the Quirpon Islands, and also on the coasts, bays, harbours, and creeks from Mount Joly on the southern coast of Labrador, to and through the Straits of Belle-Isle, and thence northwardly indefinitely along the coast, and the liberty for ever to dry and cure fish in any of the unsettled bays, harbours, and creeks of the southern part of the coast of Newfoundland, hereabove described, and the coast of Labrador; but so soon as the same, or any part thereof, shall be settled, it shall not be lawful for the said fishermen to dry or cure fish at such portions so settled without previous agreement for such purpose with the inhabitants, proprietors, or possessors of the ground; and the United States renounced for ever any liberty heretofore enjoyed or claimed by the inhabitants thereof to take, dry, or cure fish on or within three marine miles of any of the coasts, bays, creeks, or harbours of His Majesty's Dominions in America not included within the above-mentioned limits; provided, however, that the United

States' fishermen shall be admitted to enter such bays or harbours for the purpose of shelter and of repairing damages therein, of purchasing wood and of obtaining water, and for no other purpose whatever; but they shall be under such restrictions as shall be necessary to prevent their taking, drying, or curing fish therein, or in any other manner whatever abusing the privileges hereby reserved to them."

In addition to the privileges so enjoyed under the Convention of 1818, Articles XVIII and XXI of the Treaty of Washington granted to United States' citizens:—

(1.) The liberty to take fish of every kind except shell-fish, on the remaining portion of the coast of Newfoundland, with liberty to land on the said coast for the purpose of drying their nets and curing their fish; provided that in so doing they do not interfere with the rights of private property, or with British fishermen in the peaceable use of any part of the said coast in their occupancy for the said purpose: the salmon and shad fisheries and all other fisheries in rivers and mouths of rivers being reserved exclusively for British fishermen.

(2.) The admission into Newfoundland of fish oil and fish of all kinds, except fish of the inland lakes and rivers falling into them, and except fish preserved in oil, being the produce of fisheries of the United States, free of duty.

The enjoyment of these privileges to continue for the period of twelve years certain.

In return for the privileges so granted to United States' citizens, British subjects acquired under the same Treaty:—

1. Similar rights of fishing and landing on United States' coasts, north of the 39th parallel of north latitude; and,

2. The admission into the United States of fish oil and fish of all kinds, except fish preserved in oil, being the produce of the fisheries of Newfoundland, free of duty.

These privileges also are to continue for a period of twelve years, certain.

A reference to the accompanying map will show that the coast, the entire freedom of which for fishing purposes has thus been acquired by the United States for a period of twelve years, embraces that portion extending from the Rameau Islands on the south-west coast of the island eastward and northwardly, to the Quirpon Islands. This coast contains an area of upwards of 11,000 square miles, including admittedly the most valuable cod fisheries of the world. Fish of other descriptions, namely, herring, capelin, and squid, which are by far the best bait for the successful prosecution of the cod fisheries, can be taken in unlimited quantities close inshore along the whole coast, whilst in some parts are turbot, halibut, and lance.

The subjoined tables (Annex B) of the exports of fish from Newfoundland for the past seven years will show the enormous and increasing value of these fisheries; and the Census Returns also annexed (Annex C) afford the clearest evidence that the catch is very large in proportion to the number of men, vessels, and boats engaged in fishing operations on the coasts of Newfoundland, which have been thrown open to United States' citizens under the Treaty of Washington.

In addition to the value, as shown above, of the inshore fisheries, the proximity of the bank fisheries to the coast of Newfoundland forms a very important element in the present inquiry. These fisheries are situated at distances varying from 35 to 200 miles from the coast of Newfoundland, and are productive in the highest degree. Although they are open to vessels of all nations, their successful prosecution depends almost entirely in securing a commodious and proximate basis of operations. Bait, which can be most conveniently obtained in the inshore waters of Newfoundland, is indispensable, and the supply of capelin, squid, and herring is there inexhaustible for this purpose.

With reference to the importance which has from earliest times been attached to the value of the fisheries of Newfoundland, it is to be observed that a great portion of the Articles in the Treaties of 1783 and 1818 between Great Britain and the United States is devoted to careful stipulations respecting their enjoyment; and it will not escape the observation of the Commissioners that the privileges granted to United States' fishermen in those Treaties were always limited in extent, and did not confer the entire freedom for fishing operations which is now accorded by the Treaty of Washington, even on those portions of the coast which were then thrown open to them. Thus, whilst according the privilege of fishing on certain portions of the coast, the Treaty of 1783 denied the right of landing to dry and cure on the

shore, and the result was that, so ar as concerned dried cod-fish, the concession to the United States was of little or no advantage to them. It was indispensable to the production of a superior article of dried cod-fish that there should be a speedy landing and curing in a suitable climate. The climate of the United States is not adapted for this purpose, whilst that of Newfoundland is peculiarly suitable. This fact is evidenced by the United States having never competed with Newfoundland in foreign markets in the article of dried cod-fish, whilst they were debarred from landing on Newfoundland shores. Again, it is necessary for the prosecution of the fisheries, with reasonable prospects of lucrative results, that the fishermen should be in proximity to their curing and drying establishments.

The Treaty of 1783 was annulled by the war of 1812 and the stipulations of Article I of the Convention of 1818, quoted *in extenso* on page 57 of this Case, made important modifications in the privileges heretofore enjoyed by United States' fishermen. Although they had, under this Convention, the liberty of drying and curing fish upon the southern coast of Newfoundland from the Rameau Islands to Cape Ray, it was confined to the unsettled bays, harbours, and creeks within these limits; and, it being provided that so soon as any portion thereof should be settled, the liberty should cease, the fishermen of the United States have been prevented, by the coast becoming generally settled, from availing themselves of the liberty so conceded. Previously, therefore, to the Treaty of Washington, United States' fishermen did not interfere with the Newfoundland fishermen as regards the article of dried codfish, although they prosecuted the herring fishery at Bonne Bay and Bay of Islands on the western coast.

The question of the privileges of fishing on certain portions of the Newfoundland shores enjoyed by French fishermen does not come within the scope of this Commission, yet a passing allusion may be made to it. These privileges consist in the freedom of the inshore fisheries from Cape Ray northwardly to Quirpon Islands, and from thence to Cape John, on parallel 50° of north latitude; and the value attached to this right by the French Government is attested by their solicitude in maintaining it, and by the amount of French capital embarked in the prosecution of these fisheries. This affords another proof of the productiveness of the waters of the island.

Chapter II.—*Advantages derived by United States' Citizens.*

It will not be a matter of surprise that there should be an absence of exact statistical information when the facts are taken into consideration that, until the Washington Treaty, this vast extent of fishery was exclusively used by the people of Newfoundland—sparsely scattered over a long range of coast, for the most part in small settlements, between the majority of which the only means of communication is by water, and where, up to the present time, there was no special object in collecting statistical details. It is proposed, however, to show, by such evidence as will, it is believed, satisfy the Commissioners, the nature and value of the privileges accorded to the citizens of the United States under the Treaty of Washington. These may be conveniently divided into three heads, as follows:—

I. The entire freedom of the inshore fisheries.

II. The privilege of procuring bait, refitting, drying, transshipping, and procuring supplies.

III. The advantage of a free market in Newfoundland for fish and fish oil.

The privileges granted in return to British subjects will be treated subsequently, and consist of—

1. The liberty of prosecuting fishing operations in United States' waters north of the 39th parallel of north latitude; and

2. The advantages of a free market in the United States for fish and fish oil.

I.—*The Entire Freedom of the Inshore Fisheries.*

Newfoundland, from that part of its coast now thrown open to United States' fishermen, yearly extracts, at the lowest estimate, 5,000,000 dollars' worth of fish and fish oil, and when the value of fish used for bait and local consumption for food and agricultural purposes, of which there are no returns, is taken into account, the total may be fairly stated at 6,000,000 dollars annually.

It may possibly be contended on the part of the United States that their fishermen have not in the past availed themselves of the Newfoundland inshore fisheries, with but few exceptions, and that they would and do resort to the coasts

of that island only for the purpose of procuring bait for the Bank fishery. This may up to the present time, to some extent, be true as regards cod-fish, but not as regards herring, turbot, and halibut. It is not at all probable that, possessing as they now do the right to take herring and capelin for themselves on all parts of the Newfoundland coasts, they will continue to purchase as heretofore, and they will thus prevent the local fishermen, especially those of Fortune Bay, from engaging in a very lucrative employment which formerly occupied them during a portion of the winter season for the supply of the United States' market.

The words of the Treaty of Washington, in dealing with the question of compensation, make no allusion to what use the United States may or do make of the privileges granted them, but simply state that, inasmuch as it is asserted by Her Majesty's Government that the privileges accorded to the citizens of the United States under Article XVIII are of greater value than those accorded by Articles XIX and XXI to the subjects of Her Britannic Majesty, and this is not admitted by the United States, it is further agreed that a Commission shall be appointed, having regard to the privileges accorded by the United States to Her Britannic Majesty's subjects in Articles Nos. XIX and XXI, the amount of any compensation to be paid by the Government of the United States to that of Her Majesty, in return for the privileges accorded to the United States under Article XVIII.

It is asserted, on the part of Her Majesty's Government, that the actual use which may be made of this privilege at the present moment is not so much in question as the actual value of it to those who may, if they will, use it. It is possible, and even probable, that United States' fishermen may at any moment avail themselves of the privilege of fishing in Newfoundland inshore waters to a much larger extent than they do at present; but even if they should not do so, it would not relieve them from the obligation of making the just payment for a right which they have acquired subject to the condition of making that payment. The case may be not inaptly illustrated by the somewhat analogous one of a tendency of shooting or fishing privileges; it is not because the tenant fails to exercise the rights which he has acquired by virtue of his lease that the proprietor should be debarred from the recovery of his rent.

There is a marked contrast, to the advantage of the United States' citizens, between the privilege of access to fisheries the most valuable and productive in the world, and the barren right accorded to the inhabitants of Newfoundland of fishing in the exhausted and preoccupied waters of the United States north of the 39th parallel of north latitude, in which there is no field for lucrative operations even if British subjects desired to resort to them; and there are strong grounds for believing that year by year, as United States' fishermen resort in greater numbers to the coasts of Newfoundland for the purpose of procuring bait and supplies, they will become more intimately acquainted with the resources of the inshore fisheries and their unlimited capacity for extension and development. As a matter of fact, United States' vessels have, since the Washington Treaty came into operation, been successfully engaged in these fisheries; and it is but reasonable to anticipate that, as the advantages to be derived from them become more widely known, larger numbers of United States' fishermen will engage in them.

A participation by fishermen of the United States in the freedom of these waters must, notwithstanding their wonderfully reproductive capacity, tell materially on the local catch, and, while affording to the United States' fishermen a profitable employment, must seriously interfere with local success. The extra amount of bait also which is required for the supply of the United States' demand for the Bank Fishery must have the effect of diminishing the supply of cod for the inshores, as it is well known that the presence of that fish is caused by the attraction offered by a large quantity of bait fishes, and as this quantity diminishes the cod will resort in fewer numbers to the coast. The effect of this diminution may not in all probability be apparent for some years to come, and whilst United States' fishermen will have the liberty of enjoying the fisheries for several years in their present teeming and remunerative state, the effects of over-fishing may, after their right to participate in them has lapsed, become seriously prejudicial to the interests of the local fishermen.

II.—*The Privilege of procuring Bait and Supplies, Refitting, Drying, Transshipping, &c.*

Apart from the immense value to United States' fishermen of participation in the Newfoundland inshore fisheries must be estimated the important privilege of procuring bait for the prosecution of the bank and deep-sea fisheries, which are

capable of unlimited expansion. With Newfoundland as a basis of operations, the right of procuring bait, refitting their vessels, drying and curing fish, procuring ice in abundance for the preservation of bait, liberty of transshipping their cargoes, &c., an almost continuous prosecution of the Bank Fishery is secured to them. By means of these advantages, United States' fishermen have acquired, by the Treaty of Washington, all the requisite facilities for increasing their fishing operations to such an extent as to enable them to supply the demand for fish food in the United States' markets, and largely to furnish the other fish markets of the world, and thereby exercise a competition which must inevitably prejudice Newfoundland exporters. It must be remembered, in contrast with the foregoing, that United States' fishing craft, before the conclusion of the Treaty of Washington, could only avail themselves of the coast of Newfoundland for obtaining a supply of wood and water, for shelter, and for necessary repairs in case of accident, *and for no other purpose whatever*; they therefore prosecuted the Bank Fishery under great disadvantages, notwithstanding which, owing to the failure of the United States' local fisheries, and the consequent necessity of providing new fishing grounds, the Bank Fisheries have developed into a lucrative source of employment to the fishermen of the United States. That this position is appreciated by those actively engaged in the Bank Fisheries is attested by the statements of competent witnesses, whose evidence will be laid before the Commission.

It is impossible to offer more convincing testimony as to the value to United States' fishermen of securing the right to use the coast of Newfoundland as a basis of operations for the Bank Fisheries than is contained in the declaration of one who has been for six years so occupied, sailing from the ports of Salem and Gloucester, in Massachusetts, and who declares that it is of the greatest importance to United States' fishermen to procure from Newfoundland the bait necessary for those fisheries, and that such benefits can hardly be over-estimated; that there will be during the season of 1876 upwards of 200 United States' vessels in Fortune Bay for bait, and that there will be upwards of 300 vessels from the United States engaged in the Grand Bank Fishery; that owing to the great advantage of being able to run into Newfoundland for bait of different kinds they are enabled to make four trips during the season; that the capelin, which may be considered as a bait peculiar to Newfoundland, is the best which can be used for this fishery, and that a vessel would probably be enabled to make two trips during the capelin season, which extends over a period of about six weeks. The same experienced deponent is of opinion that the Bank Fisheries are capable of immense expansion and development, and that the privilege of getting bait on the coast of Newfoundland is indispensable for the accomplishment of this object.

As an instance of the demand for bait supplies derived from the Newfoundland inshore fisheries, it may be useful to state that the average amount of this article consumed by the French fishermen, who only prosecute the Bank Fisheries during a period of about six months of the year, is from 120,000 to 160,000 dollars annually. The herring, capelin, and squid, amply meet these requirements, and are supplied by the people of Fortune and Placentia Bays, the produce of the Islands of St. Pierre and Miquelon being insufficient to meet the demand.

It is evident from the above considerations that not only are the United States' fishermen almost entirely dependent on the bait supply from Newfoundland, now open to them for the successful prosecution of the Bank fisheries, but also that they are enabled, through the privileges conceded to them by the Treaty of Washington, to largely increase the number of their trips, and thus considerably augment the profits of the enterprise. This substantial advantage is secured at the risk, as beforementioned, of hereafter depleting the bait supplies of the Newfoundland inshores, and it is but just that a substantial equivalent should be paid by those who profit thereby.

We are therefore warranted in submitting to the Commissioners that not only should the present atcual advantages derived on this head by United States' fishermen be taken into consideration, but also the probable effect of the concessions made in their favour. The inevitable consequence of these concessions will be to attract a larger amount of United States' capital and enterprise following the profits already made in this direction, and the effect will be to inflict an injury on the local fishermen, both by the increased demand on their sources of supply and by competition with them in their trade with foreign markets.

III.—*The advantage of a Free Market for Fish and Fish Oil in Newfoundland.*

It might at first sight appear, from the return of fish exports from the United States to Newfoundland, that this privilege was of little or no value; indeed, the duties when collected on this article were of insignificant amount. There is, however, an important benefit conferred by it on United States' fishermen engaged in the Bank Fisheries. In fishing on the banks and deep-sea, heretofore large quantities of small fish were thrown overboard as comparatively useless, when large fish, suitable for the United States' market, could be obtained in abundance; this practice was highly prejudicial to the fishing grounds.

Under the Washington Treaty, two objects are attained; first, a market for the small fish at remunerative prices in Newfoundland; and secondly, the preservation of the fishing grounds.

It is evident that, although at the present time United States' fishermen have been in enjoyment of the privileges conferred by the Treaty of Washington only for a short period, and may not have availed themselves to the full extent of this privilege, the actual profits derived thereby, and which, in certain instances, will be substantiated before the Commissioners by the evidence of competent witnesses, will be more fully appreciated during the remaining years of the existence of the right, and this item must form a part of the claim of Newfoundland against the United States.

CHAPTER III.—*Advantages derived by British Subjects.*

Having now stated the advantages derived by United States' fishermen under the operation of the Treaty of Washington, it remains to estimate the value of the privileges granted thereby in return to the people of Newfoundland.

In the first place, the value of the right of fishing on the United States' coast conceded to them must be considered. This consists in the liberty of fishing operations, with certain exceptions already set forth, on that part of the United States' coast north of the 39th parallel of north latitude.

The arguments on this head contained in section 1 of chapter 3, in the "Case" of Canada, will, it is believed, have satisfied the Commissioners that no possible benefit can be derived by the fishermen of Newfoundland in this respect. Indeed, all that has been said with regard to Canada applies with even greater force to the more distant Colony of Newfoundland. Evidence has, however, been collected, and will be laid before the Commissioners, if required, to prove that no fishermen from Newfoundland resort to United States' waters for fishing operations.

Secondly, and finally, the remission of the duty by the United States on Newfoundland exports of fish and fish oil, must be taken into account, and this, no doubt, will be viewed as the most important item of set-off to the privileges conferred on United States' citizens.

This privilege is, however, reciprocal, and enables the people of the United States to dispose of their fish in Newfoundland markets. When the comparatively small export of Newfoundland fish and fish-oil to the United States is taken into consideration, the amount of duty remitted thereon is so insignificant that it could not, under any circumstances, be entertained as an offset for a participation in the privileges accorded under Article XVIII of the Treaty of Washington.

The Tables annexed (Annex D) will show not only the small amount of exports of this article from Newfoundland to the United States, but also the large and increasing trade with other countries. Even if a prohibitory duty were imposed in the United States on exports of fish from Newfoundland, it would be a matter of small moment to that Colony, which would readily find a profitable market for the small quantities of fish which would otherwise be exported in that direction.

Again, upon an article so largely consumed as fish is in the United States, a remission of duty must be admitted to be a benefit to the community remitting the duty, as in reality it relieves the consumer, while it affords no additional remuneration to the shipper; and this, as a matter of fact, has been particularly the case as regards Newfoundland fish shipments to the United States.

The opening up of the fishing grounds in Newfoundland, and their bait supply to United States' enterprise, enables the people of that country to meet the demand for fish food in their markets; already an appreciable falling off has taken place in the exports to that country of Newfoundland caught fish (which has always been very limited), and which, it may not unreasonably be supposed, will soon cease, owing to the extension of United States' fishing enterprise.

Conclusion.

It has thus been shown that under the Treaty of Washington there has been conceded to the United States,—

First, the privilege of an equal participation in a fishery, vast in area, teeming with fish, continuously increasing in productiveness, and now yielding to operatives, very limited in number when considered with reference to the field of labour, the large annual return of upwards of 6,000,000 dollars, of which 20 per cent. may be estimated as net profit, or 1,200,000 dollars.

It is believed that the claim on the part of Newfoundland in respect of this portion of the privileges acquired by United States' citizens under the Treaty of Washington will be confined to the most moderate dimensions when estimated at one-tenth of this amount, namely, 120,000 dollars per annum, or, for the twelve years of the operation of the Treaty, a total sum of 1,440,000 dollars.

Secondly, there has also been conceded to the United States the enormous privilege of the use of the Newfoundland coast as a basis for the prosecution of those valuable fisheries in the deep sea on the Banks of that island capable of unlimited development, and which development must necessarily take place to supply the demand of extended and extending markets. That the United States are alive to the importance of this fact, and appreciate the great value of this privilege, is evidenced by the number of valuable fishing-vessels already engaged in this branch of the fisheries.

We are warranted in assuming the number at present so engaged as at least 300 sail, and that each vessel will annually take, at a moderate estimate, fish to the value of 10,000 dollars. The gross annual catch made by the United States' fishermen in this branch of their operations cannot, therefore, be valued at less than 3,000,000 dollars, and of this at least 20 per cent., or 600,000 dollars per annum, may fairly be reckoned as net profit; of this profit Newfoundland is justified in claiming one-fifth as due to her for the great advantages derived by United States' fishermen, under the Treaty of Washington, of securing Newfoundland as a basis of operations and a source of bait supply indispensable to the successful prosecution of the Bank fisheries. An annual sum of 120,000 dollars is thus arrived at, which, for the twelve years of the operation of the Treaty, would amount to 1,440,000 dollars, which is the sum claimed by Her Majesty's Government on behalf of Newfoundland in this respect.

In conclusion, for the concession of the privileges shown above, Her Majesty's Government claim in respect of the Colony of Newfoundland, over and above any alleged advantages conferred on British subjects under the fishery Articles of the Treaty of Washington, a gross sum of 2,880,000 dollars, to be paid in accordance with the terms of the Treaty.

Summary.

In Part I of this Case the claim of Her Majesty's Government in respect of the Dominion of Canada, has been stated at a sum of 12,000,000 dollars; their claim in respect of the Colony of Newfoundland has been stated in Part II at a sum of 2,880,000 dollars; or a gross total of 14,880,000 dollars,—which is the amount which they submit should be paid to them by the Government of the United States, under the provisions of Article XXII of the Treaty of Washington of the 8th May, 1871.

FISHERY COMMISSION UNDER THE TREATY OF WASHINGTON OF MAY 8, 1871.

Annex to Case of Her Majesty's Government.

ANNEX A.

TABLE of the Aggregate Quantities and Values of Fish, the Produce of Canadian Fisheries, in the Provinces of Nova Scotia, New Brunswick, and Quebec, from 1869 to 1875, and in Prince Edward Island, since its Entry into Confederation in 1874.

Compiled from Departmental Fishery Reports for the above-named Years.

Kinds of Fish.	1869.		1870.		1871.		1872.		1873.		1874.		1875.		Total.	
	Quantity.	Value.	Quantity.	Value.	Quantity.	Value.	Quantity.	Value.	Quantity.	Value.	Quantity.	Value.	Quantity.	Value.	Quantity.	Value.
		Dol's c.		Dols. c.		Dols. c.		Dols. c.		Dols. c.		Dols. c.		Dols. c.		Dols. c.
Codfish ... ... Cwt.	510,336	1,690,441 00	572,672	2,217,777 00	671,437	2,573,271 00	824,411	3,490,192 00	880,834	3,763,617 75	797,847¾	3,502,012 25	748,755	3,256,877 53	5,006,292¾	20,494,188 53
... Barrels ...	...	...	2,340	5,850 00	1,566	3,132 00	...	...	...	...	...	...	...	...	3,906	8,982 00
Herring ... ... „ ...	296,921	1,077,608 00	242,630	944,131 00	379,824	1,301,943 00	277,958	1,118,785 00	307,045	1,193,410 00	398,089	1,235,607 00	300,258	1,250,002 64	2,202,725	8,121,486 64
„ (smoked) ... ... Boxes ...	169,879	42,219 50	73,745	112,327 25	12,435	1,833 75	606,705	151,677 00	521,086	130,271 50	454,209	113,552 25	642,000	160,500 00	2,480,059	712,381 25
Barrels ...	...	...	1,600	6,400 00	...	...	...	...	...	...	...	...	...	...	1,600	6,400 00
„ (fresh) ... ... „ ...	...	...	...	...	...	...	...	...	...	...	20	100 00	...	...	20	100 00
„ ...	51,011	530,110 00	92,183	1,092,638 00	140,305	1,349,682 00	119,439	1,665,110 00	150,404	1,504,040 00	161,096	1,559,551 00	123,654½	1,236,545 00	838,092½	8,937,676 00
Mackerel ... ... Lbs. ...	...	...	...	...	24,228	3,634 00	33,680	4,042 00	21,050	3,157 00	59,000	8,850 00	39,980	5,997 00	177,938	25,680 00
Cans ...	...	...	...	...	...	...	50,500	6,060 00	10,842	1,626 30	80,460	12,069 00	21,400	3,210 00	163,202	22,965 30
Cwt. ...	2,086	8,344 00	...	...	3,813	11,439 00	1,190	3,868 00	...	...	...	...	...	...	7,089	23,651 00
Haddock ... ... Barrels ...	1,372	6,860 00	1,747	7,895 00	106	530 00	343	1,715 00	479	2,395 00	241	1,205 00	126	630 00	4,414	21,230 00
Lbs. ...	...	...	...	...	75,000	4,500 00	40,000	4,800 00	1,892,726	113,563 56	4,104,532	246,271 92	4,695,928	281,755 68	10,808,186	650,891 16
No. ...	...	...	24,000	12,000 00	...	...	...	...	...	...	...	...	...	...	24,000	12,000 00
Cwt. ...	...	...	...	...	13,600	28,000 00	...	...	...	...	...	...	...	...	13,600	28,000 00
Halibut ... ... Barrels ...	1,051	5,845 00	1,764	10,354 00	2,868	14,340 00	5,497	27,485 00	458	2,290 00	312	1,872 00	201	1,206 00	12,151	63,392 00
Lbs. ...	...	...	...	...	...	...	...	...	662,435	39,746 10	589,275	35,356 50	573,015	34,410 90	1,824,725	109,513 50
Pollack ... ... Cwt. ...	8,767	26,301 00	560	1,680 00	1,050	3,150 00	19,931	59,793 00	18,399	64,396 50	10,539	36,886 50	5,980	20,930 00	65,226	213,137 00
Quintals ...	...	...	...	...	...	...	24,099	72,297 00	25,350	88,725 00	24,255	84,892 50	38,771	135,698 50	112,475	381,613 00
e ... ... Cwt. ...	1,410	4,935 00	330	990 00	20,180	60,540 00	37,442	112,326 00	25,733	90,065 50	28,925	101,237 50	29,817	104,359 50	143,837	474,453 50
Quintals...	...	...	...	...	...	...	89,214	267,642 00	44,321	155,123 50	42,852	149,982 00	16,685	58,397 50	193,072	631,145 00
nders ... ... Barrels	200	2,000 00	...	...	...	...	...	...	...	...	...	...	...	...	200	2,000 00
on ... ... „	7,662¾	100,320 00	12,613½	201,653 50	7,675¼	80,073 00	8,205	139,590 00	7,722	134,912 00	7,382½	130,346 00	5,026	87,684 00	56,287¼	874,578 50
„ (in ice) ... ... Lbs. ...	...	...	909,375	128,505 00	2,017,484	302,622 00	1,543,593	192,949 00	2,570,469	322,293 65	2,501,246	321,987 70	1,786,894	238,046 80	11,329,061	1,506,404 15
„ (fresh) ... ... No. ...	19,341	19,341 00	...	...	...	...	...	...	...	...	...	...	...	...	19,341	19,341 00
„ (smoked) ... ... Boxes ...	...	...	2,200	550 00	540	135 00	...	...	125,785	21,106 50	137,320	20,598 00	57,880	8,682 00	323,725	51,071 50
No. ...	852	852 00	...	...	...	...	...	...	...	...	...	...	...	...	852	852 00
„ (preserved) ... ... Cans ...	784,790	196,097 50	575,517	132,779 00	100,991	25,247 00	560,709	84,106 00	1,300,984	324,346 00	1,940,006	493,146 00	574,526	144,253 43	5,837,523	1,399,974 93
Trout ... ... Barrels ...	148½	1,485 00	245	2,246 00	209	2,090 00	407	3,766 00	99	990 00	134	1,072 00	259	2,072 00	1,501½	13,721 00
Lbs. ...	...	...	...	...	28,970	1,738 00	...	...	183,147	10,988 82	112,815	6,768 90	117,120	7,027 20	442,052	26,522 92
Alewives ... ... Barrels ...	11,692	31,056 00	39,242	137,347 00	35,225	84,702 00	34,708	104,124 00	42,787	149,754 50	55,830	195,405 00	46,253	161,885 50	265,737	864,274 00
Shad ... ... „	6,188	18,564 00	11,497	98,192 00	15,863	52,324 00	6,938	55,504 00	7,508	60,064 00	12,342	98,736 00	14,395½	115,164 00	74,731½	498,548 00
No.	73,601	5,495 55	16,249	1,624 90	26,359	2,635 90	19,960	1,996 00	19,694	1,969 00	66,873	6,687 30	134,992	13,499 20	357,728	33,907 85
Finnan haddies ... ... Barrels ...	...	...	...	...	300	6,000 00	...	...	...	...	...	...	...	...	300	6,000 00
Eels ... ... „	553	4,424 00	1,060	8,480 00	3,866	68,060 00	8,960	152,320 00	5,989	53,901 00	3,520	31,680 00	2,972	26,748 00	26,860	345,613 00
No.	109,935	10,993 50	133,033	13,303 30	137,158	13,715 80	108,459	10,845 90	160,543	16,054 00	374,187	37,418 70	266,619	26,661 90	1,289,934	128,993 10
Scalefish ... ... Cwt.	27,139	149,264 00	92,513	323,795 07	119,539	343,965 90	...	...	...	...	...	...	...	...	239,191	817,024 97
Bass ... ... Barrels ...	300	3,000 00	...	...	...	...	1,095	4,653 00	...	...	...	...	...	...	1,395	7,653 00
Lbs. ...	...	...	20,175	1,210 00	143,731	8,623 00	...	...	426,947	25,616 82	439,423	26,365 38	126,786	7,607 16	1,157,062	69,422 36
Tons ...	62	7,440 00	...	...	...	...	...	...	...	...	...	...	...	...	62	7,440 00
Smelts... ... ... Barrels ...	...	...	820	3,280 00	350	1,750 00	2,920	12,410 00	...	...	...	...	...	...	4,090	17,440 00
Lbs. ...	...	...	...	...	485,100	19,106 00	...	...	810,399	48,623 94	1,156,350	69,381 00	1,451,580	87,094 80	3,903,429	224,205 74
Oysters ... ... Barrels ...	600	1,800 00	42,000	126,000 00	13,150	39,450 00	24,820	74,460 00	27,288	81,864 00	14,318	42,772 00	11,716	35,107 00	133,892	401,453 00
Mixed fish ... ... Lbs. ...	...	...	1,120,000	24,038 30	...	...	...	...	...	...	...	...	...	...	1,120,000	24,038 30
Barrels ...	390½	1,562 00	551	2,204 00	61,122	56,084 00	1,113	4,452 00	778	3,112 00	20,353	101,765 00	23,407	117,035 00	107,714½	286,214 00
Gaspereaux ... ... „ ...	7,500	8,767 00	...	...	...	...	...	...	...	...	...	...	...	...	7,500	8,767 00

[1887]

Kinds of Fish.		1869.		1870.		1871.		1872.		1873.		1874.		1875.		Total.	
		Quantity.	Value.	Quantity	Value.	Quantity.	Value.	Quantity.	Value.	Quantity.	Value.	Quantity.	Value.	Quantity.	Value.	Quantity.	Value.
			Dols. c.		Dols. c.		Dols. c.		Dols. c.		Dols. c.		Dols. c.		Dols. c.		Dols. c.
Ling	Barrels ...	3,022	15,110 00	71	355 00	16	80 00	27	135 00	8	40 00	4	215 00	33	165 00	3,220	16,100 00
Lunge...	„ ...	...	...	...	...	...	...	...	...	...	...	430	10,750 00	250	6,250 00	680	17,000 00
Winnoniche	No.	...	...	...	...	...	...	...	...	...	...	7,500	1,875 00	9,650	2,262 50	16,550	4,137 50
Touladi	... ...	...	...	...	...	...	...	...	...	...	...	...	...	150	1,200 00	150	1,200 00
Trout, speckled	Lbs. ...	...	...	...	...	...	...	...	...	...	...	10,000	1,000 00	11,000	1,100 00	21,000	2,100 00
Sturgeon	Barrels ...	369	1,845 00	219	1,095 00	311	1,555 00	2,040	10,200 00	381	1,905 00	559	4,472 00	279	2,232 00	4,158	23,304 00
Bar and whitefish	Dozens ...	327½	655 66	6,359	12,718 00	4,356	8,712 00	3,161	6,322 00	24,756	4,952 00	11,360	22,720 00	3,735	7,470 00	54,054½	108,109 66
Sardines	Barrels ...	10,736½	53,682 50	6,871	34,355 00	1,649	8,245 00	1,791	8,955 00	870	4,350 00	902	4,510 00	1,037	5,185 00	23,856½	119,282 50
Pike	„	...	...	...	...	...	...	...	...	...	...	61	610 00	200	2,000 00	261	2,610 00
Pickerel	„	...	...	...	...	...	...	...	...	...	...	186	1,860 00	304	3,040 00	490	4,900 00
Tom cod	Bushels ...	...	...	...	...	...	...	...	...	...	...	20,000	10,000 00	20,400	10,200 00	40,400	20,200 00
Small fish	Barrels ...	...	...	...	...	...	...	...	...	...	...	...	...	2,563	640 75	2,563	640 75
Maskinonge	No. ...	...	...	...	...	...	...	...	...	...	...	500	1,000 00	850	1,700 00	1,350	2,700 00
Seals	„ ...	...	...	40,981	245,886 00	9,042	54,252 00	8,655	51,930 00	12,816	76,896 00	12,639	75,834 00	24,369	146,214 00	108,502	651,012 00
Porpoises	„ ...	...	...	208	832 00	115	4,600 00	25	1,000 00	...	...	...	...	104	1,696 00	452	8,128 00
Tunny...	Barrels ...	2	10 00	...	...	47	235 00	...	...	...	...	...	...	...	...	49	245 00
Lobsters	Cans ...	61,100	15,275 00	591,500	92,575 00	1,130,000	282,500 00	3,585,863	882,633 00	4,864,998	1,214,749 50	8,047,957	2,011,989 25	6,514,380	1,628,659 00	24,775,798	6,138,380 75
	Cases ...	...	...	...	...	...	...	...	...	...	...	1,443	10,592 00	...	...	1,443	10,592 00
Cod tongues and sounds ...	Barrels ...	287	2,009 00	135	945 00	335	2,437 00	7,433	52,031 00	6,275	43,925 00	2,204	15,428 00	2,613	18,291 00	19,282	135,066 00
Fish-roes	„ ...	443	5,316 00	230	1,380 00	2,198	22,652 00	...	...	...	...	...	...	624	4,992 00	3,495	34,340 00
Pumice	Tons ...	453	9,060 00	970	9,700 00	900	18,000 00	...	...	...	...	...	...	...	...	2,323	36,760 00
Fish guano	„ ...	...	...	...	...	...	...	738	11,070 00	804½	12,067 50	3,742	56,130 00	995	14,925 00	6,279½	94,192 50
„ for manure	Barrels ...	41,642	10,410 50	32,490	8,122 50	14,372	3,593 00	38,033	9,507 75	80,561	9,852 50	18,361	5,538 25	29,604	8,831 75	205,063	55,856 25
Sea fish (fresh)	Tons ...	...	...	...	...	...	...	...	...	...	...	181	7,157 00	...	...	181	7,157 00
	Lbs. ...	...	...	...	...	...	...	...	...	...	...	...	...	2,200	110 00	2,200	110 00
„ (other kinds)	Tons ...	...	...	...	...	...	...	...	...	...	...	32	4,300 00	200	10,748 00	232	15,048 00
Fish used fresh	...	...	...	...	...	...	146,700 00	...	...	...	...	...	...	...	...	...	146,700 00
Seal oil	Gallons	53,811	43,048 80	89,762	71,809 60	18,525	14,820 00	46,116	36,892 80	58,645	46,916 00	54,095	27,047 50	98,709	49,354 50	419,663	289,889 20
Whale oil	„	373	298 40	24,200	19,360 00	18,000	14,400 00	16,937	13,549 60	400	20 00	16,620	18,296 00	22,781	18,224 80	99,311	79,148 80
Porpoise oil	„	2,029	1,217 40	2,848	1,708 80	2,122	1,061 00	1,075	537 50	143	71 00	17	13 60	2,667	2,133 60	10,901	6,742 90
Cod oil	„	103,018	51,509 00	119,093	59,546 50	160,055	80,027 50	136,529	68,264 50	91,627	45,813 00	97,709	48,854 50	113,469	56,734 50	821,400	410,749 50
Oils	„	33,460	21,751 25	298,826	134,771 00	417,662	251,490 00	496,134	322,487 00	523,340	340,171 00	349,793	226,852 20	390,526	253,743 65	2,509,741	1,551,266 10
		...	4,186,323 56	...	6,312,409 72	...	7,379,675 85	...	9,302,483 05	...	10,254,312 44	...	11,235,618 70	...	9,897,191 29	...	58,568,014 61

Annex B.

Return showing the Quantities and Values of the undermentioned Articles exported from Ports between Rameau Islands to Cape Race and thence North to Twillingate inclusive, for the Years 1868, 1869, 1870, 1871, 1872, 1873, and 1874.

Years.	Dried Codfish.		Green Codfish.		Herrings.		Cod Oil.		Refined Cod Oil.		Cod Roes.		Cod Sounds and Tongues.	
	Quintals.	Values.	Quintals.	Values.	Barrels.	Values.	Tons.	Values.	Tons.	Values.	Barrels.	Values.	Packages.	Values.
		Dollars.		Dollars.		Dollars.		Dollars.		Dollars.		Dollars.		Dollars.
1868	829,340	2,902,890	..	..	50,557	151,671	2,754	385,560	224	36,000	1,084	2,168	500	500
1869	791,339	3,165,356	1,518	3,036	46,340	139,020	3,967	634,720	324	81,000	844	3,376	382	382
1870	915,396	3,478,504	1,331	2,129	43,837	118,359	3,441	509,268	413	107,380	1,081	4,324	279	279
1871	928,016	3,526,460	19	30	61,462	147,508	4,767	629,244	299	61,235	1,895	5,685	125	125
1872	847,337	3,389,348	48	48	40,162	120,486	3,852	539,280	221	44,200	857	6,856	66	66
1873	983,193	3,539,494	18	27	33,632	70,536	3,681	515,340	321	64,200	856	2,568	115	115
1874	1,183,020	4,495,760	6	9	35,625	90,275	2,734	437,440	221	50,918	1,126	3,378	158	158
Total	6,477,641	24,497,812	2,940	5,279	311,615	837,855	25,196	3,650,852	2,023	444,933	7,743	28,355	1,625	1,625
Average	925,377	3,499,687	420	754	44,516	119,693	3,599	521,550	289	63,562	1,106	4,051	232	232

List of Documents filed with the Secretary of the Commission in support of the Case of Her Majesty's Government.

1. TREATY of Paris, 1783.
2. Treaty of Ghent, 1814.
3. Convention of October 20, 1818.
4. Reciprocity Treaty, 1854.
5. Instructions to Her Majesty's High Commissioners, and Protocols of the Conferences held at Washington between February 27 and May 26, 1871.
6. Treaty of Washington, May 8, 1871.
7. Imperial Act of August 6, 1872.
8. Canadian Act, June 14, 1872.
9. Prince Edward Island Act, June 29, 1872.
10. Proclamation issued at Washington, June 7, 1873.
11. Ditto, May 29, 1874.
12. Document admitting United States' fishermen by Prince Edward Island in 1871.
13. Annex A (attached to Case).
14. United States' Trade and Navigation Reports of 1868, 1869, 1870, 1871, 1872.
15. Mr. E. H. Derby's report.
16. Minutes of Executive Council of Prince Edward Island, 17th February, 1874.
17. Report of Commander of "La Canadienne," 1865.
18. Schedule of fishing licenses issued to United States' citizens in 1866, 1867, 1868, 1869.
19. Cape Ann Advertiser, March 6, 1874.
20. United States' Trade and Navigation Returns for 1866.
21. Colonel R. D. Cutt's Report, 1869.
22. Mr. W. Smith's Report, 1866 (p. 27).
23. Mr. Perley's Report, 1852 (pp. 28, 33, 44, 49, 52, 56).
24. Report of Collector of Customs at Port Mulgrave, 1873.
25. Mr. Lorenzo Sabine's Report, 1865.
26. Professor Baird's Report, 1871-72.
27. Report of State Commissioners for Maine, 1872-74.
28. Mr. Currie's Report, 1873.
29. Mr. Andrew's Report, 1852.
30. Canadian Fishery Reports for last ten years.
31. Report of Massachusetts Fishery Commissioners, 1872 (p. 39).
32. Annex B (attached to Case).
33. Annex C. Census Return of Newfoundland.
34. Annex D. Exports from Newfoundland to foreign countries.

APPENDIX B.

Answer on behalf of the United States of America to the Case of Her Britannic Majesty's Government.

I.

BEFORE proceeding to consider the Case which has been presented on behalf of Her Majesty, the attention of the Commissioners is first called to the precise question which, and which only, they have been appointed and are authorized to determine.

By Article XVIII of the Treaty of Washington, the inhabitants of the United States have acquired, for the term of twelve years, which commenced July 1, 1873, liberty "to take fish of every kind, except shell-fish, on the sea coasts and shores, and in the bays, harbours, and creeks of the provinces of Quebec, Nova Scotia, and New Brunswick, and the colony of Prince Edward's Island, and of the several islands thereunto adjacent, without being restricted to any distance from the shore, with permission to land upon the said coasts and shores and islands, and also upon the Magdalen Islands, for the purpose of drying their nets and curing their fish: provided that, in so doing, they do not interfere with the rights of private property, or with British fishermen in the peaceable use of any part of the said coasts in their occupancy for the same purpose.

"It is understood that the above-mentioned liberty applies solely to the sea fishery, and that the salmon and shad fisheries, and all other fisheries in rivers and the mouths of rivers, are reserved exclusively for British fishermen."

By Article XXII provision is made for the appointment of Commissioners to determine the amount of any compensation which, in their opinion, ought to be paid by the Government of the United States to that of Her Britannic Majesty, in return for the privileges accorded to the citizens of the United States under Article XVIII of the Treaty.

Compensation can be awarded only for such new privileges as the United States acquired by virtue of Article XVIII. It is not competent for the Commissioners to award compensation for those rights which the fishermen of the United States enjoy in common with the rest of mankind, nor for the liberty secured to them by the Convention of 1818, nor for any rights, privileges, liberties, or advantages to which the United States are entitled by virtue of any other articles of the Treaty of Washington. Nothing, except the privileges newly acquired by virtue of Article XVIII, falls within the claim for compensation which Her Majesty's Government is entitled to make, and upon the validity and amount of which the Commission has jurisdiction to determine.

These are—

1st. The privilege to fish on the sea coasts and shores, and in the bays, harbours, and creeks of Quebec, Nova Scotia, New Brunswick, Prince Edward's

Island, and the adjacent islands, without being restricted to any distance from the shore.

2nd. The permission to land on said coasts, shores, and islands, for the purpose of drying nets and curing fish, *provided* that they do not interfere with the rights of private property or with the occupancy of British fishermen.

These are the only privileges accorded for which any possible compensation can be demanded. The liberty extends only to the sea fishery: the salmon and shad fisheries, and all other fisheries in rivers and mouths of rivers, are reserved exclusively for British fishermen.

It becomes necessary at the outset to inquire what rights American fishermen and those of other nations possess, independently of Treaty, upon the ground that the sea is the common property of all mankind. For the purposes of fishing, the territorial waters of every country along the sea coast extend three miles from low-water mark; and beyond is the open ocean, free to all. In the case of bays and gulfs, such only are territorial waters as do not exceed six miles in width at the mouth, upon a straight line measured from headland to headland. All larger bodies of water connected with the open sea form a part of it. And wherever the mouth of a bay, gulf, or inlet exceeds the maximum width of six miles at its mouth, and so loses the character of territorial or inland waters, the jurisdictional or proprietary line, for the purpose of excluding foreigners from fishing, is measured along the shore of the bay, according to its sinuosities, and the limit of exclusion is three miles from low-water mark.

The United States insist upon the maintenance of these rules, believing them to conform to the well established principles of international law, and to have received a traditional recognition from other Powers, including Great Britain.

Moreover, the province of the present Commission is not to decide upon questions of international law. In determining what, if any, compensation Great Britain is entitled to receive from the United States, for the privilege of using for twelve years the in-shore sea fisheries, and for the permission to land on unoccupied and desert shores for the purpose of curing fish and drying nets, it is the manifest duty of the Commissioners to treat the question practically, and proceed upon the basis of the status actually existing when the Treaty of Washington was adopted.

The Commissioners who framed the Treaty of Washington, decided not "to enter into an examination of the respective rights of the two countries under the Treaty of 1818 and the general law of nations, but to approach the settlement of the question on a comprehensive basis."

What, then, was the practical extent of the privileges enjoyed by American fishermen at and before the date of the Treaty of Washington?

Even before the Reciprocity Treaty, adopted June 5, 1854, the extreme and untenable claims put forth at an earlier day had been abandoned; and, directly after its abrogation, the Colonial authorities were instructed (April 12, 1866) "that American fishermen should not be interfered with, either by notice or otherwise, unless found within three miles of the shore, or *within three miles of a line drawn across the mouth of a bay or creek which is less than ten geographical miles in width*, in conformity with the arrangement made with France in 1839."

After that time, till 1870, the Canadian Government issued licenses to foreign fishermen. And when that system was discontinued (May 14, 1870) the Minister of Marine and Fisheries gave orders to the Commander of the Government vessels engaged in protecting the fisheries, not to interfere "with any American fishermen, unless found within three miles of the shore, *or within three miles of a line drawn across the mouth of a bay or creek which is less than ten geographical miles in width.* In the case of any other bay—as the Bay of Chaleurs, for example—you will not admit any United States' fishing-vessel or boat, or any American fishermen, inside of a line drawn across at that part of such bay *where its width does not exceed ten miles.*" It is not apprehended that, for the purposes of the present Commission, there would be any appreciable practical difference between extending the headland doctrine to bays ten miles wide at the mouth, and limiting it to those which are only six miles wide.

But, as soon as these instructions were received in England, Her Majesty's Government made haste to telegraph to the Governor-General its hope "that the United States' fishermen will not be for the present prevented from fishing, except within three miles of land, or in bays which are less than six miles broad at the mouth." Accordingly, Mr. Peter Mitchell, the Minister of Marine and Fisheries,

was compelled to withdraw his former instructions, and to give new ones, as follows, under the date of June 27, 1870 :—

"Until further instructed, therefore, you will not interfere with any American fishermen, unless found within three miles of the shore, or within three miles of a line drawn across the mouth of a bay or creek, *which, though in parts more than six miles wide, is less than six geographical miles in width at its mouth.* In the case of any other bay,—as Bay des Chaleurs, for example,—you will not interfere with any United States' fishing vessel or boat, or any fishermen, *unless they are found within three miles of the shore.*"

In connection with and as a part of this case, the United States submit to the Commission a Brief, exhibiting more fully the history of this controversy, and the authorities upon it, which conclusively show that the instructions just quoted correspond exactly with the well-established rules of international law. It is not doubted that the instructions given were carefully framed with a view to precise conformity with these rules, and in order that Great Britain might claim no more than it was prepared to concede to all foreign Governments, in dealing with a question of great practical importance.

The United States believe that Her Majesty's Government are now in full accord with their own on this subject, and that all more extensive claims formerly made are regarded by it, in the recent and forcible language of the Lord Chief Justice of England, "as vain and extravagant pretensions, which have long since given way to the influence of reason and common sense. . . . . These assertions of sovereignty were manifestly based on the doctrine that the narrow seas are part of the realm of England. But that doctrine is now exploded. Who at this day would venture to affirm that the sovereignty thus asserted in those times now exists? What English lawyer is there who would not shrink from maintaining, what foreign jurist who would not deny, what foreign Government which would not repel, such a pretension?"

II.

Having ascertained the extent and limits of the privileges accorded to the United States by Article XVIII, it is next necessary to state what are the privileges accorded to Her Majesty's subjects by Articles XIX and XXI of the Treaty of Washington. For Article XXII, which defines the powers and duties of this Commission, and constitutes its sole authority to act, expressly directs it to have "regard to the privileges accorded by the United States to the subjects of Her Britannic Majesty, as stated in Articles XIX and XXI."

By Article XIX British subjects acquire, for the same term of years, identically the same privileges, and upon the same restrictions of landing to cure fish and dry nets, and of fishing on the eastern coasts and shores of the United States north of the 39th parallel of north latitude, and on the shores of the adjacent islands, and in the bays, harbours, and creeks of said sea coasts and shores, without being restricted to any distance from the shore; as by Article XVIII had been accorded to United States' fishermen in regard to the territorial waters of the Atlantic coast of British North America. *Mutatis mutandis,* the privileges conceded by each side to the other are of the same character, and expressed in precisely the same language.

Article XXII is as follows:—

"It is agreed that, for the term of years mentioned in Article XXXIII of this Treaty, fish-oil and fish of all kinds (except fish of the inland lakes and of the rivers falling into them, and except fish preserved in oil), being the produce of the fisheries of the United States, or of the Dominion of Canada, or of Prince Edward's Island, shall be admitted into each country, respectively, free of duty."

The right to admit fish and fish-oil, free of duty, from the United States into Canada and Prince Edward's Island is regarded in the Treaty as of such insignificant and inappreciable importance that no account is to be taken of it in the estimate and adjustment of equivalents which the Commissioners are directed to make. But the right granted to 4,000,000 of people, a large portion of whom find their chief industrial interest and source of wealth in the Fisheries, to import fish and fish-oil for twelve years, duty free, into the markets of a nation of 40,000,000 of inhabitants, the Commissioners are directed to weigh and appreciate. The magnitude and value of this privilege will be considered hereafter.

In regard to Newfoundland, no special remarks seem to be required at this point, except that by Article XXXII the provisions and stipulations of Articles XVIII to XXV inclusive are extended to that island, so far as they are applicable. But there is no previous mention of Newfoundland in the Treaty; and it seems a strained and unnatural construction of Article XXXII to hold that, by this general language, it was intended to make the provisions as to this Commission applicable thereto. The United States assert that the jurisdiction of the Commissioners does not extend to inquiring whether compensation should be made for the inshore fisheries of that island, both because the language of the Treaty does not authorize them to do so, and because the extensive rights to the inshore fisheries of that island, and to dry and cure fish upon its shores, already possessed by the United States under the Convention of 1818, render it extremely improbable that any idea of possible compensation to that island could have been entertained by either of the High Contracting Powers when the Treaty was framed.

III.

It is proposed next to consider the value of the advantages which the United States derive from the provisions of Article XVIII. This will be done in the light of the principles already laid down, which, it is trusted, have been established to the satisfaction of the Commissioners.

The only material concession is that of fishing within British territorial waters over which jurisdiction exists to such an extent as to authorize the exclusion of the rest of mankind. Such jurisdiction only exists within three miles from low-water mark, both on the shores of the sea and within bays less than six miles wide between their headlands, for all bays and gulfs of larger size are parts of the open ocean; and whatever lies beyond is the gift of God to all, incapable of being monopolized by any kingdom, or State, or people.

The necessity of reiterating and emphasizing these positions arises from the surprising circumstance, that the Case of Her Majesty's Government throughout completely and studiously ignores any such distinction. "From the Bay of Fundy to the Gulf of St. Lawrence inclusive," over "an area of many thousands of square miles," it claims the whole as British property (p. 18). This is not done, indeed, in formal and explicit terms: if it had been, the pretension would have been more easily refuted, or rather its extravagance would have refuted itself. But all the assertions as to value, and all the statistics of the case, though vague and indefinite, nevertheless are based constantly upon this untenable and long-since exploded theory. The affirmative lies upon Her Majesty's Government to show the value to American fishermen of the inshore fisheries as separated and distinguished from those of the deep sea; but this distinction the British case nowhere attempts to draw. The United States insist that the true issue cannot be evaded thus; and that the party claiming compensation is bound, by every principle of law, equity, and justice, to show, with some degree of definiteness and precision, wherein consist the privileges which are made the foundation of an enormous pecuniary demand.

(1.) The fisheries pursued by the United States' fishermen in the waters adjacent to the British provinces on the Atlantic coast are the halibut and cod fishery, and the mackerel and herring fishery. The halibut and cod fisheries include hake, haddock, cusk, and pollock. These fish are caught exclusively on the banks, far beyond the jurisdiction of any nation. *The cod fishery, therefore, is solely a deep sea fishery, and not a subject within the cognizance of this Commission.* This appears even by the inspection of the maps attached to the British Case, highly coloured and partial as those are believed to be, they having been drawn and marked without any discrimination between territorial waters and the open sea. Moreover, it will appear in evidence, conclusively, that there is substantially no inshore cod fishing done by the Americans.

Nor do they land on the shores to dry their nets or cure their fish. These customs belonged to the primitive mode of catching codfish practised by former generations of fishermen, and have been disused for many years past. Codfish are now salted for temporary preservation on shipboard; but are cured in large establishments at home, by fish packers and curers, who make this a separate business, and to whom the fish are sold from the vessels in a green state.

(2.) Nor do the American cod fishermen fish for bait to any considerable extent in the territorial waters of the British dominions. Their vessels are so large, and their outfit is so expensive, that they find it more economical when the first

supply of bait, which is always brought from home, is exhausted, to purchase fresh bait of the Canadians, who fish for it in open boats or small craft near their own homes, to which they return every night. The best bait for cod and other similar fish is the frozen herring, large quantities of which, of a quality too poor for any other use, are taken in seines by the Canadians, and sold to the United States' fishermen. The importance of this and other kinds of traffic to the poor inhabitants of the Canadian fishing villages, and the destitution to which they were reduced, when, from motives of policy, and to affect the negotiations between the two Governments, it was broken up by the Canadian authorities, will appear from their own testimony and from official documents. This subject will receive attention hereafter. *Suffice it now to observe, that the claim of Great Britain to be compensated for allowing United States' fishermen to buy bait and other supplies of British subjects, finds no semblance of foundation in the Treaty, by which no right of traffic is conceded.* The United States are not aware that the former inhospitable statutes have ever been repealed. Their enforcement may be renewed at any moment, and the only security against such a course is the fact that such uncivilized legislation is far more inconvenient and injurious to the Canadians than it can possibly be to American fishermen. It will appear in the sequel, that, in the unanimous opinion of that portion of the Canadians who reside on the sea-coast, the benefits of such commercial intercourse are at least as great to themselves as to foreign fishermen.

(3.) It is further important to bear in mind, that the fishery claims of the Treaty of Washington have already been in formal operation during four years,—one-third of the whole period of their continuance ; while practically both fishing and commercial intercourse have been carried on in conformity with the Treaty ever since it was signed, May 8, 1871. After that date, the provincial authorities desisted from the system of seizures and other molestations by which foreign fishermen had been previously annoyed. And what has been the result, to each party, of the liberal policy inaugurated by the Treaty? Under its benign influences, as the British Case declares, "the produce of the fisheries caught by British subjects has greatly increased during seven years past." But, while the result to them has been one of "steady development and increasing wealth," the United States' cod fishery, even, has declined in amount and value,—not, to be sure, to such an extent as the mackerel fishery, but sufficiently to demonstrate that the American fisheries for halibut, cod, haddock, pollock, and hake, have not been benefited by any privileges conceded to the United States under the Treaty of Washington ; and that, in respect to these fisheries, no just claim for compensation can be maintained before this Commission.

(4.) Almost the only fish ever taken by Americans within the three-miles limit of the coast of the British Provinces are the mackerel; and of the entire catch of this fish, only a very small fractional part is so taken. They abound along the Atlantic coast, from Cape May northward ; great quantities of them are found in the deep sea ; and the chief use made of the inshore fisheries on the Canadian coast by American fishermen is to follow, occasionally, a school of fish which, in its progress, chances to set in towards the shore.

The method of taking them formerly was by hand-lines with the jig hooks ; and this method is still the one principally practised off the British coast. Within the past few years, the use of purse-seines has become the method most approved and most generally adopted by United States' fishermen. By means of them the schools of fish can be controlled and caught, whether they are inclined to take bait or not. And this new mode of taking fish has revolutionized the business, since American fishermen now require no bait, and are enabled to take an abundant supply of mackerel in American waters throughout the whole fishing season.

The migration of mackerel in the spring begins on the Atlantic coast from a point as far south as Cape Hatteras. The first-comers reach Provincetown, Mass., about May 10. Here they begin to scatter, and they are found during the entire season along the New England coast.

"Whatever may be the theories of others on the subject," says Professor Baird, "the American mackerel fisher knows perfectly well that in spring, about May, he will find the schools of mackerel off Cape Hatteras, and that he can follow them northward, day by day, as they move in countless myriads on to the coast of Maine, of Nova Scotia, and into the Gulf of St. Lawrence. They may be occasionally lost sight of by their sinking below the surface ; but they are sure to present themselves, shortly after, to those who look for them farther north and east."

Leaving it to naturalists to account for the reasons, the fact is universally acknowledged, that, for a number of years past, the value of the mackerel fisheries

in British waters has diminished, while, during the same period, the quantity and quality of these fish taken off the coast of New England has greatly improved.

As early as 1868, the following statement appears in the Annual Report of Marine and Fisheries :—

"Owing to some unknown cause, the net as well as the bait mackerel fishery has nearly failed on our coasts. As already stated, the spring fishing at Magdalen Islands had yielded almost nothing to the inhabitants, and the foreign schooners which resorted there to pursue the same fishing had barely covered the cost of outfit. According to general opinion, mackerel appeared but in very small numbers in Pleasant Bay. However bad this fishery had been, hopes were entertained of the results of the summer fishery. There was, however, to be further disappointment in this instance. Mackerel, it is true, was seen on the shores of Magdalen Islands, Gaspé, and Bay des Chaleurs, but in such limited numbers that, with the exception of a few caught for bait, a very limited quantity was taken at the Islands and at Gaspé Bay and Basin. The mackerel would not take bait at the surface of the water; and after trying every means for several weeks to induce the fish to come to the surface, by means of bait, the American schooners left the islands and shores of Gaspé, with only a few barrels taken. I have since ascertained that, at the end of August or beginning of September, mackerel had been abundant on the shores of Prince Edward's Island, and that the schooners which had resorted there had done well. It is to be hoped that this report was true, as otherwise the loss incurred by our own and foreign schooners must have been very large, if this fishing had been a failure everywhere. The cost of outfit is heavy; and, to compensate for expenses necessarily incurred by most of the vessels, it was necessary that there should be at least a middling success. The scarcity of mackerel was, therefore, the reason why I met so very few American schooners near our shores. In June, July, September, and October, however, when the results of this fishing were still uncertain, several schooners were seen in Bay des Chaleurs, Paspebiac, Port Daniel, and Percé. From what I could ascertain, about one-third had licenses; but the rest, dreading a bad season, preferred fishing only on the Banks, at Magdalen Islands, or outside the limits, rather than to pay for a license. Moreover, from information obtained, I have reason to believe that few were seen fishing inside of the three-mile limits; and even those may have been provided with licenses. During the whole of my cruise in August, I saw none of them acting in contravention of the law; and the owners of schooners whom I met without a license had left without infringing the act, after being notified. The fact of the matter is, that, having fine and costly vessels, of which they are for the most part owners, they can ill afford the risk of losing them, especially this year, by fishing within the three-mile limits." (Report of Theophile Tetu, Esq., on the Fisheries of the Gulf of St. Lawrence: Annual Report of the Canadian Department of Marine and Fisheries, 1868, p. 54.)

The same deterioration of inshore mackerel fishing has steadily continued down to the present time:—

"Is it not an extraordinary thing," says the Report of the same Department for 1876, "that halibut and mackerel, which have only a comparatively inferior value in our markets, are always quoted at a high price with our neighbours? They are difficult fish to cure, and this may explain the difference in price between both markets; and, as this fishery is very uncertain, our people dare not enter into it, on account of the possibility of heavy losses in time and money. With the exception of the inhabitants of Magdalen Islands and some three or four fishermen from Gaspé, nobody in the whole division placed under my charge takes any interest in either of these fisheries. The importance of this fishery, even as carried on by strangers, has greatly diminished. *Out of five or six hundred schooners which formerly frequented Bay des Chaleurs, Magdalen Islands, &c., in search of mackerel, hardly one hundred are now counted.* One schooner only, 'The W. Merchant,' of Gloucester, was this year engaged in halibut fishing; and, when I visited her at Esquimaux Point, she had caught nothing,—not even one barrel of herring. The restrictions to which foreigners fishing in our waters were subjected during past years, and the seizures of vessels which were the consequence of violations of Canadian fishery laws, must undoubtedly have contributed a great deal to deter Americans from the the waters of the Gulf, and compelled them to take another direction, where they very likely find more remunerative results. In the course of a conversation with the United States' Consul at Gaspé, he handed me a newspaper from Gloucester, Mass., which explains in a few words this decrease of American schooners in our waters:—'Our large firms,' said that paper, 'far from curtailing their fishing outfits, have increased them. Most of them have added another vessel to the number already possessed. The attention of outfitters seems now to be solely bent upon cod-fishing. In former times, their whole reliance was placed upon mackerel fishing, which was practised on shore on George's Bank, or in the Gulf of St. Lawrence; but very little notice is taken of it now,—so much so that the total catch of mackerel by our vessels is now reduced to one-tenth of what it used to be. Several causes have been adduced to explain this change; but the first is undoubtedly the use of seines. It is almost an impossible thing now to catch mackerel, as formerly, with hook and line, and seining is so uncertain that most of the masters were compelled to abandon this fishery. Mackerel fishing in the Gulf of St. Lawrence formerly constituted the occupation of the whole Gloucester fleet during the fall season; but now hardly fifty or sixty schooners are met within its waters.' The above statements agree perfectly with the observations I have made during the past season. A few years ago, no more than half-a-dozen Gloucester schooners were engaged cod-fishing on the banks: now there are two hundred. No attention whatever was then given to cod-fishing, but now it has attracted the notice of the trade of Gloucester. Halibut-fishing is another pursuit which is daily growing more and more important for Gloucester fishermen; but the latter appear to have abandoned the Gulf, or rather the grounds which

these fish formerly frequented. Several of the finest and swiftest sailers of that fleet were employed during the whole year, and fitted so as to be able to carry these fish, fresh or salted. The above will explain the cause of the disappearance of American schooners from our waters."

It is also to be observed, that the American mackerel uniformly command a higher price than the Colonial catch,—the difference varying from 4 to 6 dollars per barrel; the average excess in price in favour of the catch off the coasts of the United States is at least 5 dollars per barrel.

The evidence to be laid before the Commission will fully establish the position taken by the American Commissioners who framed the Treaty of Washington, that the value of the inshore fisheries has been greatly exaggerated; and that the United States have desired to secure the privilege of using them, not for their commercial or intrinsic value, but for the purpose of removing a source of irritation.

The simple truth is, that all American fishermen would, at the date of the Treaty, and ever since, have gladly abandoned all fishing in the territorial waters of Canada, rather than have been subjected to competition on equal terms with the Canadian fishermen.

(5.) As for the herring fishery by Americans in British waters, it amounts to nothing. Hardly any trace of its existence can be found. Herring are purchased, but not fished for, by United States' fishermen in British territorial waters.

The United States call upon the British Agent to produce, and upon the Commissioners to require at his hands, tangible evidence of the actual practical value of the privilege of fishing, by Americans, in British territorial waters, as it has existed under the Treaty for four years past; as it exists to-day; and as, judging of the future by the past, it may reasonably be expected to continue during the ensuing eight years embraced in the Treaty. It is insisted that the Commissioners have no right to proceed upon vague and general claims and assertions, as unsubstantial as the fog banks along the coast, and, therefore, as difficult to refute as it would be to dissipate a fog. Especially are they bound not to suffer themselves to be misled by the untenable and exploded theory that the portion of the high seas which is adjacent to the British Provinces constitutes a part of their dominions.

IV.

It is next proposed to consider the advantages derived by British subjects from the provisions of the Treaty of Washington.

In the first place, the admission of American fishermen into British waters is no detriment, but a positive advantage, to Colonial fishermen: they catch more fish, make more money, and are improved in all their material circumstances, by the presence of foreign fishermen. The large quantities of the best bait thrown over from American vessels attract myriads of fish, so that Canadians prefer to fish side by side with them; and, when doing so, make a larger catch than they otherwise could. The returns of the product of the British fisheries conclusively show that the presence of foreign fishermen cannot possibly have done them any injury.

Secondly, the incidental benefits arising from traffic with American fishermen are of vital importance to the inhabitants of the British maritime provinces. When, after the abrogation of the Reciprocity Treaty, the Canadian authorities saw fit to prohibit such commercial intercourse, the disastrous consequences which ensued are thus depicted by the Hon. Stewart Campbell, M.P., in his letter to the Department of Marine and Fisheries, in 1869:—

"The principal source of inconvenience and grievance on the part of the British traders and subjects generally in the Maritime Provinces, who are connected with the fisheries, is to be found in the great change of circumstances brought about by the abrogation of the Reciprocity Treaty. During the existence of that Treaty, the entire freedom with which that branch of industry represented by the fisheries was pursued, on the part of the subjects of the United States of America, on the coasts of the British Provinces, naturally brought these foreigners into most intimate business relations with merchants, traders, and others, in many localities of the maritime portion of the Dominion, and especially at and in the vicinity of the Straits of Canso. The great body of the large fleet of American fishermen, numbering several hundred vessels, which annually passed through that strait to the Gulf of St. Lawrence, in the prosecution of the fisheries, and especially the mackerel fishery, was invariably in the habit of procuring much of the requisite supplies for the voyage at the several ports in that Strait. The business thus created largely benefitted not only those directly engaged in commercial pursuits, but was also of immense advantage to other classes of the inhabitants of several of the adjacent counties of Nova Scotia. The constant demand for, and ready disposal at remunerative prices to the American fishing vessels of, a large quantity of farm produce, and other products of industry, in the shape of

barrels, hoops, lumber, wood, &c., was at once the character and result of the intercourse which subsisted during the existence of the Reciprocity Treaty.

"And here I may offer some observations as to what, in my judgment, would be the probable effects of dealing with the American fishermen in the more liberal spirit of cheap licenses. In a former part of this communication, I have referred to the active and advantageous business relations subsisting between them and the merchants, traders, and others, in the eastern counties of Nova Scotia, and particularly at the Strait of Canso, during the existence of the Reciprocity Treaty, and pointed out the very prosperous condition of our own people during that period. Much depression has prevailed since its abrogation, caused principally by the exaction of a high rate of tonnage dues, which has induced the Americans to transfer their former business relations to Prince Edward's Island, where the terms of the Convention of 1818 are practically permitted to be unrecognized."

The value of this trade during the period of that Treaty is thus stated by Sir John A. Macdonald, in the debate in the Dominion Parliament, May 3, 1872:—

"The people of Nova Scotia and the other provinces found that the Treaty, while it yielded a nominal right, conferred many and solid advantages. A great trade, which they had never anticipated, sprung up in consequence of the admission of American fishermen; and, instead of the ruin they feared, they gained so much in every respect that they desired a continuance of the Treaty, and lamented its repeal. It was found, too, that the people of Prince Edward's Island also experienced a great advantage from the Treaty, in respect to trade in coarse grains with the United States, which was largely increased by the permission granted to Americans to frequent their coasts for fishing purposes. In that colony, too, there had been apprehensions,—and he doubted not they were sincere,—that the Treaty would not be really beneficial to the people; but, when the privileges given to citizens of the United States were freely enjoyed by them, they, in return, brought so many benefits that we heard no complaints from the Colony. No injury was done to the fishermen of the island; on the contrary, the trade which grew up was found to be profitable in many different ways. More goods were imported than ever before; commerce was brisk; stores were opened, and profits made, which never would have been realized but for the existence of the Treaty."

In the same debate Mr. Power, of Halifax, who was described by another speaker as "a man who had devoted his whole life to enterprises connected with the fisheries of the maritime Provinces, who had given them the most careful study and attention, and had become possessed of every information concerning them," declared that—

"The harbours on the entire line of coast were visited by United States' vessels, for the purpose of obtaining supplies of bait, ice, &c., for the deep-sea and other fisheries; and, if we wished to have the protection effectual, we would prevent this. *He might, however, say that he had always been opposed to United States' vessels being prevented from obtaining these supplies from our people. It looked too much like the cutting off the nose to be revenged on the face. The value of articles supplied in this way was very large, and the revenue, as well as the inhabitants, was benefited by it*; whilst the only injury that would be done to the Americans by prohibiting the trade was to oblige them to bring the supplies with them from home, or drive them to Prince Edward's Island, where every facility was readily given them. He understood that, until the Treaty was finally ratified, it was the intention of the Government to prevent American vessels from landing their catch in ports of the Dominion. He much doubted the wisdom of this restriction. It might be all well enough if they were not permitted to do so in Prince Edward's Island. That island lay almost in the centre of the fishing-grounds; and there they were allowed to take all supplies they might require, and land their fish, which was reshipped in American steamers that plied weekly between Charlottetown and Boston. Such action on the part of the Government would hardly form any restriction to the Americans while they had Prince Edward's Island open to them, and would only deprive our people of the Strait of Canso of the advantage of storage and harbour attendant on the landing of cargoes, and our vessels of the benefit of the freighting of them to the United States."

The condition of things in 1870 appears from the reports of Vice-Admiral Fanshawe, and the other officers in command of the war-vessels cruizing off the Canadian coast, for the protection of the fisheries.—Canadian Report of the Department of Marine and Fisheries, 1870, pp. 324, 338, 339, 341, and 349. Admiral Fanshawe says:—

"The strong interest that both the resident British traders and the United States' fishermen have in maintaining the trade would, in my opinion, render its suppression extremely difficult, even were it thought judicious to continue the attempt; whilst the combination between these two bodies to evade British law, and the sympathies arising therefrom, must be very undesirable."

The Commander of Her Majesty's gun-boat "Britomart," in his report on the fisheries of the Bay of Fundy, says:—

"The inhabitants on the Nova Scotia coast, from St. Mary's Bay to Cape Sable, I believe, prefer the Americans coming in, as they are in the habit of selling them stores, bait, and ice, and give them every information as to my movements.

"Wherever I went, I found the people most anxious whether the Americans were still going to be allowed to come and purchase the frozen herrings; if they were not, they had no other market for them, and the duty was so heavy they could not afford to take them into American ports themselves. At the same time, they wished to have the Americans prevented from fishing on their coasts."

The Commander of Her Majesty's ship "Plover," in his report from Prince Edward's Island, in the same year, says:—

"Every facility is given in the ports of this island to foreigners for obtaining and replenishing their stock of stores and necessaries for fishing. This, if the Treaty is intended to be strictly enforced, should not be allowed; as, if it is wished to drive the United States' fishermen from these waters, they will then be obliged to return home for supplies."

H. E. Betts, Commander Government schooner "Ella G. McLean," says:—

"I anchored off Port Mulgrave, and procured wood and water. Here the feeling is very much against the law that prevents the American fishermen procuring supplies, such as bait, barrels, provisions, &c. One house, whose receipts in 1864 and 1865 were about 80,000 dollars each year, this year was reduced to 10,000 dollars, the principal part of which was 'stolen.' They advocate the return to the licence system, doing away with the twenty-four hours' notice there used to be, and having these schooners to rigidly enforce the law, and to instantly seize any vessel fishing inside the limits without a licence. They suggest that the proceeds of the licences might be used as a set-off against the American duty of 2 dollars a barrel, by dividing it at so much per barrel amongst our fishermen as a bounty, thus putting our fishermen on nearly equal terms with the Americans as regards a market for their fish."

The anticipations that the Treaty of Washington would so operate as to remove the distress existing in the maritime provinces at the date of its negotiation have been fully realized, as will appear by the testimony to be laid before the Commission. It also appears that several thousands of British fishermen find lucrative employment on board American fishing vessels.

The benefits thus far alluded to are only indirectly and remotely within the scope and cognizance of this Commission. They are brought to its attention chiefly to refute the claim, that it is an advantage to the United States to be able to enter the harbours of the provinces and traffic with the inhabitants. No doubt, all such advantages are mutual and reciprocal. They only show that, in this instance, as in so many others, a system of freedom rather than one of repression, proves the best for all mankind.

V.

It is necessary now to consider the specific benefits which the Treaty directs the Commission to regard in its comparison and adjustment of equivalents.

1. What do British subjects gain by admission to the fishing grounds of the United States down to the 39th parallel of north latitude?

All descriptions of fish found in British waters also abound along this portion of the coast of the United States. They are nearly as extensive territorially, and equally valuable. If the provincial fishermen invested the same amount of capital in the business, and exerted equal enterprise, industry, and skill, they would find the American waters fully as valuable to them as theirs now are to the fishermen of the United States.

Off the American coast is found exclusively the menhaden or porgies, by far the best bait for mackerel. This is well stated by Sir John Macdonald, who says:—

"It is also true that, in American waters, the favourite bait to catch the mackerel is found, and it is so much the favourite bait, that one fishing-vessel having this bait on board would draw a whole school of mackerel in the very face of vessels having an inferior bait. Now, the value of the privilege of entering American waters for catching that bait is very great. If Canadian fishermen were excluded from American waters by any combination among American fishermen, or by any act of Congress, they would be deprived of getting a single ounce of the bait. American fishermen might combine for that object, or a law might be passed by Congress forbidding the exportation of menhaden; but, by the provision made in the Treaty, Canadian fishermen are allowed to enter into American waters to procure the bait, and the consequence of that is, that no such combination can exist, and Canadians can purchase the bait, and be able to fish on equal terms with the Americans."—Speech of Sir John A. Macdonald, May 3, 1872.

These statements were based upon the Canadian Official Reports previously published, which say:—

"For mackerel fishing, the Americans use 'porgies' and clams, chopped fine, as bait. The 'porgies' are found only on the coast of the United States, and, when imported into the Dominion, cost about 6 dollars per barrel.

"The bait with which the Americans are supplied is far superior to any which can be procured in this country, to which may be attributed in a great measure the success of the Americans previously to the recent restrictions, although even now the local fishermen complain that they have no chance while an American schooner is fishing near them."—Annual Report of the Department of Marine and Fisheries for the year ending June 1870, pp. 312, 342.

The menhaden fishery has within ten years grown into an immense business. Formerly they were taken only for bait, and were either ground in hand-mills for mackerel, or used in what is called "slivers" for codfish bait. There is now a large fleet of steamers and sailing vessels engaged in this fishery. Large factories have been erected on shore for extracting the oil. As these fish are not valuable until they are fat, which is in August and September, they are not much taken in their spawning time; and they will not therefore be exterminated. They are caught solely with seines, near the shore, their food being a kind of marine seed which floats upon the waters, consequently they will not take the hook. This fishery is one of the most profitable of all the fisheries, the oil being used for tanning and currying extensively at home, and being exported in large quantities. The refuse of the fish, after being pressed, is used for manufacturing guano or fish phosphate, and is very valuable as a fertilizer. This fishery is purely an American fishery, no menhaden ever being found north of the coast of Maine. It is entirely an inshore fishery, the fish being taken within two miles from the shore.

The United States inshore fisheries for mackerel, in quality, quantity, and value, are unsurpassed by any in the world. They are within four hours' sail of the American market, and many of the mackerel are sold fresh at a larger price than when salted and packed. The vessels fitted with mackerel seines can use the same means and facilities for taking menhaden, so that both fisheries can be pursued together. And they combine advantages compared with which the Dominion fisheries are uncertain, poor in quality, and vastly less in quantity. The Canadian fisheries are a long voyage from any market whatever, and involve far more exposure to loss of vessels and life. These fisheries along the shores of the United States are now open to the competition of the cheap-built vessels, cheap-fed crew, and poorly paid labour of the Dominion fishermen, who pay trifling taxes, and live, both on board their vessels and at home, at less than half the expense of American fishermen. It is only from lack of enterprise, capital, and ability that the Dominion fishermen have failed to use them. But recently hundreds of Dominion fishermen have learned their business at Gloucester and other American fishing towns, and by shipping in American vessels. They have in United States' waters to-day over thirty vessels equipped for seining, which, in company with the American fleet, are sweeping the shores of New England.

2. The enormous pecuniary value of the right to import fish and fish-oil, free of duty, into the markets of the United States, must be admitted by every candid mind. Testimony from all quarters can be adduced of the most convincing character on this subject.

In June 24, 1851, long before the adoption of the Reciprocity Treaty, the British Minister at Washington, Lord Elgin, wrote to Mr. Webster, that if the United States would admit "all fish, either cured or fresh, imported from the British North American possessions, in vessels of any nation or description, free of duty, and upon terms in all respects of equality with fish imported by citizens of the United States," Her Majesty's Government were prepared "to throw open to the fishermen of the United States the fisheries in the waters of the British North American Colonies, with permission to those fishermen to land on the coasts of those Colonies for the purpose of drying their nets and curing fish; provided that, in so doing, they do not interfere with the owners of private property, or with the operations of British fishermen."—Documents accompanying President's message, December, 1851, part 1, pp. 89, 90.

And after the abrogation of the Reciprocity Treaty in 1867, a Committee of the Nova Scotia Legislsture earnestly recommended "that, instead of levying a pecuniary license fee, steps be taken to arrange, if practicable, with the American Government, for the admission of the products of Colonial fishermen into the American market free, or under a more reduced Tariff than that now imposed." —Report of Committee of Legislature of Nova Scotia, 1867, quoted in Knight's Report on the Fisheries of Nova Scotia, p. 14.

"Under the Reciprocity Treaty," said Mr. Stewart Campbell, in the memorandum already quoted from, "*the total exemption from duty of all fish exported from the maritime provinces to the markets of the United States, was also a boon of inestimable value to the very large class of British subjects directly and indirectly connected with our fisheries and its resulting trade.* This state of things, which was beneficial also in no small degree to the subjects of the United States, undoubtedly created a condition of general prosperity and contentment among the classes of British subjects referred to, such as had never previously existed."

On this subject, Sir John A. Macdonald, in the Parliament of the Dominion, thus expressed himself:—

"I may be liable to the charge of injuring our own case in discussing the advantages of the arrangements, because every word used by me may be quoted and used as evidence against us hereafter. The statement has been so thrown broadcast that the arrangement is a bad one for Canada, that, in order to show to this House and the country that it is one that can be accepted, one is obliged to run the risk of his language being used before the Commissioners to settle the amount of compensation, as an evidence of the value of the Treaty to us. It seems to me that, in looking at the Treaty in a commercial point of view, and looking at the question whether it is right to accept the articles, we have to consider mainly that interest which is most peculiarly affected. Now, unless I am greatly misinformed, the fishing interests in Nova Scotia, with one or two exceptions for local reasons, are altogether in favour of the Treaty. They are so anxious to get free admission for their fish into the American market, that they would view with great sorrow any action of this House which would exclude them from that market; that they look forward with increasing confidence to a large development of their trade, and of that great industry; and I say that, that being the case,—if it be to the interest of the fishermen, and for the advantage of that branch of national industry, setting aside all other considerations—we ought not wilfully to injure that interest. Why, Sir, what is the fact of the case as it stands? *The only market for the Canadian No. 1 mackerel in the world is the United States. That is our only market, and we are practically excluded from it by the present duty. The consequence of that duty is, that our fishermen are at the mercy of the American fishermen. They are made the hewers of wood and the drawers of water for the Americans. They are obliged to sell their fish at the Americans' own price. The American fishermen purchase their fish at a nominal value, and control the American market.* The great profits of the trade are handed over to the American fishermen, or the American merchants engaged in the trade, and they profit to the loss of our own industry and our own people. Let anyone go down the St. Lawrence on a summer trip—as many of us do—and call from the deck of the steamer to a fisherman in his boat, and see for what a nominal price you can secure the whole of his catch; and that is from the absence of a market, and from the fact of the Canadian fishermen being completely under the control of the foreigner. With the duty off Canadian fish, the Canadian fisherman may send his fish at the right time, when he can obtain the best price, to the American market, and thus be the means of opening a profitable trade with the United States in exchange. If, therefore, it is for the advantage of the maritime provinces, including that portion of Quebec which is also largely interested in the fisheries, that this Treaty should be ratified, and that this great market should be opened to them, on what ground should we deprive them of this right? Is it not a selfish argument that the fisheries can be used as a lever in order to gain reciprocity in flour, wheat, and other cereals? Are you to shut our fishermen out of this great market, in order that you may coerce the United States into giving you an extension of the reciprocal principle?

"I have heard the fear expressed that, with this Treaty, the Americans would come down into our waters and take the fish away from our people. This was a groundless fear. Why had not this occurred under the Reciprocity Treaty, under which the Americans enjoyed fully equal privileges to those they would have under the Treaty of Washington? Did we find them interfering with our fishermen? We did not; and, with the United States' markets open to us on the same terms as to its own fishermen, could any intelligent man suppose that they could come down four or five hundred miles in vessels costing more to build, equip, and sail than our vessels, and compete with our people, who took the fish almost at their own doors? In Mr. Knight's report on the working of the Reciprocity Treaty, drawn up in the year 1867, was found the following extract of a letter from a gentleman in Guysborough: 'The fishermen in this locality have, since the commencement of the Reciprocity Treaty, say, for the past ten years, made more money than during any ten years previous, from the fact that they had a free market in the United States, *which is the only market where a large proportion of our fish will sell* to advantage; and, although fish have not been so abundant, the extra price has more than compensated for the deficiency in the catch. If a heavy duty were put upon our mackerel and herrings in the United States, the fishery would not be remunerative; and,' he added, 'the American cod and mackerel fishermen have not interfered with us nor injured our fisheries during the past ten years, and our fishermen caught more mackerel in 1864 than in any previous year.' It would be seen that we need have no fears that the Americans would do us any greater injury under this Treaty. He also found in Mr. Knight's report that the value of fish exported from the province of Nova Scotia from 1855 to 1865, during the existence of the Reciprocity Treaty, had increased from 1,940,127 dollars to 3,476,461 dollars, and was it not fair to assume that a proportionate increase would take place under the Washington Treaty?

"Those opposed to the Treaty seemed to set great value upon what we were asked by it to surrender. 'Oh,' said they, 'why should we give up our valuable fisheries, such important privileges, and for so small a consideration?' Had those who talked in this way studied the case? I believe they had not, else they would form a different opinion. That our fisheries were valuable, I am well aware. Their value under favourable conditions could not be over-estimated; but that value would be great or small just in proportion to the markets we possessed. By this Treaty we surrendered very

little, and gained in many ways; for, in addition to our own fishing grounds, which we still retained, we had the privilege, if we choose to avail ourselves of it, of going into United States' waters to fish, and would gain a free market, which would have the effect of increasing the value of our own fisheries to a most important extent. Newfoundland and Prince Edward's Island had given strong indications that they would ratify this Treaty; and Americans having free access to the fishing grounds of the former, they would be quite independent of us in the herring and cod fisheries. Prince Edward's Island's ratifying it would give them access to the mackerel fishery of that island; and with the right which they now possessed, under the Treaty of 1818, to take all kinds of fish when and where they pleased at the Magdalen Islands—and the Islands comprise, both for herring and mackerel, about the best fishing ground of the Dominion—the Americans need care very little for any privileges that we might have the power to withhold from them, which would amount to but a few miles of an inshore mackerel fishery; in return for which the markets of the entire United States were thrown open to us, free, for all the fish and products of the fisheries of the whole Dominion."

In the same debate of May 13, 1872, Mr. Power, of Halifax, said:—

"He was in favour of accepting the Treaty even as it was, and the following were some of his reasons,—they were not merely theoretical, but the result of years of practical experience and careful observation. In the spring of each year, some forty or fifty vessels resorted to the Magdalen Islands for herring, and he had known the number to be greater. These vessels carried an average of 900 barrels each, so that the quantity taken was generally in the neighbourhood of 50,000 barrels. During the existence of the Reciprocity Treaty, no United States' vessels went after these fish. All the vessels engaged in that fishery belonged to some one of the provinces now forming this Dominion. Since the abrogation of the Treaty and the imposition of the duty of 1 dollar per barrel by the United States, the case had become entirely changed. Vessels still went there; but they were nearly all American. Now, under this Treaty we would get that important branch of trade back again. The lower provinces, Nova Scotia in particular, had a large herring trade with Newfoundland. Vessels went there with salt and other supplies, and brought back cargoes of herring in bulk. Employment was thus given to the cooper and labourer in preparing these fish for export; and, as the business was prosecuted mostly in the winter months, when other employment was difficult to obtain, it always proved a great boon to the industrious. We lost this trade also when we lost the Reciprocity Treaty; but it would return to us under the Treaty now offered for our acceptance. A little more than two years ago, two vessels belonging to the Province of Quebec arrived in Halifax from Labrador. They had between them 3,400 barrels of herrings. Not finding sale for them in Halifax, they proceeded to New York, where they sold. The duty on these two cargoes amounted to 3,400 dollars in gold. Under a Treaty of this kind this 3,400 dollars would go into the pockets of the owners and crews of the vessels, instead of into the United States' Treasury, and cases of this kind occurred almost every day. The same reason applied to the mackerel fishery, but with still greater force, the duty being 2 dollars per barrel. There was another feature connected with this fishery, which ought to have a good deal of weight with this House, in favour of the Treaty. American vessels following the cod and mackerel fisheries were manned in great part by natives of some part of this Dominion. The chief cause of this was, that, as the hands fished on shares—viz., one-half of what they caught,—those employed on board of United States' vessels got theirs in free of duty, whilst the men employed in the vessels of the Dominion had to pay the duty on theirs. A hand catching twenty-five barrels of mackerel to his share, on board of a United States' vessel, would receive 50 dollars more than he would receive for the same quantity taken in one of our own vessels. A consequence of this was, that the best men went on board the American vessels, and our vessels had to put up with the less capable. Indeed, should the present state of things continne much longer, our people would be compelled to give up the hook-and-line fishing altogether, for it was impossible that they could continue to compete against the duty and their other disadvantages. During the existence of the Reciprocity Treaty, the number of vessels following the hook-and-line mackerel fishery had increased to about sixty in the county of Lunenburg alone. Since the termination of the Treaty the number had been gradually falling off, until, during last session, no more than half a dozen vessels engaged in that business; and he believed that, should this Treaty not be ratified, there would not be a single vessel fitted out in that county for the mackerel fishery the approaching season. He had been assured by vessel owners in Havre au Bouche—an enterprising settlement at the eastern end of the County of Antigonish—and also by those on the western side of the Strait of Canso, in the County of Guysboro' (from both of which places the mackerel and herring fisheries had been extensively prosecuted), that the business will not more than pay expenses, and that, unless something was done to relieve those fish from the present duty, they would be obliged to abandon the business altogether. This need create no surprise, when it is considered that, at the present value of mackerel and herrings, the duty is fully equal to 50 per cent. Owing to the advantages offered by the American vessels over our provincial vessels engaged in fishing, not only were our best men induced to give their skill to the Americans in fishing, but in many cases they remained away, and their industry was lost to the provinces. They went to the States in the vessel the last trip, in order to get settled up for the season's work, and generally remained there to man the fishing and other vessels of the Republic. Why, a very large proportion of the inhabitants of Gloucester and other fishing towns of Massachusetts and Maine were natives of some of the provinces of this Dominion. Now, with this Treaty, the inducements to give a preference to American vessels would be removed, and our own vessels would be able to select good hands, who would remain at home, the temptation to emigrate, as he had just explained, being removed. *He had heard it said that the consumer paid the duty. Now, whilst this might be the case with some articles, it was not so with the article of our fish. In our case in this business, our fishermen fished side by side with their American rivals, both carrying the proceeds of their catch to the same market, where our men had to contend against the free fish of the American fishermen. Let him illustrate this. An American and a provincial vessel took*

500 *barrels of mackerel each; both vessels were confined to the same market, where they sold at the same price. One had to pay a duty of* 1,000 *dollars, while the other had not to do so. Who then paid the* 1,000 *dollars? Most certainly not the purchaser or consumer, but the poor, hard-worked fisherman of this Dominion; for this* 1,000 *dollars was deducted from his account of sales.* Those who contended that in this case the consumer paid the duty, ought to be able to show that, if the duty were taken off in the United States, the selling price there would be reduced by the amount of the duty. There was nothing in the nature or existing circumstances of the trade to cause any person who understands to believe that this would be the case; *and, therefore, it would be seen that at present our fishermen laboured under disadvantages, which made it almost impossible for them to compete with their rivals in the United States, and that the removal of the duty, as proposed by this Treaty, would be a great boon, and enable them to do a good business where they now were but struggling, or doing a losing trade.*"

In the same debate Dr. Tupper, of Halifax, said:—

"While in 1854 American fishermen were able to compete with Canadians, because they had no high taxes to pay, and the cost of outfit was much less than at present, the war and the burdens it had left behind had so changed their position in relation to this question, that every Canadian fisherman, who had the fish in the sea at his own door, with all the advantages of cheap vessels and cheap equipment, if he belonged (as no one doubted) to the same courageous and adventurous class as the Americans, would enter into the competition with an advantage of 40 or 50 per cent. in his favour. . . . . Who would say that the Canadian fisherman was deserving of any consideration, if he was not able, with that premium in his favour, to meet the competition, not only of the United States, but of the world? Why, then, instead of the Treaty surrendering our fishermen and fisheries to the destructive competition of the foreigner, the result would be—and mark his words, the facts would soon show it—that the American fishermen who employed their industry in the waters of Canada would become like the American lumbermen who engaged in that trade in the valley of the Ottawa, they would settle upon Canadian soil, bringing with them their character for enterprise and energy, and would become equally good subjects of Her Majesty, would give this country the benefit of their talents, and their enterprise, and their capital. *Was there anybody who could doubt as to the effect of removing the duty which was now levied of* 2 *dollars per barrel upon mackerel, and* 1 *dollar upon herrings, of taking off this enormous bounty in favour of the American fishermen, and leaving our fishermen free and unrestricted access to the best market for them in the world?* Was there any one who could doubt that the practical result would be to leave the Canadians, in a very short time, almost without any competition at all? The Opposition for a long time held out the idea that Parliament and the Government must protect the poor struggling and industrious fishermen of Nova Scotia and the other provinces against the operation of this Treaty, which, it was held, would be ruinous to them in every way. Gradually, however, light began to break in upon them, until at last they discovered this extraordinary fact, that while the clauses of this Treaty which related to Canada were held by every intelligent fisherman to be a great boon, as something which would take the taxes off them, and relieve them from hundreds of thousands of dollars' tribute that they were now compelled to pay to a foreign nation, the fishermen of the United States were, on the other hand, just as much averse to the Treaty as our own people were anxious that it should be carried into effect. How different would the future be under this Treaty from what it would certainly be if the present state of affairs were to continue! What was the result now? Why, many of our fishermen were compelled to go to the United States, abandoning their homes in Canada, in order to place themselves upon an equal footing with the Americans. The member for West Durham stated that, if Canada had continued the policy of exclusion, the American fisheries would very soon have utterly failed, and they would have been at our mercy. This was a great mistake. Last summer he went down in a steamer from Dalhousie to Pictou, and fell in with a fleet of thirty American fishing vessels, which had averaged 300 barrels of mackerel in three weeks, and had never been within ten miles of the shore."

The Hon. S. Campbell, of Nova Scotia, said:—

"Under the operation of the system that had prevailed since the repeal of the Treaty of 1854, the fishermen of Nova Scotia had, to a large extent, become the fishermen of the United States. They had been forced to abandon their vessels and homes in Nova Scotia, and ship to American ports, there to become engaged in aiding the commercial enterprizes of that country. It was a melancholy feature to see thousands of young and hardy fishermen compelled to leave their native land to embark in the pursuits of a foreign country, and drain their own land of that aid and strength which their presence would have secured. There was another evil in connection with this matter, that, not only were they forced to aid in promoting the welfare of another country, but they were, by being so, gradually alienated from the land of their birth, and led to make unfortunate contrasts and comparisons to the detriment of the country to which they belonged; because, in the country to which they departed, they derived benefits that were unattainable in their own. Another evil of the present state of things was the impediment thrown in the way of shipbuilding by the depression caused in the business of the country. While Nova Scotia had mechanics who were able to build vessels that would compete in every important respect with those built by our American neighbours, the commercial impediments thrown in the way of Americans fishing in Canadian waters had an injurious effect upon the shipbuilding interest. It had been said that the concessions obtained by the Dominion were not equivalent to the concessions which were granted to the United States. Upon that point, he regarded what had been said by the Minister of Justice about the privileges of Canadians resorting to American waters, or the purpose of procuring bait, as being of great importance. He believed that to be a very valuable nd important concession. He did not regard the American inshore fisheries as of such little value as

had been represented; for he knew that frequently American fishermen left our coast, and resorted to their own waters, where they received a valuable recompense for changing their venue and base of operations. By the Treaty of 1818, American fishing vessels were not permitted to enter our harbours, except for the purpose of obtaining wood, water, and shelter. This limitation had produced a great deal of dissatisfaction, and did injustice to our shore population. During the reciprocity, those vessels were constantly in our waters, engaged in a mutually advantageous business with the merchants who lived on shore. Both parties desired a renewal of that relation, which would decidedly be to the advantage of Nova Scotia. It was because he desired to restore to the people of Nova Scotia the advantages of that reciprocal trade, that he was ardently anxious for the ratification of this Treaty. To use a phrase that had been employed on both sides of the House, his constituents had 'set their hearts upon it;' and, as far as his voice and vote went, they would surely have it."

Mr. Macdonald, of Nova Scotia, remarked:—

"The Honourable Member for Halifax, who addressed the House a few days ago (Mr. Power), has told what effect the high duty on mackerel in the States has had on this hook-and-line fishing. The number of vessels fitted out for it from Lunenburg County has decreased from sixty to seventy under the Reciprocity Treaty. Until last year, not more than half-a-dozen ventured to engage in it, finding the high duties made it unprofitable. Last year, nearly all that fine fleet of vessels, after returning from Labrador, instead of going out again for mackerel, were compelled to lay for the remainder of the season idly swinging at their anchors in the harbours and coves around the coast; while the young men who should have formed their fishing crews were either compelled to remain at home, or seek other imployment elsewhere,—some of them, perhaps, on board American vessels, where the fish they caught were worth more than if taken on board their own vessels, because they would be free of duty under the American flag. It was thus of vital importance to the fishing people of that country that the fishery Articles of the Treaty should be ratified; because they believed, and he judged they rightly believed, they would then be placed on a much better footing than they occupied at the present time. Not only were his constituents deeply interested, but the whole people of Nova Scotia were immediately concerned. He read from statistics to show the magnitude and importance of the fishing interest, the number of men it employed, and the value of the products. In 1853, the year before the commencement of the Reciprocity Treaty, the total value of the products of the fisheries in Nova Scotia was something less than two millions of dollars, of which only about thirty per cent., or less than 582,038 dollars' worth, found a market in the United States. In 1865 the total yield of the fisheries had risen, with various fluctuations, to an aggregate of nearly three and a half millions; and it was found that the export to the States had not only kept pace with that aggregate increase, but had largely exceeded it, the exports to the States in that year being about forty-three per cent. of the aggregate catch, or near a million and a half of dollars. Thus it would seem that, under the old Reciprocity Treaty, our fishermen lost nothing by allowing their American neighbours to fish in our waters. On the contrary, they had gained in every way. The influence of a free market had acted as a stimulant on their energies, so that, although their fishing grounds were shared by American fishermen, their total catch had increased fifty per cent.; and so beneficial was that free market found to be, that the exports to the States had increased over a hundred and fifty per cent. in the twelve years. Nothing could more clearly establish the two important facts, that our fishermen have nothing to fear from fair competition with American fishermen in our own waters, and that the free access to the markets of that country is of the greatest possible importance to us. A comparison of the last three years of the Reciprocity Treaty with three years since its abrogotion shows that the exports of fish to the States have fallen off seven per cent. since the Treaty was abrogated,—another proof of the value of that Treaty to our fishermen. Give us this Treaty, and what happened before will happen again. Give us a free market in the States, and the energies of our fishermen will be stimulated anew into life and activity, and an increased aggregate yield, together with a largely increased export to the States, would show that our people were fully equal to competing, on fair terms in our own waters, with their American neighbours."

"There was one important consideration, which had been overlooked in weighing the advantages and disadvantages of the Treaty, and that was that the admission of British vessels to fish in American waters would enable Americans to purchase vessels in provincial ports, where the cost of construction was much less than in the United States. It was true they would be unable to obtain American registers, but they could take out British registers."

"The privilege given by the new Treaty to vessels carrying the British flag, to fish in the United States' waters, it would be found, was no barren privilege, as had been asserted; for, besides the privilege of fishing there, which our people might avail themselves of if they choose, we should now build fishing-vessels for our neighbours. The fishing masters of Maine and Massachusetts, when they find that they can get as good a vessel built in Lunenburg or Shelbourne or Yarmouth for 5,000 dollars as they can in Gloucester for 8,000 dollars, will not be slow to avail themselves of the advantage thus placed within their reach: they will not throw away the extra cost of the vessel on any mere sentiment about the flag, when the less costly vessel will suit their purpose as well, and the flag of their own nation does not secure to them any special advantages. He considered this a very material point; and he believed that Americans would largely avail themselves of the opportunity which would thus be offered of obtaining vessels at much less cost than they now paid."

"*The honourable gentleman knows that for the best brands of mackerel, No.* 1 *and No.* 2, *we had literally no market, except the United States;* while for the inferior fish, No. 3, we had also a market there, as well as further south."

"Remove the duty, as it is proposed by the Washington Treaty, and our fishermen will have these valuable fields of industry restored to them. He justified the statement made by the President of the Council, to the effect that the duty on pickled fish in the United States was equal to a tax of 600,000

dollars last year on the fishing industry of Nova Scotia. The member for Halifax (Mr. Jones) had denied this, and stated that the duty on mackerel and herring shipped to the States in 1871 was only about 90,000 dollars. That was another of that gentleman's facts that was made to do duty for a misstatement. It was quite true that the duty on our fish exported to that market last year would only have amounted to about 90,000 dollars, but that only proved that the duty was so nearly prohibitory as to prevent the export of larger quantities. He read from a return to show that the value of the fish caught in Nova Scotia last year amounted to over 5,000,000 dollars. Of this quantity there were 228,152 barrels mackerel and 201,600 barrels herring; the duty on which, if shipped to the States, would be over 650,000 dollars; so that the statement made by the President of the Privy Council was more than justified by the facts. If there was so small a proportion of this total sold in the States, it was because the duty was almost prohibitory. Remove the duty, and the Custom-house returns of fish shipped to that market will show a much larger result."

It will be observed that the foregoing extracts relate in part to other points than the value of the right which the Canadians have acquired, of free access to the markets of the United States. But it seemed most convenient to present them together.

Evidence will be laid before the Commission conclusively showing that the remission of duties to the Canadian fishermen during the four years which have already elapsed under the operation of the Treaty has amounted to about 400,000 dollars annually. But this subject, by the British Case, is disposed of summarily in two or three passing sentences, under the head of the convenience of reciprocal free markets, in which it seems to be tacitly assumed, rather than expressly asserted, that the removal of the duty has inured to the benefit of the American fish consumers, and not the Canadian fishermen. Such a claim can be fully refuted in various ways. In point of fact, as will appear by proof, prices were not cheapened in the markets of the United States when the fishery clauses of the Treaty took effect. And there has been no subsequent gain thus produced to the consumer. The reasons are obvious; the American catch has always fixed the price in the United States' markets. It is four times as large as the importations from the British provinces, and the business is almost exclusively in American hands. Consequently, after the abrogation of the Reciprocity Treaty, the duties levied on fish and fish oils at the custom houses of the United States were a direct tax on Canadian fishermen, who could not add any part of the duties paid by them to the price of their shipments.

When a tax or duty is imposed upon only a small portion of the producers of any commodity from which the great body of its producers are exempt, such tax or duty necessarily remains a burden upon the producers of the smaller quantity, diminishing their profits, and cannot be added to the price and so distributed among the purchasers and consumers.

Statesmen of every age and nation have striven to secure to their people by Treaties free access to large foreign markets. The British Government, Canadian statesmen, and the inhabitants of the maritime provinces, all regarded this right, under the Treaty of Washington, as "an inestimable boon."

The last four years have been a period of commercial depression all over the world. Nevertheless, the benefits already reaped by the British provinces from the Treaty of Washington have been immense; and they are destined to increase during the next eight years in a rapid ratio of progression.

In recapitulation, the United States maintain :—

First. That the province of this Commission is limited solely to estimating the value, to the inhabitants of the United States, of new rights accorded by the Treaty of Washington to the fisheries within the territorial waters of the British North American Provinces on the Atlantic coast; which comprise only that portion of the sea lying within a marine league of the coast, and also the interior of such bays and inlets as are less than six miles wide between their headlands; while all larger bodies of water are parts of the free and open ocean, and the territorial line within them is to be measured along the contour of the shore, according to its sinuosities, and within these limits no rights existing under the Convention of 1818 can be made the subject of compensation.

Second. That within these limits there are no fisheries, except for mackerel, which United States' fishermen do or advantageously can pursue; and that, of the mackerel catch, only a small fractional part is taken in British territorial waters.

Third. That the various incidental and reciprocal advantages of the Treaty, such as the privileges of traffic, purchasing bait and other supplies, are not the subject of compensation; *because* the Treaty of Washington confers no such rights on the inhabitants of the United States, who now enjoy them merely by sufferance, and who can at any time be deprived of them by the enforcement of existing laws, or the re-enactment of former oppressive statutes. Moreover, the Treaty does not provide for any possible compensation for such privileges; and they are far more important and valuable to the subjects of Her Majesty than to the inhabitants of the United States.

Fourth. That the inshore fisheries along the coast of the United States north of the thirty-ninth parallel of north latitude are intrinsically fully as valuable as those adjacent to the British Provinces; and that British fishermen can, and probably will, reap from their use as great advantages as the Americans have enjoyed, or are likely to enjoy, from the right to fish in British waters.

Fifth. That the right of importing fish and fish-oil into the markets of the United States is to British subjects a boon amounting to far more than an equivalent for any and all the benefits which the Treaty has conferred upon the inhabitants of the United States.

Sixth. In respect to Newfoundland, the United States, under the Convention of 1818, enjoyed extensive privileges. But there are no fisheries in the territorial waters of that island of which the Americans make any use. There, as everywhere else, the cod fishery is followed in the open sea, beyond the territorial waters of Great Britain. No herring, mackerel, or other fishery is there pursued by Americans within the jurisdictional limits. The only practical connection of Newfoundland with the Treaty of Washington is the enjoyment by its inhabitants of the privilege of free importation of fish and fish-oil into the United States' markets. The advantages of the Treaty are all on one side,—that of the islanders, who are immensely benefited by the opening of a valuable traffic, and by acquiring free access to a market of forty millions of people.

For the foregoing reasons, and others to be more fully developed in evidence and argument, the United States deny that this Commission ought to award any sum to the Government of Her Britannic Majesty, and assert that the advantages conferred on her subjects are vastly greater than any that have been or will be realized by the citizens of the United States under the fishery clauses of the Treaty of Washington.

DWIGHT FOSTER,
Agent of the United States' Government.

APPENDIX C.

Brief on behalf of the United States, before the Commission convened at Halifax in June 1877, pursuant to the Treaty between the United States and Great Britain, concluded at Washington, May 8, 1871; upon the question of the Extent and Limits of the Inshore Fisheries and Territorial Waters on the Atlantic Coast of British North America.

THE Articles relating to the Fisheries in this Treaty are the following:—

ARTICLE XVIII.

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

It is understood that the above-mentioned liberty applies solely to the sea-fishery; and that the salmon and shad fisheries, and all other fisheries in rivers and the mouths of rivers are reserved exclusively for British fishermen.

ARTICLE XIX.

It is agreed by the High Contracting Parties that British subjects shall have, in common with the citizens of the United States, the liberty, for the term of years mentioned in Article XXXIII of this Treaty, to take fish of every kind, except shell-fish, on the eastern sea-coasts and shores of the United States north of the thirty-ninth parallel of north latitude, and on the shores of the several islands thereunto adjacent, and in the bays, harbours, and creeks of the said sea-coasts and shores of the United States, and of the said islands, without being restricted to any distance from the shore, with permission to land upon the said coasts of the United States and of the islands aforesaid, for the purpose of drying their nets and curing their fish: provided that, in so doing, they do not interfere with the rights of private property or with the fishermen of the United States, in the peaceable use of any part of the said coasts in their occupancy for the same purpose.

It is understood that the above-mentioned liberty applies solely to the sea fishery, and that salmon and shad fisheries and all other fisheries in rivers and mouths of rivers are hereby reserved exclusively for fishermen of the United States.

ARTICLE XX.

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

ARTICLE XXI.

It is agreed that, for the term of years mentioned in Article XXXIII of this Treaty, fish-oil and fish of all kinds (except fish of the inland lakes and of the rivers falling into them, and except fish preserved in oil), being the produce of the fisheries of the United States or of the Dominion of Canada, or of Prince Edward's Island, shall be admitted into each country respectively free of duty.

ARTICLE XXII.

Inasmuch as it is asserted by the Government of Her Britannic Majesty, that the privileges accorded to the citizens of the United States under Article XVIII of this Treaty are of greater value

than those accorded by Articles XIX and XXI of this Treaty to the subjects of Her Britannic Majesty, and this assertion is not admitted by the Government of the United States, it is further agreed that Commissioners shall be appointed to determine, having regard to the privileges accorded by the United States to the subjects of Her Britannic Majesty, as stated in Articles XIX and XXI of this Treaty, the amount of any compensation which, in their opinion, ought to be paid by the Government of the United States to the Government of Her Britannic Majesty, in return for the privileges accorded to the citizens of the United States under Article XVIII of this Treaty: and that any sum of money which the said Commissioners may so award, shall be paid by the United States' Government in a gross sum, within twelve months after such award shall have been given.

ARTICLE XXIII.

The Commissioners referred to in the preceding Article shall be appointed in the following manner; that is to say, one Commissioner shall be named by the President of the United States, one by Her Britannic Majesty, and a third by the President of the United States and Her Britannic Majesty conjointly; and, in case the third Commissioner shall not have been so named within a period of three months from the date when this Article shall take effect, then the third Commissioner shall be named by the Representative at London of His Majesty the Emperor of Austria and King of Hungary. In case of the death, absence, or incapacity of any Commissioner, or in the event of any Commissioner omitting or ceasing to act, the vacancy shall be filled in the manner hereinbefore provided for making the original appointment, the period of three months in case of such substitution being calculated from the date of the happening of the vacancy.

The Commissioners so named shall meet in the City of Halifax, in the Province of Nova Scotia, at the earliest convenient period after they have been respectively named; and shall, before proceeding to any business, make and subscribe a solemn declaration that they will impartially and carefully examine and decide the matters referred to them to the best of their judgment, and according to justice and equity; and such declaration shall be entered on the record of their proceedings.

Each of the High Contracting Parties shall also name one person to attend the Commission as its Agent, to represent it generally in all matters connected with the Commission.

ARTICLE XXIV.

The proceedings shall be conducted in such order as the Commissioners appointed under Articles XXII and XXIII of this Treaty shall determine. They shall be bound to receive such oral or written testimony as either Government may present. If either party shall offer oral testimony, the other party shall have the right of cross-examination, under such rules as the Commissioners shall prescribe.

If in the case submitted to the Commissioners either party shall have specified or alluded to any report or document in its own exclusive possession, without annexing a copy, such party shall be bound, if the other party thinks proper to apply for it, to furnish that party with a copy thereof; and either party may call upon the other, through the Commissioners, to produce the originals or certified copies of any papers adduced as evidence, giving in each instance such reasonable notice as the Commissioners may require.

The case on either side shall be closed within a period of six months from the date of the organization of the Commission; and the Commissioners shall be requested to give their award as soon as possible thereafter. The aforesaid period of six months may be extended for three months, in case of a vacancy occurring among the Commissioners under the circumstances contemplated in Article XXIII of this Treaty.

ARTICLE XXV.

The Commissioners shall keep an accurate record and correct minutes or notes of all their proceedings, with the dates thereof, and may appoint and employ a secretary, and any other necessary officer or officers, to assist them in the transaction of the business which may come before them.

Each of the High Contracting Parties shall pay its own Commissioner and Agent or Counsel; all other expenses shall be defrayed by the two Governments in equal moieties.

ARTICLE XXXII.

It is further agreed that the provisions and stipulations of Articles XVIII to XXV of this Treaty, inclusive, shall extend to the Colony of Newfoundland, so far as they are applicable. But if the Imperial Parliament, the Legislature of Newfoundland, or the Congress of the United States, shall not embrace the Colony of Newfoundland in their laws enacted for carrying the foregoing Articles into effect, then this Article shall be of no effect; but the omission to make provision by law to give it effect, by either of the Legislative Bodies aforesaid, shall not in any way impair any other Articles of this Treaty.

ARTICLE XXXIII.

The foregoing Articles XVIII to XXV, inclusive, and Article XXX of this Treaty, shall take effect as soon as the laws required to carry them into operation shall have been passed by the Imperial Parliament of Great Britain, by the Parliament of Canada, and by the Legislature of Prince Edward's Island on the one hand, and by the Congress of the United States on the other. Such assent having been given, the said Articles shall remain in force for the period of ten years from the date at which they may come into operation; and further, until the expiration of two years after either of the High

Contracting Parties shall have given notice to the other of its wish to terminate the same, each of the High Contracting Parties being at liberty to give such notice to the other at the end of the said period of ten years, or at any time afterward.

By the Treaty of Paris (February 10, 1763,) France yielded up to Great Britain all the possessions formerly held by her in North America, with the exception of some small islands; and Great Britain thus acquired the fisheries along the shores of the North American Provinces.

From that time until the Revolution, the citizens of the United States, being under the Government of Great Britain, enjoyed the fisheries equally with the other inhabitants of the British Empire.

By the Treaty of 1783, in which the independence of the United States was recognized by Great Britain, the American fishermen were permitted to fish in the waters of the North American Provinces, and to use certain parts of their coast for drying and curing fish.

Article III of the Treaty is as follows, viz.:—

"It is agreed that the people of the United States shall continue to enjoy unmolested the right to take fish of every kind on the Grand Bank and on all other banks of Newfoundland, also in the Gulf of St. Lawrence, and at all other places in the sea where the inhabitants of both countries used at any time heretofore to fish; and also that inhabitants of the United States shall have liberty to take fish of every kind on such part of the coasts 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 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, as long as the same shall remain unsettled. But as soon as the same or either of them shall be settled, it shall not be lawful for 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."

The fisheries were among the questions discussed by the Commissioners who framed the Treaty of Peace at the close of the war of 1812. The United States' Commissioners claimed that the Treaty of 1783 conferred no new rights upon the United States; that it was merely an agreement as to a division of property, which took place on the division of the British Empire after the success of the American Revolution, and was in no respect abrogated by the war. The British Commissioners, on the other hand, held that, while the Treaty of 1783 recognized the right of the United States to the deep-sea fisheries, it conferred privileges as to the inshore fisheries, and the use of the shores which were lost by a declaration of war. The Commissioners were unable to come to an agreement, and the Treaty of Ghent, December 24, 1814, did not allude to the question of the fisheries, which remained unsettled.

Until the year 1818 the American fishermen carried on the fisheries as before the war of 1812, but were harassed and troubled by the British cruizers; and several were captured and carried into Halifax for alleged infringement of the fishing laws, although the American Government still claimed, under the Treaty of 1783, the right to fish anywhere on the coasts of the British Provinces. In a long correspondence with Lord Bathurst, Mr. John Quincy Adams maintains the claims of the United States. "American State Papers, Foreign Relations," vol. iii, page 732 *et seq.* In 1818, Mr. Albert Gallatin, the Minister to France, and Mr. Richard Rush, the Minister to Great Britain, were empowered by the President to treat and negotiate with Great Britain concerning the fisheries, and other matters of dispute between the two Governments. Mr. Frederick John Robinson and Mr. Henry Goulburn were the British Commissioners; and, after a long conference, the Convention of October 20, 1818, was agreed upon, the Article of which concerning the fisheries and the subject of the present discussion is as follows, viz.:—

"ARTICLE I.

"Whereas differences have arisen respecting the liberty claimed by the United States for the inhabitants thereof to take, dry, and cure fish on certain coasts, bays, harbours, and creeks of His 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 any kind 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, 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; and that the American fishermen shall also have the liberty for ever to dry and cure fish in any of the unsettled bays, harbours,

and creeks of the southern part of the coast of Newfoundland hereinbefore described, and of the coast of Labrador. But as soon as the same or any portion thereof shall be settled, it shall not be lawful for 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 renounces for ever any liberty heretofore enjoyed or claimed by the inhabitants thereof to take, dry, or cure fish, on or within three marine miles of any of the coasts, bays, creeks, or harbours of His Britannic Majesty's dominions in America not included within the above-mentioned limits: *Provided*, however, that the American fishermen shall be admitted to enter such bays or harbours for the purpose of shelter, of repairing damages therein, of purchasing wood, and of obtaining water, and for no other purpose whatever. But they shall be under such restrictions as shall be necessary to prevent their taking, drying, or curing fish therein, or in any other manner whatever abusing the privileges hereby secured to them."

The construction placed upon this Article by the Government of the Dominion has been formerly,—First, that American fishermen are thereby excluded from, and have given up all rights to, the fisheries in the large bays, such as the Bay of Fundy, the Bay of Chaleurs, and the Bay of Miramichi. Second, that a straight line should be drawn, from headland to headland, across the mouths of all bays, gulfs, or indentations of the shore, and from this line the three marine miles mentioned in the Convention should be measured; and that this was the limit within which the Americans were forbidden to prosecute the fisheries. On the other hand, the American Government has always insisted that the three-mile limit should follow the coast parallel to its sinuosities, and should be measured across the mouths of bays only when the distance from headland to headland did not exceed six miles.

After 1818 there appears to have been no correspondence between the two Governments until 1824; and, during these six years, American fishermen used the fisheries in the Bay of Fundy, and more than three miles beyond the line of low-water mark along the shores, without molestation or interference.

In September 1824, Mr. Brent writes to Mr. Addington, Chargé d'Affaires from Great Britain:—

"I have the honour to transmit to you three memorials from sundry citizens of the United States belonging to the State of Maine, accompanied by seven protests and affidavits, which exhibit the nature and extent of the facts referred to by the memorialists, complaining of the interruption which they have experienced during the present season in their accustomed and lawful employment of taking and curing fish in the Bay of Fundy and upon the Grand Banks by the British armed brig 'Dotterel,' commanded by Captain Hoare, and another vessel, a provincial cutter of New Brunswick, acting under the orders of that officer, and earnestly soliciting the interposition of this Government to procure them suitable redress."

This complaint of the American Government was caused by the seizure of two vessels, the "Reindeer" and the "Ruby," on July 26, 1824, at Two-Island Harbour, Grand Menan. The correspondence does not show what the precise cause of the seizure was. The Report of Captain Hoare merely says, "infringing the Treaty." These two vessels were afterwards rescued by the fishermen, and carried into the harbour of Eastport.

Afterwards, in answer to this, February 19, 1825, Mr. Addington writes to Mr. Adams, Secretary of State:—

"It will, I trust sir, most conclusively appear to you that the complainants have no just ground of accusation against the officers of the 'Dotterel,' nor are entitled to reparation for the loss they have sustained; that, on the contrary, they rendered themselves by the irregularity of their own conduct, justly obnoxious to the severity exercised against them, having been taken, some *flagrante delicto*, and others in such a position and under such circumstances as rendered it absolutely impossible that they could have had any other intention than that of pursuing their avocations as fishermen within the lines laid down by Treaty as forming boundaries within which such pursuit was interdicted to them."

The evidence regarding the seizure of these and various other American vessels is appended to this letter, and will be found in full, with the affidavits of the American seamen, in Senate Ex. Doc. No. 100, 32nd Congress, 1st Session.

The next correspondence was January 1836, when Mr. Charles Bankhead, Chargé d'Affaires, writes to Mr. Forsyth concerning the encroachments "on the limits of the British fisheries carried on in the River and Gulf of St. Lawrence."

At this time a circular was issued by the Secretary of the Treasury to the American fishermen, enjoining them to observe the limits of the Treaty, but without saying what these limits were. The claim of the provincial authorities to exclude American fishermen from the great bays, such as Fundy and Chaleurs, and also from a distance of three miles, determined by a line drawn from headland to head-

land across their mouths, was not attempted to be enforced until the years 1838 and 1839, when several of the American fishing-vessels were seized by the British cruizers, for fishing in the large bays. On July 10, 1839, Mr. Vail, the acting Secretary of State, writes to Mr. H. S. Fox, complaining of seizures in the Bay of Fundy by the British Government vessel the "Victory."

A letter from Lieutenant-Commander Paine to Mr. Forsyth, Secretary of State, dated December 29, 1839, sums up the matters in dispute, thus:—

"The authorities of Nova Scotia seem to claim a right to exclude Americans from all bays, including such large seas as the Bay of Fundy and the Bay of Chaleurs; and also to draw a line from headland to headland, the Americans not to approach within three miles of this line. The fishermen, on the contrary, believe they have a right to work anywhere, if not nearer than three miles from the land."

With the exception of the vessels seized in the Bay of Fundy, referred to in the letter from Mr. Vail, this construction of the clause in the Treaty was not rigidly enforced. Indeed, the orders of Admiral Sir Thomas Hardy, as stated by himself, were only to prevent American vessels fishing nearer than three miles from shore.

In February 1841, Mr. Forsyth writes to Mr. Stevenson, the American Minister at St. James's, desiring him to present formally to the British Government the demand of the United States in regard to the right of fishing off the Canadian coast:—

MR. FORSYTH TO MR. STEVENSON, FEB. 20, 1841.

"The first Article of the Convention of 1818 between the United States and Great Britain, which contains the Treaty stipulations relating to the subject, is so explicit in its terms that there would seem to be little room for misapprehending them; and, indeed, it does not appear that any conflicting questions of right between the two Governments have arisen out of differences of opinion between them regarding the intent and meaning of this Article. Yet in the actual application of the provisions of the Treaty, committed, on the part of Great Britain, to the hands of subordinate agents, subject to and controlled by local legislation, difficulties growing out of individual acts have sprung up from time to time; and, of these, perhaps the most grave in their character are the recent seizures of American vessels made, it is believed, under colour of a provincial law, entitled William IV., chap. 8, 1836; enacted, doubtless, with a view rigorously to restrict, if not intended to directly aim a fatal blow at, our fisheries on the coast of Nova Scotia. From information in the possession of the Department, it appears that the Provincial authorities assume a right to exclude American vessels from all their bays, even including those of Fundy and Chaleurs, and to prohibit their approach within three miles of a line drawn from headland to headland."

"Our fishermen believe—and they are obviously right in their opinion, if uniform practice is any evidence of correct construction—that they can with propriety take fish anywhere on the coasts of the British Provinces, if not nearer than three miles to land, and resort to their ports for shelter, wood, water, &c.: nor has this claim ever been seriously disputed, based as it is on the plain and obvious terms of the Convention, whilst the construction attempted to be put upon that instrument by the authorities of Nova Scotia is directly in conflict with its provisions, and entirely subversive of the rights and interests of our citizens. It is one which would lead to the abandonment, to a great extent, of a highly important branch of American industry, and cannot for one moment be admitted by this Government."

Mr. Stevenson, in his official note to Lord Palmerston, states the matter in dispute and the claims of the United States very strongly:—

"It also appears, from information recently received by the Government of the United States, that the Provincial authorities assume a right to exclude the vessels of the United States from all bays, even including those of Fundy and Chaleurs; and likewise to prohibit their approach within three miles of a line *drawn from headland to headland, instead of from the indents of the shores of the provinces.* They also assert the right of excluding them from British ports, except in actual distress, warning them to depart, or get under weigh and leave harbour, whenever the Provincial Custom-house or British naval officer shall suppose that they have remained a reasonable time, and this without a full examination of the circumstances under which they may have entered the port. Now the fishermen of the United States believe—and it would seem that they are right in their opinion, if uniform practice is any evidence of correct construction—that they can with propriety take fish anywhere on the coasts of the British provinces, if not *nearer than three marine miles from land,* and have the right to resort to their ports for shelter, wood, and water; nor has this claim, it is believed, ever been seriously disputed, based as it is on the plain and obvious terms of the Convention. Indeed, the main object of the Treaty was not only to secure to American fishermen, in the pursuit of their employment, the right of fishing, but likewise to insure them as large a proportion of the conveniences afforded by the neighbouring coasts of British settlements as might be reconcilable with the just rights and interests of British subjects and the due administration of Her Majesty's Dominions. The construction, therefore, which has been attempted to be put upon the stipulations of the Treaty, by the authorities of Nova Scotia, is directly in conflict with their object, and entirely subversive of the rights and interests of the citizens

of the United States. It is one, moreover, which would lead to the abandonment, to a great extent, of a highly important branch of American industry, which could not for a moment be admitted by the Government of the United States."

Lord Palmerston acknowledges the receipt of this note, and states that he has referred the matter to the Secretary of State for the Colonial Department. Here the matter rested, no definite understanding seeming to have arisen between the two Governments.

On May 10, 1843, the American schooner "Washington," belonging to Newburyport, Massachusetts, was seized in the Bay of Fundy by an officer of the Provincial Customs, and carried into Yarmouth, Nova Scotia, on account of alleged violation of the provisions of the Treaty. The "Washington" was, at the time of her seizure, within the Bay of Fundy, but distant ten miles from the shore, as appears from the deposition of William Bragg, one of her crew :—

"I further depose and say, that at no time while I was on board said schooner did we, or any of us, take or attempt to take fish within *ten miles of the coast of Nova Scotia, New Brunswick*, or of the *islands belonging to either of those provinces;* that the place where said schooner was taken possession of, as aforesaid, was opposite to a place on the coasts of Nova Scotia, called *Gulliver's Hole*, and is distant from Annapolis-Gut about fifteen miles, the said Gulliver's Hole being to the south-westward of said Annapolis-Gut."

This seizure of the "Washington" was the cause of a special Message of President Tyler to the United States' Senate, February 28, 1845.

The correspondence between Mr. Everett, the American Minister, and Lord Aberdeen, shows the positions taken by the two Governments :—

MR. EVERETT TO LORD ABERDEEN, AUG. 10, 1843.

"The undersigned, Envoy Extraordinary and Minister Plenipotentiary of the United States of America, has the honour to transmit to the Earl of Aberdeen, Her Majesty's Principal Secretary of State for Foreign Affairs, the accompanying papers relating to the seizure, on the 10th of May last, on the coast of Nova Scotia, by an officer of the Provincial Customs, of the American fishing schooner 'Washington,' of Newburyport, in the State of Massachusetts, for an alleged infraction of the stipulations of the Convention of the 20th October, 1818, between the United States and Great Britain.

"It appears from the deposition of William Bragg, a seaman on board the 'Washington,' that at time of her seizure she was not within ten miles of the coast of Nova Scotia. By the 1st Article of the Convention above alluded to, the United States renounce any liberty heretofore enjoyed or claimed by their inhabitants to take, dry, or cure fish on or within three marine miles of any coast of Her Majesty's Dominions, in America, for which express provision is not made in the said Article. This renunciation is the only limitation existing on the right of fishing upon the coasts of Her Majesty's Dominions in America, secured to the people of the United States by the IIIrd Article of the Treaty of 1783.

"The right, therefore, of fishing on any part of the coast of Nova Scotia, at a greater distance than three miles, is so plain that it would be difficult to conceive on what ground it could be drawn in question, had not attempts been already made by the provincial authorities of Her Majesty's Colonies to interfere with its exercise. These attempts have formed the subject of repeated complaints on the part of the Government of the United States, as will appear from several notes addressed by the predecessor of the undersigned to Lord Palmerston.

"From the construction attempted to be placed, on former occasions, upon the 1st Article of the Treaty of 1818, by the Colonial authorities, the undersigned supposes that the 'Washington' was seized because she was found fishing in the Bay of Fundy, and on the ground that the lines within which American vessels are forbidden to fish are to run from headland to headland, and not to follow the shore. It is plain, however, that neither the words nor the spirit of the Convention admits of any such construction; nor, it is believed, was it set up by the provincial authorities for several years after the negotiation of that instrument. A glance at the map will show Lord Aberdeen that there is perhaps, no part of the great extent of the sea-coasts of Her Majesty's possessions in America in which the right of an American vessel to fish can be subject to less doubt than that in which the 'Washington' was seized.

"For a full statement of the nature of the complaints which have, from time to time, been made by the Government of the United States against the proceedings of the Colonial authorities of Great Britain, the undersigned invites the attention of Lord Aberdeen to a note of Mr. Stevenson, addressed to Lord Palmerston on the 27th March, 1841. The receipt of this note was acknowledged by Lord Palmerston on the 2nd April; and Mr. Stevenson was informed that the subject was referred by his Lordship to the Secretary of State for the Colonial Department.

"On the 28th of the same month, Mr. Stevenson was further informed by Lord Palmerston that he had received a letter from the Colonial Department, acquainting his Lordship that Mr. Stevenson's communication would be forwarded to Lord Falkland, with instructions to inquire into the allegations contained therein, and to furnish a detailed report upon the subject. The undersigned does not find on the files of this Legation any further communication from Lord Palmerston, in reply to Mr. Stevenson's letter of the 27th March, 1841; and he believes that letter still remains unanswered.

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"In reference to the case of the 'Washington,' and those of a similar nature which have formerly occurred, the undersigned cannot but remark upon the impropriety of the conduct of the Colonial authorities in undertaking, without directions from Her Majesty's Government, to set up a new construction of a Treaty between the United States and England, and in proceeding to act upon it by the forcible seizure of American vessels.

"Such a summary procedure could only be justified by a case of extreme necessity, and where some grave and impending mischief required to be averted without delay. To proceed to the capture of vessels of a friendly Power, for taking a few fish within limits alleged to be forbidden, although allowed by the express terms of the Treaty, must be regarded as a very objectionable stretch of provincial authority. The case is obviously one for the consideration of the two Governments, and in which no disturbance of a right, exercised without question for fifty years from the Treaty of 1783, ought to be attempted by any subordinate authority. Even Her Majesty's Government, the undersigned is convinced, would not proceed in such a case to violent measures of suppression, without some understanding with the Government of the United States, or, in the failure of an attempt to come to an understanding, without due notice given of the course intended to be pursued.

"The undersigned need not urge upon Lord Aberdeen the desirableness of an authoritative intervention, on the part of Her Majesty's Government, to put an end to the proceedings complained of. The President of the United States entertains a confident expectation of an early and equitable adjustment of the difficulties which have been now for so long a time under the consideration of Her Majesty's Government. This expectation is the result of the President's reliance upon the sense of justice of Her Majesty's Government, and the fact that, from the year 1818, the date of the Convention, until some years after the attempts of the provincial authorities to restrict the rights of American vessels by Colonial legislation, a *practical* construction was given to the Ist Article of the Convention, in accordance with the obvious purport of its terms, and settling its meaning as understood by the United States.

"The undersigned avails himself of this opportunity to tender to Lord Aberdeen the assurance of his distinguished consideration."

Lord Aberdeen to Mr. Everett, April 15, 1844.

"Mr. Everett, in submitting this case, does not cite the words of the Treaty, but states in general terms that, by the Ist Article of the said Treaty, the United States renounce any liberty heretofore enjoyed or claimed by their inhabitants to take, dry, or cure fish on or within three miles of any of the coasts of Her Majesty's dominions in America. Upon reference, however, to the words of the Treaty, it will be seen that American vessels have no right to fish, and indeed are expressly debarred from fishing, in any bay on the coast of Nova Scotia.

"The words of the Treaty of October, 1818, Article I. run thus:—

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

"It is thus clearly provided that American fishermen shall not take fish within three marine miles of any bay of Nova Scotia, &c. If the Treaty was intended to stipulate simply that American fishermen should not take fish within three miles of the coast of Nova Scotia, &c., there was no occasion for using the word 'bay' at all. But the proviso at the end of the article shows that the word 'bay' was used designedly; for it is expressly stated in the proviso, that, under certain circumstances, the American fishermen may enter *bays;* by which it is evidently meant that they may, under those circumstances, pass the sea-line which forms the entrance of the bay. The undersigned apprehends that this construction will be admitted by Mr. Everett."

"Mr. Everett to Lord Aberdeen, May 25, 1844.

"The undersigned had remarked in his note of the 10th August last, on the impropriety of the conduct of the Colonial authorities in proceeding, in reference to a question of construction of a Treaty pending between the two countries, to decide the question in their own favour, and, in virtue of that decision, to order the capture of the vessels of a friendly State. A summary exercise of power of this kind, the undersigned is sure, would never be resorted to by Her Majesty's Government, except in an extreme case, while a negotiation was in train on the point at issue. Such a procedure on the part of a local Colonial authority is, of course, highly objectionable; and the undersigned cannot but again invite the attention of Lord Aberdeen to this view of the subject.

"With respect to the main question, of the right of American vessels to fish within the acknowledged limits of the Bay of Fundy, it is necessary, for a clear understanding of the case, to go back to the Treaty of 1783.

"By this Treaty it was provided, that the citizens of the United States should be allowed '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 that ground.'

"These privileges and conditions were, in reference to a country of which a considerable portion was then unsettled, likely to be attended with differences of opinion as to what should, in the progress of time, be accounted a settlement from which American fishermen might be excluded. These differences in fact arose; and, by the year 1818, the state of things was so far changed that Her Majesty's Government thought it necessary, in negotiating the Convention of that year, entirely to except the province of Nova Scotia from the number of the places which might be frequented by Americans, as being in part unsettled, and to provide that the fishermen of the United States should not pursue their occupation within three miles of the shores, bays, creeks, and harbours of that and other parts of Her Majesty's possessions similarly situated. The privilege reserved to American fishermen by the Treaty of 1783, of taking fish in all waters, and drying them on all the unsettled portions of the coast of these possessions, was accordingly, by the Convention of 1818, restricted as follows:—

"'The United States hereby renounce for ever any liberty heretofore enjoyed or claimed by the inhabitants thereof to take, dry, or cure fish on or within three marine miles of any of the coasts, bays, creeks, or harbours of His Britannic Majesty's dominions in America, not included within the above-mentioned limits: provided, however, that the American fishermen shall be admitted to enter such bays or harbours for the purpose of sheltering and repairing damages therein, of purchasing wood, and of obtaining water, and for no other purpose whatever.'

"The existing doubt as to the construction of the provision arises from the fact that a broad arm of the sea runs up to the north-east, between the provinces of New Brunswick and Nova Scotia. This arm of the sea, being commonly called the Bay of Fundy, though not in reality possessing all the characters usually implied by the term 'bay,' has of late years been claimed by the provincial authorities of Nova Scotia to be included among 'the coasts, bays, creeks, and harbours' forbidden to American fishermen.

"An examination of the map is sufficient to show the doubtful nature of this construction. It was notoriously the object of the Article of the Treaty in question to put an end to the difficulties which had grown out of the operations of the fishermen from the United States, along the coasts and upon the shores of the settled portions of the country; and, for that purpose, to remove their vessels to a distance not exceeding three miles from the same. In estimating this distance, the undersigned admits it to be the intent of the Treaty, as it is itself reasonable, to have regard to the general line of the coast; and to consider its bays, creeks, and harbours—that is, the indentations usually so accounted—as included within that line. But the undersigned cannot admit it to be reasonable, instead of thus following the general directions of the coast, to draw a line from the south-westernmost point of Nova Scotia to the termination of the north-eastern boundary between the United States and New Brunswick; and to consider the arms of the sea which will thus be cut off, and which cannot on that line be less than sixty miles wide, as one of the bays on the coast from which American vessels are excluded. By this interpretation, the fishermen of the United States would be shut out from the waters distant, not three, but thirty miles from any part of the Colonial coast. The undersigned cannot perceive that any assignable object of the restriction imposed by the Convention of 1818 on the fishing privilege accorded to the citizens of the United States, by the Treaty of 1783, requires such a latitude of construction.

"It is obvious, that, by the terms of the Treaty, the furthest distance to which fishing vessels of the United States are obliged to hold themselves from the Colonial coasts and bays is three miles. But, owing to the peculiar configuration of these coasts, there is a succession of bays indenting the shores both of New Brunswick and Nova Scotia, within any distance not less than three miles,—a privilege from the enjoyment of which they will be wholly excluded,—in this part of the coast, if the broad arm of the sea which flows up between New Brunswick and Nova Scotia is itself to be considered one of the forbidden bays.

"Lastly,—and this consideration seems to put the matter beyond doubt,—the construction set up by Her Majesty's Colonial authorities would altogether nullify another and that a most important stipulation of the Treaty, about which there is no controversy; viz., the privileges reserved to American fishing vessels of taking shelter and repairing damages in the bays within which they are forbidden to fish. There is, of course, no shelter nor means of repairing damages for a vessel entering the Bay of Fundy, in itself considered. It is necessary, before relief or succour of any kind can be had, to traverse that broad arm of the sea, and reach the bays and harbours (properly so called) which indent the coast, and which are no doubt the bays and harbours referred to in the Convention of 1818. The privilege of entering the latter in extremity of weather, reserved by the Treaty, is of the utmost importance. It enables the fisherman, whose equipage is always very slender,—that of the 'Washington' was four men all told,—to pursue his laborious occupation with comparative safety, in the assurance that, in one of the sudden and dangerous changes of weather so frequent and so terrible on this iron-bound coast, he can take shelter in a *neighbouring* and friendly port. To forbid him to approach within thirty miles of that port, except for shelter in extremity of weather, is to forbid him to resort there for that purpose. It is keeping him at such a distance at sea as wholly to destroy the value of the privilege expressly reserved.

"In fact, it would follow, if the construction contended for by the British Colonial authorities were sustained, that two entirely different limitations would exist in reference to the right of shelter reserved to American vessels on the shores of Her Majesty's Colonial possessions. They would be allowed to fish within three miles of the place of shelter along the greater part of the coast; while, in reference to the entire extent of shore within the Bay of Fundy, they would be wholly prohibited from fishing along the coast, and would be kept at a distance of twenty or thirty miles from any place of refuge in case of extremity. There are certainly no obvious principles which render such a construction probable."

In August 1844, the American schooner "Argus" was seized while fishing off

the coast of Cape Breton, under exactly similar circumstances with the seizure of the "Washington."

Mr. Everett, at the request of the United States' Government, called this seizure to the notice of the Earl of Aberdeen, and reiterates the arguments previously used with reference to the "Washington:"—

MR. EVERETT TO THE EARL OF ABERDEEN, OCTOBER 9, 1844.

"The undersigned, Envoy Extraordinary and Minister Plenipotentiary of the United States of America, has the honour to transmit to the Earl of Aberdeen, Her Majesty's Principal Secretary of State for Foreign Affairs, the accompanying papers relating to the capture of an American fishing vessel, the 'Argus,' by a Government cutter from Halifax, the 'Sylph,' on the 6th July last.

"In addition to the seizure of the vessel, her late commander, as Lord Aberdeen will perceive from his deposition, complains of harsh treatment on the part of the captors.

"The grounds assigned for the capture of this vessel are not stated with great distinctness. They appear to be connected partly with the construction set up by Her Majesty's provincial authorities in America, that the line within which vessels of the United States are forbidden to fish is to be drawn from headland to headland, and not to follow the indentations of the coast; and partly with the regulations established by those authorities in consequence of the annexation of Cape Breton to Nova Scotia.

"With respect to the former point, the undersigned deems it unnecessary, on this occasion, to add anything to the observation contained in his note to Lord Aberdeen of the 25th of May, on the subject of the limitations of the right secured to American fishing-vessels by the Treaty of 1783 and the Convention of 1818, in reply to the note of his Lordship of the 15th of April on the same subject. As far as the capture of the 'Argus' was made under the same authority of the Act annexing Cape Breton to Nova Scotia, the undersigned would observe that he is under the impression that the question of the legality of that measure is still pending before the Judicial Committee of Her Majesty's Privy Council. It would be very doubtful whether rights secured to American vessels under public compacts could, under any circumstances, be impaired by acts of subsequent domestic legislation; but to proceed to capture American vessels in virtue of such acts, while their legality is drawn in question by the home Government, seems to be a measure as unjust as it is harsh.

"Without enlarging on these views of the subject, the undersigned would invite the attention of the Earl of Aberdeen to the severity and injustice which in other respects characterize the laws and regulations adopted by Her Majesty's provincial authorities against the fishing-vessels of the United States. Some of the provisions of the provincial law, in reference to the seizures which it authorizes of American vessels, were pronounced, in a note of Mr. Stevenson to Viscount Palmerston, of the 27th of March, 1841, to be 'violations of well-established principles of the common law of England, and of the principles of the just laws of well-civilized nations;' and this strong language was used by Mr. Stevenson under the express instructions of his Government.

"A demand of security to defend the suit from persons so little able to furnish it as the captains of small fishing schooners, and so heavy that, in the language of the Consul at Halifax, 'it is generally better to let the suit go by default,' must be regarded as a provision of this description. Others still more oppressive are pointed out in Mr. Stevenson's note above referred to, in reference to which the undersigned finds himself obliged to repeat the remark made in his note to Lord Aberdeen of the 10th of August, 1843, that he believes it still remains unanswered.

"It is stated by the captain of the 'Argus' that the commander of the Nova Scotia schooner by which he was captured said that he was within three miles of the line beyond which, 'on their construction of the Treaty, we were a lawful prize, and that he seized us to settle the question.'

The undersigned again feels it his duty, on behalf of his Government, formally to protest against an act of this description. American vessels of trifling size, and pursuing a branch of industry of the most harmless description, which, however beneficial to themselves, occasions no detriment to others instead of being turned off the debateable fishing ground,—a remedy fully adequate to the alleged evil,—are proceeded against as if engaged in the most undoubted infractions of municipal law or the law of nations, captured and sent into port, their crews deprived of their clothing and personal effects, and the vessels subjected to a mode of procedure in the Courts which amounts in many cases to confiscation; and this is done to settle the construction of a Treaty.

"A course so violent and unnecessarily harsh would be regarded by any Government as a just cause of complaint against any other with whom it might differ in the construction of a national compact. But when it is considered that these are the acts of a provincial Government with whom that of the United States has and can have no intercourse, and that they continue and are repeated while the United States and Great Britain, the only parties to the Treaty the purport of whose provisions is called in question, are amicably discussing the matter, with every wish on both sides to bring it to a reasonable settlement, Lord Aberdeen will perceive that it becomes a subject of complaint of the most serious kind.

"As such, the undersigned is instructed again to bring it to Lord Aberdeen's notice, and to express the confident hope that such measures of redress as the urgency of the case requires will, at the instance of his Lordship, be promptly resorted to."

March 10, 1845, Lord Aberdeen writes to Mr. Everett, informing him that, although the British Government still adhered to their previous construction of the Treaty, and denied any right of American fishermen to fish within three miles of a

line drawn from headland to headland across the mouths of the bays on the Canadian coast, yet the rule would be relaxed so far that American vessels would be permitted to fish in the Bay of Fundy at any part not less than three miles from shore, and "provided they do not approach, except in the cases specified in the Treaty of 1818, within three miles of the entrance of any bay on the coast of Nova Scotia or New Brunswick."

Mr. Everett, March 25, 1845, thanks Lord Aberdeen for "the amicable disposition evinced by Her Majesty's Government;" but he still maintains the American construction of the Treaty, saying that he does this, not "for the sake of detracting from the liberality evinced by Her Majesty's Government in relaxing from what they regard as their right, but it would be placing his own Government in a false position to accept as mere favour that for which they have so long and strenuously contended as due to them from the Convention."

"In the case of the 'Washington,' which formed the subject of the note of the Undersigned of the 25th of May, 1844, to which the present communication of Lord Aberdeen is a reply, the capture complained of was in the waters of the Bay of Fundy. The principal portion of the argument of the Undersigned was addressed to that part of the subject.

"In the case, however, of the 'Argus;' which was treated in the note of the Undersigned of the 9th of October, the capture was in the waters which wash the north-eastern coast of Cape Breton,—a portion of the Atlantic Ocean intercepted, indeed, between a straight line drawn from Cape North to the northern head of Cow Bay, but possessing none of the characters of a bay (far less so than the Bay of Fundy), and not called a 'bay' on any map which the Undersigned has seen. The aforesaid line is a degree of latitude in length; and, as far as reliance can be placed on the only maps (English ones) in the possession of the Undersigned on which this coast is distinctly laid down, it would exclude vessels from fishing-grounds which might be thirty miles from the shore.

"But if Her Majesty's provincial authorities are permitted to regard as a 'bay' any portion of the sea which can be cut off by a direct line connecting two points of the coast, however destitute in other respects of the character usually implied by that name, not only will the waters on the north-eastern coast of Cape Breton, but on many other parts of the shores of the Anglo-American Dependencies where such exclusion has not yet been thought of, be prohibited to American fishermen. In fact, the waters which wash the entire south-eastern coast of Nova Scotia, from Cape Sable to Cape Canso, a distance on a straight line of rather less than 300 miles, would in this way constitute a bay, from which the United States' fishermen would be excluded.

"The Undersigned, however, forbears to dwell on this subject; being far from certain, on a comparison of all that is said in the two notes of Lord Aberdeen of the 10th instant, as to the relaxation proposed by Her Majesty's Government, that it is not intended to embrace the waters of the north-eastern coasts of Cape Breton, as well as the Bay of Fundy.

"The British colonial fishermen possess considerable advantages over those of the United States. The remoter fisheries of Newfoundland and Labrador are considerably more accessible to the colonial than to the United States' fishermen. The fishing-grounds on the coasts of New Brunswick and Nova Scotia, abounding in cod, mackerel, and herring, lie at the doors of the former: he is therefore able to pursue his avocation in a smaller class of vessels, and requires a smaller outfit; he is able to use the net and the seine to great advantage in the small bays and inlets along the coast, from which the fishermen of the United States, under any construction of the Treaty, are excluded.

"All or nearly all the materials of shipbuilding—timber, iron, cordage, and canvas—are cheaper in the Colonies than in the United States; as are salt, hooks, and lines. There is also a great advantage enjoyed by the former in reference to the supply of bait and curing the fish. These and other causes have enabled the colonial fishermen to drive those of the United States out of many foreign markets, and might do so at home but for the protection afforded by the duties.

"It may be added, that the highest duty on the kinds of fish that would be sent to American market is less than a half-penny per pound, which cannot do more than counterbalance the numerous advantages possessed by the colonial.

"The Undersigned supposes, though he has no particular information to that effect, that equal or higher duties exist in the Colonies on the importation of fish from the United States.

"The Undersigned requests the Earl of Aberdeen to accept the assurance of his high consideration."

On the same date, March 25, 1845, Mr. Everett writes to Mr. Calhoun, reporting the communication of Lord Aberdeen, granting American fishermen permission to fish in the Bay of Fundy:—

"You are aware that the construction of the Ist Article of the Convention between Great Britain and the United States, of 1818, relative to the right of fishing in the waters of the Anglo-American Dependencies, has long been in discussion between the two Governments. Instructions on this subject were several times addressed by Mr. Forsyth to my predecessor, particularly in a despatch of the 20th of February, 1841, which formed the basis of an able and elaborate note from Mr. Stevenson to Lord Palmerston of the 27th of the following month. Mr. Stevenson's representations were acknowledged and referred by the Colonial Office to the Provincial Government of Nova Scotia, but no other answer was returned to them.

"The exclusion of American fishermen from the waters of the Bay of Fundy was the most

prominent of the grievances complained of on behalf of the United States. Having received instructions from the Department in reference to the seizure of the 'Washington,' of Newburyport, for fishing in the Bay of Fundy, I represented the case to Lord Aberdeen in a note of the 10th of August, 1843. An answer was received to this note on the 15th of April following, in which Lord Aberdeen confined himself to stating that, by the terms of the Convention, the citizens of the United States were not allowed to fish within three miles of any bay upon the coast of the British American Colonies, and could not, therefore, be permitted to pursue their avocation within the Bay of Fundy. I replied to this note on the 25th of May following, and endeavoured to show that it was the spirit and design of the 1st Article of the Convention of 1818 to reserve to the people of the United States the right of fishing within three miles of the coast. Some remarks on the state of the controversy at that time will be found in my despatch No. 130 of the 26th of May last.

"On the 9th of October last, in obedience to your instructions No. 105, I addressed a note to Lord Aberdeen in reference to the case of the 'Argus,' of Portland, which was captured while fishing on St. Anne's Bank, off the north-eastern coast of Cape Breton. The papers relative to this case left the precise grounds of the seizure of the 'Argus' in some uncertainty. It was, however, sufficiently apparent that they were, to some extent at least, similar to those for which the 'Washington' had been captured.

"I received a few days since, and herewith transmit, a note from Lord Aberdeen, containing the satisfactory intelligence that, after a reconsideration of the subject, although the Queen's Government adhere to the construction of the Convention which they have always maintained, they have still come to the determination of relaxing from it so far as to allow American fishermen to pursue their avocations in the Bay of Fundy.

"I thought it proper, in replying to Lord Aberbeen's note, to recognize in ample terms the liberal spirit evinced by Her Majesty's Government in relaxing from what they consider their right. At the same time I felt myself bound to say that the United States could not accept as a mere favour what they had always claimed as a matter of right, secured by the Treaty."

MR. EVERETT TO MR. BUCHANAN, APRIL 23, 1845.

"With my despatch No. 278 of 25th March I transmitted the note of Lord Aberdeen of the 10th of March, communicating the important information that this Government had come to the determination to concede to American fishermen the right of pursuing their occupation within the Bay of Fundy. It was left somewhat uncertain by Lord Aberdeen's note whether this concession was intended to be confined to the Bay of Fundy, or to extend to other portions of the coast of the Anglo-American possessions, to which the principles contended for by the Government of the United States equally apply, and particularly to the waters on the north-eastern shores of Cape Breton where the 'Argus' was captured. In my notes of the 25th ultimo and 2nd instant, on the subject of the 'Washington' and the 'Argus,' I was careful to point out to Lord Aberdeen that all the reasons for admitting the right of Americans to fish in the Bay of Fundy apply to those waters, and with superior force, inasmuch as they are less landlocked than the Bay of Fundy, and to express the hope that the concession was meant to extend to them, which there was some reason to think, from the mode in which Lord Aberdeen expressed himself, was the case.

"I received last evening the answer of his Lordship, informing me that my two notes had been referred to the Colonial Office, and that a final reply could not be returned till he should be made acquainted with the result of that reference, and that, in the meantime, the concession must be understood to be limited to the Bay of Fundy.

"The merits of the question are so clear that I cannot but anticipate that the decision of the Colonial Office will be in favour of the liberal construction of the Convention. In the meantime I beg leave to suggest that, in any public notice which may be given that the Bay of Fundy is henceforth open to American fishermen, it should be carefully stated that the extension of the same privilege to the other great bays on the coast of the Anglo-American dependencies is a matter of negotiation between the two Governments."

After an ineffectual attempt to induce the United States to conclude a Reciprocity Treaty with the British Provinces, Mr. Crampton gave notice to the Secretary of State, Mr. Webster, July 5, 1852, that a force of war-steamers and sailing-vessels was coming to the fishing-grounds to prevent encroachments of vessels belonging to citizens of the United States on the fishing-grounds reserved to Great Britain.

August 23, 1852, the Provincial Secretary issued a notice that "no American fishing-vessels are entitled to commercial privileges in provincial ports, but are subject to forfeiture if found engaged in traffic. The colonial collectors have no authority to permit freight to be landed from such vessels, which, under the Convention, can only enter our ports for the purposes specified therein, and for no other."

Under the clauses of the Convention of February 8, 1853, the case of the "Washington" came before the Joint Commission for settlement of claims, in London, and, on the disagreement of the Commissioners, was decided by the umpire, Mr. Joshua Bates, in favour of the United States, on the ground that, by the construction of the Treaty of 1818, the United States fishermen had the right to fish in the Bay of Fundy and the other bays of the coast of British North American

Provinces as long as they did not fish within three miles of the coast. The full text of the decision is as follows, viz.:—

Bates, Umpire:—

"The schooner 'Washington' was seized by the revenue schooner 'Julia,' Captain Darby, while fishing in the Bay of Fundy, ten miles from the shore, on the 10th of May, 1843, on the charge of violating the Treaty of 1818. She was carried to Yarmouth, Nova Scotia, and there decreed to be forfeited to the Crown by the Judge of the Vice-Admiralty Court, and, with her stores, ordered to be sold. The owners of the 'Washington' claim for the value of the vessel and appurtenances, outfits, and damages, 2,483 dollars, and for eleven years' interest, 1,638 dollars, amounting together to 4,121 dollars. By the recent Reciprocity Treaty, happily concluded between the United States and Great Britain, there seems no chance for any further dispute in regard to the fisheries.

"It is to be regretted that, in that Treaty, provision was not made for settling a few small claims of no importance in a pecuniary sense, which were then existing; but, as they have not been settled, they are now brought before this Commission.

"The 'Washington' fishing schooner was seized, as before stated, in the Bay of Fundy, ten miles from the shore, off Annapolis, Nova Scotia.

"It will be seen by the Treaty of 1783 between Great Britain and the United States that the citizens of the latter, in common with the subjects of the former, enjoyed the right to *take* and *cure* fish on the shores of all parts of Her Majesty's dominions in America, used by British fishermen; but not to dry fish on the Island of Newfoundland, which later privilege was confined to the shores of Nova Scotia, in the following words: 'And American fishermen shall have liberty to dry and cure fish on any of the unsettled bays, harbours, and creeks of Nova Scotia; but, as soon as said shores shall become settled, it shall not be lawful to dry or cure fish at such Settlement, without a previous agreement for that purpose with the inhabitants, proprietors, or possessors of the ground.'

"The Treaty of 1818 contains the following stipulations in relation to the fishery. 'Whereas differences have arisen respecting the liberty claimed by the United States to *take, dry,* and *cure* fish on certain *coasts, harbours,* and *creeks* of His Britannic Majesty's dominions *in America,* it is agreed that the inhabitants of the United States shall have, in common with the subjects of His Britannic Majesty, the right to fish on certain portions of the southern, western, and northern coast of Newfoundland; 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 coasts: and that American fishermen shall have liberty to dry and cure fish in any of the unsettled bays, harbours, and creeks of said described coasts, until the same become settled, and the United States renounce the liberty *heretofore enjoyed* or claimed by the inhabitants thereof to take, dry, or cure fish *on or within three marine miles* of any of the coasts, bays, creeks, and harbours of His Britannic Majesty's dominions in America, not included in the abovementioned limits: Provided, however, that the American fishermen shall be admitted to enter such bays or harbours, for the purpose of shelter, and of repairing damages therein, of purchasing wood, and of obtaining water, and for no other purpose whatever. But they shall be under such restrictions as may be necessary to prevent their taking, drying, or curing fish therein, or in any other manner whatever abusing the privileges hereby reserved for them.'

"The question turns, so far as relates to the Treaty stipulations, on the meaning given to the word 'bays' in the Treaty of 1783. By that Treaty, the Americans had no right to dry and cure fish on the shores and *bays* of Newfoundland; but they had that right on the shores, coasts, *bays, harbours,* and *creeks* of Nova Scotia; and, as they must land to cure fish on the shores, bays, and creeks, they were evidently admitted to the shores *of the bays, &c.* By the Treaty of 1818, the same right is granted to cure fish on the coasts, bays, &c., of Newfoundland; but the Americans relinquished that right, *and the right to fish within three miles* of the *coasts, bays, &c. of Nova Scotia.* Taking it for granted that the framers of the Treaty intended that the word 'bay' or 'bays' should have the same meaning in all cases, and no mention being made of headlands, there appears no doubt that the 'Washington,' in fishing ten miles from the shore, violated no stipulations of the Treaty.

"It was urged on behalf of the British Government, that by 'coasts,' 'bays,' &c., is understood an imaginary line drawn along the coast from headland to headland, and that the jurisdiction of Her Majesty extends three marine miles outside of this line; thus closing all the bays on the coast or shore, and that great body of water called the Bay of Fundy, against Americans and others, making the latter a British bay. This doctrine of the headlands is new, and has received a proper limit in the Convention between France and Great Britian of 2nd of August, 1839;* in which 'it is agreed that the distance of three miles, fixed as the general limit for the exclusive right of fishery upon the coasts of the two countries, shall, with respect to bays the mouths of which do not exceed ten miles in width, be measured from a straight line drawn from headland to headland.'

"The Bay of Fundy is from 65 to 75 miles wide, and 130 to 140 miles long; it has several bays on its coast; thus the word 'bay,' as applied to this great body of water, has the same meaning as that applied to the Bay of Biscay, the Bay of Bengal, over which no nation can have the right to assume sovereignty. One of the headlands of the Bay of Fundy is in the United States, and ships bound to Passamaquoddy must sail through a large space of it. The islands of Grand Manan (British) and Little Manan (American) are situated nearly on a line from headland to headland. These islands, as represented in all geographies, are situated in the Atlantic Ocean. The conclusion is therefore in my mind irresistible, that the Bay of Fundy is not a British bay, nor a bay within the meaning of the word as used in the Treaties of 1783 and 1818.

* This Convention between France and Great Britain extended the headland doctrine to bays ten miles wide; thus going beyond the general rule of international law, according to which no bays are treated as within the territorial jurisdiction of a State which are more than six miles wide on a straight line measured from one headland to the other.

"The owners of the 'Washington,' or their legal representatives, are therefore entitled to compensation; and are hereby awarded, not the amount of their claim (which is excessive), but the sum of 3,000 dollars due on the 15th of January, 1855."

The intention of the framers of the Convention of 1818 appears from a letter of Mr. Richard Rush, one of its negotiators, to the Secretary of State, July 18, 1853, referring to that instrument:—"In signing it we believed that we retained the right of fishing in the sea, whether called a bay, gulf, or by whatever term designated, that washed any part of the coast of the British North American Provinces, with the simple exception that we did not come *within a marine league* of the shore. We inserted the clause of renunciation. The British Plenipotentiaries did not desire it.

The conclusion of the Reciprocity Treaty, June 5, 1854, rendered controversy of no importance, and disposed of all the other questions, for the time being. During the time when this Treaty was in force no complaints of any kind were made by the Canadians, who were fully satisfied that the benefits derived from the Treaty were far more valuable than any loss they received from the using of their inshore fisheries by the Americans. The United States, however, perceiving that the value of the fisheries did not equal the loss of revenue from the duties on Canadian goods imported into the United States, and that the Canadian fishermen, by their nearness to the fishing-grounds and the cheapness of labour and materials for building boats in the provinces, rendered unprofitable the prosecution of the fisheries by the Americans, gave notice, March 17, 1865, to abrogate the Treaty in one year from the time of the notice.

April 12, 1866, the following instructions for the guidance of the naval officers on the coast of the North American Provinces were sent from the Secretary of State for the Colonies to the Lords of the Admiralty:—

"Even before the conclusion of the Reciprocity Treaty, Her Majesty's Government had consented to forego the exercise of its strict right to exclude American fishermen from the Bay of Fundy; and they are of opinion that, during the present season, that right should not be exercised in the body of the Bay of Fundy; and that American fishermen should not be interfered with, either by notice or otherwise, unless they are found within three miles of the shore, or within three miles of a line drawn across the mouth of a bay or creek which is less than ten geographical miles in width, in conformity with the arrangement made with France in 1839.

"Her Majesty's Government do not desire that the prohibition to enter British bays should be generally insisted upon, except when there is reason to apprehend some substantial invasion of British rights. And, in particular, they do not desire American vessels to be prevented from navigating the Gut of Canso, from which Her Majesty's Government are advised they may lawfully be excluded, unless it shall appear that this permission is used to the injury of colonial fishermen, or for other improper objects."

The Canadian Government then resorted to the system of issuing licences permitting American fishermen to fish in the inshore fisheries. The number of licenses taken out the first year, 1866, was 354, at 50 cents per ton. The license fee for the next year was 1 dollar per ton; and the number of licenses diminished to 281. In 1868, the license fee was raised to 2 dollars per ton, and only 56 licenses were taken out. In 1869, only 25 licenses were taken out.

In 1870, the Canadian Government, having decided to issue no more licenses to foreign fishermen, the following correspondence ensued between the two Governments:—

MR. FISH TO MR. THORNTON, APRIL 1, 1870.

"Information has reached this Department to the effect that it was announced, on behalf of the Canadian Minister, in the Parliament of the Dominion of Canada, on the 9th ultimo, that it was the intention of the Government to issue no more licenses to foreign fishermen; and that they were taking every step possible to protect their fisheries."

MR. THORNTON TO MR. FISH, APRIL 2, 1870.

"In reply to your note of yesterday's date, I have the honour to inform you that, although I am aware of the announcement recently made by the Canadian Government of their intention to issue no more licenses to foreign fishermen, I have received no official information to that effect from the Governor-General of Canada."

MR. FISH TO MR. THORNTON, APRIL 21, 1870.

"I have the honour to acknowledge the receipt of your note of the 14th instant. I must invite your attention, and that of Her Majesty's authorities, to the first paragraph of the Order in Council of

the 8th of January last, as quoted in the memorandum of the Prime Minister of the Dominion of Canada, accompanying the despatch of his Excellency the Governor-General; which paragraph is in the following language, to wit, 'That the system of granting fishing license to foreign vessels, under the Act 31 Vict., c. 61, be discontinued, *and that henceforth all foreign fishermen be prevented from fishing in the waters of Canada.* The words underscored seem to contemplate an interference with rights guaranteed to the United States under the first Article of the Treaty of 1818, which secures to American fishermen the right of fishing in certain waters which were understood to be claimed at present as belonging to Canada."

MR. THORNTON TO MR. FISH, APRIL 22, 1870.

"I am forwarding a copy of your note to the Governor-General of Canada; but, in the meantime, I beg you will allow me to express my conviction that there was not the slightest intention, in issuing the above-mentioned order, to abridge citizens of the United States of any of the rights to which they are entitled by the Treaty of October 20, 1818, and which are tacitly acknowledged in the Canadian Law of May 22, 1868, a copy of which I had the honour to forward to you in my note of the 14th instant."

MR. THORNTON TO MR. FISH, MAY 26, 1870.

"I have the honour to enclose, for the information of the Government of the United States, copies of letters which have been addressed by the Admiralty to Vice-Admiral George G. Wellesley, commanding Her Majesty's naval forces on the North American and West Indies station, and of a letter from the Colonial Department to the Foreign Office, from which you will see the nature of the instructions to be given to Her Majesty's and the Canadian officers, who will be employed in maintaining order at the fisheries in the neighbourhood of the coasts of Canada."

MR. ROGERS TO THE SECRETARY OF THE ADMIRALTY, APRIL 30, 1870.

"In Mr. Secretary Cardwell's letter to the Lords Commissioners of the Admiralty of the 12th of April, 1866, it was stated that American vessels should not be seized for violating the Canadian fishing laws, 'except after wilful and persevering neglect of the warnings which they may have received; and, in case it should become necessary to proceed to forfeiture, cases should, if possible, be selected for that extreme step in which the offence has been committed within three miles of the land.'

"The Canadian Government has recently determined, with the concurrence of Her Majesty's Ministers, to increase the stringency of the existing practice of dispensing with the warnings hitherto given, and seizing at once any vessel detected in violating the law.

"In view of this change, and of the questions to which it may give rise, I am directed by Lord Granville to request that you will move their Lordships to instruct the officers of Her Majesty's ships employed in the protection of the fisheries, that they are not to seize any vessel, unless it is evident and can be clearly proved that the offence of fishing has been committed, and the vessel itself captured within three miles of land."

May 14, 1870, the following instructions as to the jurisdiction were given by Mr. Peter Mitchell, Minister of Marine and Fisheries, to the officer in command of the Government vessels engaged in the protection of the Fisheries:—

"The limits within which you will, if necessary, exercise the power to exclude United States' fishermen, or to detain American fishing vessels or boats, are for the present to be exceptional. Difficulties have arisen in former times with respect to the question, whether the exclusive limits should be measured on lines drawn parallel everywhere to the coast, and describing its sinuosities, or on lines produced from headland to headland across the entrances of bays, creeks, or harbours. Her Majesty's Government are clearly of opinion that, by the Convention of 1818, the United States have renounced the right of fishing, not only within three miles of the Colonial shores, but within three miles of a line drawn across the mouth of any British bay or creek. It is, however, the wish of Her Majesty's Government neither to concede, nor for the present to enforce, any rights in this respect which are in their nature open to any serious question. Until further instructed, therefore, you will not interfere with any American fishermen, unless found within three miles of the shore, *or within three miles of a line drawn across the mouth of a bay or creek which is less than ten geographical miles in width.* In the case of any other bay—as the Bay of Chaleurs, for example—you will not admit any United States' fishing vessel or boat, or any American fishermen, inside of a line drawn across at that part of such bay *where its width does not exceed ten miles.*"—Sessional Papers, No. 12, 1871.

This re-assertion of the headland doctrine did not seem to meet the approval of the Home Government. June 6, 1870, Lord Granville telegraphs to the Governor-General, "Her Majesty's Government hopes that the United States' fishermen will not be for the present prevented from fishing, except within three miles of land, or in bays which are less than six miles broad at the mouth."

In consequence of this telegram, on June 27, 1870, Mr. Mitchell gives to the commanders of the Government vessels new instructions, as follows:—

"The limits within which you will, if necessary, exercise the power to exclude United States' fishermen, or to detain American fishing vessels or boats, are for the present to be exceptional. Difficulties have arisen in former times with respect to the question, whether the exclusive limits should be measured on lines drawn parallel everywhere to the coast and describing its sinuosities, or on lines produced from headland to headland across the entrances of bays, creeks, or harbours. Her Majesty's Government are clearly of opinion that, by the Convention of 1818, the United States have renounced the right of fishing, not only within three miles of the Colonial shores, but within three miles of a line drawn across the mouth of any British bay or creek. It is, however, the wish of Her Majesty's Government neither to concede, nor for the present to enforce, any rights in this respect which are in their nature open to any serious question. Until further instructed, therefore, you will not interfere with any American fishermen, unless found within three miles of the shore, or within three miles of a line drawn across the mouth of a bay or creek, which, *though in parts more than six miles wide, is less than six geographical miles in width at its mouth.* In the case of any other bay—as Bay des Chaleurs, for example—you will not interfere with any United States' fishing vessel or boat, or any American fishermen, *unless they are found within three miles of the shore.*"

The true doctrine on the subject is laid down by the Government of Great Britain in a "Memorandum from the Foreign Office respecting a Commission to settle the limits of the right of exclusive fishery on the coast of British North America." (Sessional Papers 7 to 19, vol. ii., No. 4, 1871.)

"The right of Great Britain to exclude American fishermen from waters within three miles of the coast is unambiguous, and, it is believed, uncontested. But there appeared to be some doubt what are the waters described as within three miles of bays, creeks, and harbours. When a bay is less than six miles broad, its waters are within the three miles' limit, and, therefore, clearly within the meaning of the Treaty; but, when it is more than that breadth, the question arises whether it is a bay of Her Britannic Majesty's dominions. This is a question which has to be considered in each particular case with regard to international laws and usage. When such a bay, &c., is not a bay of Her Majesty's dominions, the American fishermen will be entitled to fish in it, except within three miles of the 'coast;' when it is a bay of Her Majesty's dominions, they will not be entitled to fish within three miles of it—that is to say, it is presumed, within three miles of a line drawn from headland to headland."

The foregoing statement is accepted as an accurate and satisfactory definition of the rights of the two Governments under the provisions of the Convention of 1818. *The question is, What are bays of Her Majesty's dominions?*

On this subject we will examine the authorities.

The latest and most authoritative expositions of the law of England as to what are territorial waters, and as to the extent of jurisdiction, for any purposes, beyond low-water mark, will be found in the case of the "Franconia," decided in November, 1876, before all the Judges of England. *Queen* v. *Keyn*, L. R., 2 Exch. Div. 63.

The opinions of the different Judges are a repertory of nearly all the learning, ancient and modern, English, American, and Continental, which could be collected from treatises and reports. The immediate question did not relate to headlands, but was whether the criminal jurisdiction of England extended to a crime committed by a foreigner on a foreign vessel, within three miles of the English coast.

The case is remarkable for the unanimous and emphatic repudiation, by all the Judges, of former English claims of jurisdiction or sovereignty over portions of the sea. All of the opinions should be read and studied by whoever desires to master the subject.

A few citations are subjoined. Sir Robert Phillimore says:—

"Whatever may have been the claims asserted by nations, in times past, and perhaps no nation has been more extravagant than England in this matter, it is at the present time an unquestionable proposition of international jurisprudence, that the high seas are of right navigable by the ships of all States. . . . .

"The question as to dominion over portions of the seas enclosed within headlands or contiguous shores, such as the King's Chambers, is not now under consideration. It is enough to say that, within this term 'territory,' are certainly comprised the ports and harbours, and the space between the flux and reflux of tide, or the land up to the furthest point at which the tide recedes.

"With respect to the second question, the distance to which the territorial waters extend, it appears, on an examination of the authorities, that the distance has varied (setting aside even more extravagant claims) from one hundred to three miles, the present limit. . . . .

"The sound conclusions which result from the investigations of the authorities which have been referred to appear to me to be these:—

"The *consensus* of civilized, independent States, has recognized a maritime extension of frontier to

the distance of three miles from low-water mark, because such a frontier or belt of water is necessary for the defence and security of the adjacent State.

"It is for the attainment of these particular objects that a dominion has been granted over this portion of the high seas."

Lindley, J., expressed himself as follows:—

"The controversy between Grotius, in his 'Mare Liberum,' and Selden, in his 'Mare Clausum,' has been observed upon by almost every writer on international law since their day, and the result has been that, whilst the extravagant propositions contended for by each of these celebrated men have been long ago exploded, it appears to me to be now agreed, by the most esteemed writers on international law, that, subject to the right of all ships freely to navigate the high seas, every State has full power to enact and enforce what laws it thinks proper, for the preservation of peace and the protection of its own interests, over those parts of the high seas which adjoin its own coasts and are within three miles thereof; but that beyond this limit, or, at all events, beyond the reach of artillery on its own coasts, no State has any power to legislate, save over subjects and over persons on board ships carrying its flag.

"It is conceded that, even in time of peace, the territoriality of a foreign merchant ship, within three miles of the coast of any State, does not exempt that ship or its crew from the operation of those laws of that State which relate to its revenue or fisheries."

Grove, J.:—

"The proposition, that a belt or zone of three miles of sea surrounding or washing the shores of a nation—what is termed 'territorial water'—is the property of that nation, as a river flowing through its land would be, or, if not property, is subject to its jurisdiction and law, is not in its terms of ancient date; but this defined limit, so far at least as a maritime country like England is concerned, is rather a restriction than an enlargement of its earlier claims, which were at one time sought to be extended to a general dominion on the sea, and subsequently over the channels between it and other countries, or, as they were termed, 'the narrow seas.' The origin of the three mile zone appears undoubted. It was an assumed limit to the range of cannon—an assumed distance at which a nation was supposed able to exercise dominion from the shore."

"The principal authorities may be conveniently arranged as follows:—

"1. Those who affirm the right, in what are generally termed 'territorial waters,' to extend at least to the distance at which it can be commanded from the shore, or as far as arms can protect it.

"2. Those who, assigning the same origin to the right, recognized it as being fixed at a marine league, or three geographical miles from the shore.

"3. Those who affirm the right to be absolute and the same as over an inland lake, or (allowing for the difference of the subject-matter) as over the land itself.

"4. Those who regard the right as qualified: and the main, if not only qualification that seems to me fairly deducible from the authorities is, that there is a right of transit or passage, and, as incident thereto, possibly a right of anchorage when safety or convenience of navigation requires it, in the territorial waters, for foreign ships.

"Puffendorf, Bynkershoek, Casaregis, Mozer, Azuni, Klüber, Wheaton, Hautefeuille, and Kaltenborn, though not all placing the limit of territorial jurisdiction at the same distance from the shore, none of them fix it at a smaller distance than a cannon-shot, or as far off as arms can command it. They also give no qualification to the jurisdiction, but seem to regard it as if (having regard to the difference of land and water) it were an absolute territorial possession. Chancellor Kent seems also to recognize an exclusive dominion. Hautefeuille speaks of the power of a nation to exclude others from the parts of the sea which wash its territory, and to punish them for infraction of its laws, and this as if it were dealing with its land dominion.

"Wheaton, Calvo, Halleck, Massey, Bishop, and Manning give the limit as a marine league, or three miles. Heffter mentions this limit, but says it may be extended. Ortolan, Calvo, and Massé put the right as one of jurisdiction, and not of property; but do not limit it further than that the former writer says that the laws of police and surety are there obligatory, and Massé also writes of police jurisdiction. Bluntschli says the territorial waters are subject to the military and police authorities of the place. Faustin Helie speaks of crimes in these waters coming within the jurisdiction of the tribunals of the land to which they belong. Unless these words, 'military, police, and surety,' be taken to impose a limit, no limit to the jurisdiction of a country over its territorial waters, beyond a right of passage for foreign ships, is mentioned, as far as I could gather from the numerous authorities cited; except by Mr. Manning, who confines it (though not by words expressly negativing other rights) to fisheries, customs, harbours, lighthouses, dues, and protection of territory during war. Grotius, Ortolan, Bluntschli, Schmaltz, and Massé consider there is a right of peaceable passage for the ships of other nations; and Vattel says that it is the duty of nations to permit this, but seems to think that, as a matter of absolute right, they may prohibit it.

"Such are the conclusions of the principal publicists, most of whom are of very high authority on questions of international law.

"The result of them is to show that, as in the case of many other rights, a territorial jurisdiction over a neighbouring belt of sea had its origin in might, its limits being at first doubtful and contested; but ultimately, by a concession or comity of nations, it became fixed at what was for a long time the supposed range of a cannon-shot, viz., three miles' distance.

"In addition to the authority of the publicists, this three mile range, if not expressly recognized as an absolute boundary by international law, is yet fixed on, apparently without dispute, in Acts of Parliament, in Treaties, and in judgments of Courts of Law in this country and America."

Brett, J., uses the following language :—

"What are the limits of the realm should, in general, be declared by Parliament. Its declaration would be conclusive, either as authority or evidence. But, in this case of the open sea, there is no such declaration; and the question is in this case necessarily left to the judges, and to be determined on other evidence or authority. Such evidence might have consisted of proof of a continuous public claim by the Crown of England, enforced, when practicable, by arms, but not consented to by other nations. I should have considered such proof sufficient for English Judges. In England, it cannot be admitted that the limits of England depend on the consent of any other nation. But no such evidence was offered. The only evidence suggested in this case is that, by law of nations, every country bordered by the sea is to be held to have, as part of its territory (meaning thereby a territory in which its law is paramount and exclusive), the three miles of open sea next to its coast; and, therefore, that England, among others, has such territory. The question on both sides has been made to depend on whether such is or is not proved to be the law of nations.

"I cannot but think, therefore, that substantially all the foreign jurists are in accord in assserting that, by the common consent of all nations, each which is bordered by an open sea has over three adjacent miles of it a territorial right. And the sense in which they all use that term seems to me to be fully explained by Vattel (lib. i. c. 18, § 205). He says :—

"'Lorsqu'une nation s'empare d'un pays qui n'appartient encore à personne, elle est censée y occuper l'Empire, ou la souveraineté, en même temps que le domaine. Tout l'espace dans lequel une nation étend son Empire forme le ressort de sa juridiction, et s'appelle son territoire.' At lib. ii. § 84: 'L'Empire, uni au domaine, établit la juridiction de la nation dans le pays qui lui appartient, dans son territoire.'

"This seems plain: sovereignty and dominion necessarily give or import jurisdiction, and do so throughout the territory.

"Applying this to the territorial sea, at lib. i. c. 23, § 295, he says:—

"'Quand une nation s'empare de certaines parties de la mer, elle y occupe l'Empire aussi bien que le domaine, &c. Ces parties de la mer sont de la juridiction du territoire de la nation. Le Souverain y command; il y donne des lois, et peut reprimer ceux qui les violent; en un mot, il y a tous les mêmes droits qui lui appartiennent sur la terre,' &c.

"It seems to me that this is, in reality, a fair representation of the accord or agreement of substantially all the foreign writers on international law; and that they all agree in asserting that, by the consent of all nations, each which is bordered by open sea has a right over such adjacent sea as a territorial sea—that is to say, as a part of its territory; and that they all mean thereby to assert that it follows, as a consequence of such sea being a part of its territory, that each such nation has, in general, the same right to legislate and to enforce its legislation over that part of the sea as it has over its land territory.

"Considering the authorities I have cited, the terms used by them—wholly inconsistent, as it seems to me, with the idea that the adjacent country has no property, no dominion, no sovereignty, no territorial right,—and, considering the necessary foundation of the admitted rights and duties of the adjacent country as to neutrality, which have always been made to depend on a right and duty as to its territory—I am of opinion that it is proved that, by the law of nations, made by the tacit consent of substantially all nations, the open sea within three miles of the coast is a part of the adjacent nation, as much and as completely as if it were land, and a part of the territory of such nation. By the same evidence which proves this proposition, it is equally proved that every nation which possesses this water territory has agreed with all other nations that all shall have the right of free navigation to pass through such water territory, if such navigation be with an innocent or harmless intent or purpose. The right of free navigation cannot, according to ordinary principles, be withdrawn without common consent; but it by no means derogates from the sovereign authority, over all its territory, of the State which has agreed to grant this liberty, or easement, or right, to all the world."

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Lord Chief Justice Cockburn delivered the Judgment of the Court, from which the following passages are extracted :—

"By the old common law of England, every offence was triable in the county only in which it had been committed; as, from that county alone, the 'pais,' as it was termed—in other words, the jurors by whom the fact was to be ascertained—could come. But only so much of the land of the outer coast as was uncovered by the sea was held to be within the body of the adjoining county. If an offence was committed in a bay, gulf, or estuary, *inter fauces terræ*, the common law could deal with it, because the parts of the sea so circumstanced were held to be within the body of the adjacent county or counties; but, along the coast, on the external sea, the jurisdiction of the common law extended no further than to low-water mark."

"The jurisdiction of the Admiral, however largely asserted in theory in ancient times, being abandoned as untenable, it becomes necessary for the Counsel for the Crown to have recourse to a doctrine of comparatively modern growth, namely, that a belt of sea, to a distance of three miles from the coast, though so far a portion of the high seas as to be still within the jurisdiction of the Admiral, is part of the territory of the realm, so as to make a foreigner in a foreign ship, within such belt, though on a voyage to a foreign port, subject to our law, which it is clear he would not be on the high sea

beyond such limit. It is necessary to keep the old assertion of jurisdiction and that of to-day essentially distinct; and it should be borne in mind that it is because all proof of the actual exercise of any jurisdiction by the Admiral over foreigners in the narrow seas totally fails, that it becomes necessary to give to the three-mile zone the character of territory, in order to make good the assertion of jurisdiction over the foreigner therein.

"Now, it may be asserted, without fear of contradiction, that the position that the sea within the belt or zone of three miles from the shore, as distinguished from the rest of the open sea, forms part of the realm or territory of the Crown, is a doctrine unknown to the ancient law of England, and which has never yet received the sanction of an English criminal court of justice. It is true that, from an early period the Kings of England, possessing more ships than their opposite neighbours, and being thence able to sweep the Channel, asserted the right of sovereignty over the narrow seas, as appears from the commissions issued in the fourteenth century, of which examples are given in the 4th Institute, in the chapter on the Court of Admiralty, and others are to be found in Selden's 'Mare Clausum,' book 2. At a later period, still more extravagant pretensions were advanced. Selden does not scruple to assert the sovereignty of the King of England over the sea as far as the shores of Norway, in which he is upheld by Lord Hale, in his treatise 'De Jure Maris.' (Hargrave's Law Tracts, p. 10.)

"All these vain and extravagant pretensions have long since given way to the influence of reason and common sense. If, indeed, the sovereignty thus asserted had a real existence, and could now be maintained, it would, of course, independently of any questions as to the three-mile zone, be conclusive of the present case. But the claim to such sovereignty, at all times unfounded, has long since been abandoned. No one would now dream of asserting that the Sovereign of these realms has any greater right over the surrounding seas than the Sovereigns on the opposite shores; or that it is the especial duty and privilege of the Queen of Great Britain to keep the peace in these seas, or that the Court of Admiralty could try a foreigner for an offence committed in a foreign vessel in all parts of the Channel."

"The *concensus* of jurists, which has been so much insisted on as authority, is perfectly unanimous as to the non-existence of any such jurisdiction. Indeed, it is because this claim of sovereignty is admitted to be untenable that it has been found necessary to resort to the theory of the three-mile zone. It is in vain, therefore, that the ancient assertion of sovereignty over the narrow seas is invoked to give countenance to the rule now sought to be established, of jurisdiction over the three-mile zone. If this rule is to prevail, it must be on altogether different grounds. To invoke as its foundation, or in its support, an assertion of sovereignty, which, for all practical purposes, is, and always has been, idle and unfounded, and the invalidity of which renders it necessary to have recourse to the new doctrine, involves an inconsistency on which it would be superfluous to dwell. I must confess myself unable to comprehend how, when the ancient doctrine as to sovereignty over the narrow seas is adduced, its operation can be confined to the three-mile zone. If the argument is good for anything, it must apply to the whole of the surrounding seas. But the counsel for the Crown evidently shrank from applying it to this extent. Such a pretension would not be admitted or endured by foreign nations. That it is out of this extravagant assertion of sovereignty that the doctrine of the three-mile jurisdiction, asserted on the part of the Crown, and which, the older claim being necessarily abandoned, we are now called upon to consider, has sprung up, I readily admit."

"From the review of these authorities, we arrive at the following results. There can be no doubt that the suggestion of Bynkershoek, that the sea surrounding the coast to the extent of cannon-range should be treated as belonging to the State owning the coast, has, with but very few exceptions, been accepted and adopted by the publicists who have followed him during the last two centuries. But it is equally clear, that, in the practical application of the rule in respect of the particular of distance, as also in the still more essential particular of the character and degree of sovereignty and dominion to be exercised, great difference of opinion and uncertainty have prevailed, and still continue to exist.

"As regards distance, while the majority of authors have adhered to the three-mile zone, others, like M. Ortolan and Mr. Halleck, applying with greater consistency the principle on which the whole doctrine rest, insist on extending the distance to the modern range of cannon—in other words, doubling it. This difference of opinion may be of little practical importance in the present instance, inasmuch as the place at which the offence occurred was within the lesser distance; but it is, nevertheless, not immaterial, as showing how unsettled this doctrine still is. The question of sovereignty, on the other hand, is all-important. And here we have every shade of opinion.

"One set of writers—as, for instance, M. Hautefeuille—ascribe to the State territorial property and sovereignty over the three miles of sea, to the extent of the right of excluding the ships of all other nations, even for the purpose of passage,—a doctrine flowing immediately from the principle of territorial property, but which is too monstrous to be admitted. Another set concede territorial property and sovereignty, but make it subject to the right of other nations to use these waters for the purpose of navigation. Others again, like M. Ortolan and M. Calvo, deny any right of territorial property, but concede 'jurisdiction;' by which I understand them to mean the power of applying the law, applicable to persons on the land, to all who are within the territorial water, and the power of legislating in respect of it, so as to bind every one who comes within the jurisdiction, whether subjects or foreigners. Some, like M. Ortolan, would confine this jurisdiction to purposes of 'safety and police;' by which I should be disposed to understand measures for the protection of the territory, and for the regulation of the navigation and the use of harbours and roadsteads, and the maintainance of order among the shipping therein, rather than the general application of the criminal law.

"Other authors—for instance, Mr. Manning—would restrict the jurisdiction to certain specified purposes in which the local State has an immediate interest; namely, the protection of its revenue and fisheries, the exacting of harbour and light dues, and the protection of its coasts in time of war.

"Some of these authors—for instance, Professor Bluntschli—make a most important distinction between a commorant and a passing ship. According to this author, while the commorant ship is liable to the local jurisdiction only in matters of 'military and police regulations made for the safety of the

territory and population of the coast,' none of these writers, it should be noted, discuss the question whether, or go the length of asserting that, a foreigner in a foreign ship, using the waters in question for the purpose of navigation solely, on its way to another country, is liable to the criminal law of the adjoining country for an offence committed on board."

"To those who assert that, to the extent of three miles from the coast, the sea forms part of the realm of England, the question may well be put, When did it become so? Was it so from the beginning? It certainly was not deemed to be so as to a three-mile zone, any more than as to the rest of the high seas, at the time the Statutes of Richard II were passed. For in those Statutes a clear distinction is made between the realm and the sea, as also between the bodies of counties and the sea; the jurisdiction of the Admiral being (subject to the exception already stated as to murder and mayhem) confined strictly to the latter, and its exercise 'within the realm' prohibited in terms. The language of the first of these Statutes is especially remarkable: 'The Admirals and their deputies shall not meddle from henceforth with anything done *within the realm of England, but only with things done upon the sea.*'

"It is impossible not to be struck by the distinction here taken between the realm of England and the sea; or, when the two Statutes are taken together, not to see that the term 'realm,' used in the first Statute, and 'bodies of counties,' the term used in the second Statute, mean one and the same thing. In these Statutes, the jurisdiction of the Admiral is restricted to the high seas, and, in respect of murder and mayhem, to the great rivers below the bridges: while whatever is within the realm—in other words, within the body of a county—is left within the domain of the common law. But there is no distinction taken between one part of the high sea and another. The three-mile zone is no more dealt with as within the realm than the seas at large. The notion of a three-mile zone was in those days in the womb of time. When its origin is traced, it is found to be of comparatively modern growth . . . .

"For centuries before it was thought of, the great landmarks of our judicial system had been set fast: the jurisdiction of the common law over the land, and the inland waters contained within it, forming together the realm of England; that of the Admiral over English vessels on the seas, the common property or highway of mankind."

"But to what, after all, do these ancient authorities amount? Of what avail are they towards establishing that the soil in the three-mile zone is part of the territorial domain of the Crown? These assertions of sovereignty were manifestly based on the doctrine that the narrow seas are part of the realm of England. But that doctrine is now exploded. Who at this day would venture to affirm that the sovereignty thus asserted in those times now exists? What English lawyer is there who would not shrink from maintaining, what foreign jurist who would not deny, what foreign Government which would not repel, such a pretension? I listened carefully to see whether any such assertion would be made; but none was made. No one has gone the length of suggesting, much less of openly asserting, that the jurisdiction still exists. It seems to me to follow, that, when the sovereignty and jurisdiction from which the property in the soil of the sea was inferred is gone, the territorial which was suggested to be consequent upon it must necessarily go with it.

"But we are met here by a subtle and ingenious argument. It is said, that, although the doctrine of the criminal jurisdiction of the Admiral over foreigners on the four seas has died out, and can no longer be upheld, yet, as now, by the consent of other nations, sovereignty over this territorial sea is conceded to us, the jurisdiction formerly asserted may be revived and made to attach to the newly acquired domain. I am unable to adopt this reasoning. *Ex concessis*, the jurisdiction over foreigners in foreign ships never really existed; at all events, it has long been dead and buried; even the ghost of it has been laid. But it is evoked from its grave, and brought to life, for the purpose of applying it to a part of the sea which was included in the whole, as to which it is now practically admitted that it never existed. From the time the jurisdiction was asserted to the time when the pretension to it was dropped, it was asserted over this portion of the sea, as part of the whole to which the jurisdiction was said to extend. If it was bad as to the whole indiscriminately, it was bad as to every part of the whole. But why was it bad as to the whole; simply because the jurisdiction did not extend to foreigners in foreign ships on the high seas. But the waters in question have always formed part of the high seas. They are alleged in this indictment to be so now. How then, can the admiral have the jurisdiction over them contended for, if he had it not before? There having been no new statute conferring it, how has he acquired it?"

"First, then, let us see how the matter stands as regards Treaties. It may be asserted, without fear of contradiction, that the rule that the sea surrounding the coast is to be treated as a part of the adjacent territory, so that the State shall have exclusive dominion over it, and that the law of the latter shall be generally applicable to those passing over it in the ships of other nations, has never been made the subject-matter of any Treaty, or, as matter of acknowledged right, has formed the basis of any Treaty, or has even been the subject of diplomatic discussion. It has been entirely the creation of the writers on international law. It is true that the writers who have been cited constantly refer to Treaties in support of the doctrine they assert. But when the Treaties they refer to are looked at, they will be found to relate to two subjects only,—the observance of the rights and obligations of neutrality and the exclusive right of fishing. In fixing the limits to which these rights should extend, nations have so far followed the writers on international law as to adopt the three mile range as a convenient distance. There are several Treaties by which nations have engaged, in the event of either of them being at war with a third, to treat the sea within three miles of each other's coasts as neutral territory, within which no warlike operations should be carried on: instances of which will be found in the various treaties on international law."

"Again, nations possessing opposite or neighbouring coasts, bordering on a common sea, have sometimes found it expedient to agree that the subjects of each shall exercise an exclusive right of fishing to a given distance from their own shores, and here also have accepted the three miles as a convenient distance. Such, for instance, are the Treaties made between this country and the United States

in relation to the fishery off the coast of Newfoundland, and those between this country and France in relation to the fishery on their respective shores; and local laws have been passed to give effect to these engagements.

"But in all these Treaties, this distance is adopted, not as a matter of existing right established by the general law of nations, but as matter of mutual concession and convention. Instead of upholding the doctrine contended for, the fact of these Treaties having been entered into has rather the opposite tendency; for it is obvious that, if the territorial right of a nation bordering on the sea to this portion of the adjacent waters had been established by the common assent of nations, these Treaty arrangements would have been wholly superfluous. Each nation would have been bound, independently of Treaty engagement, to respect the neutrality of the other in these waters, as much as in its inland waters. The foreigner invading the rights of the local fishermen would have been amenable, consistently with international law, to local legislation prohibiting such infringement, without any stipulation to that effect by Treaty. For what object, then, have Treaties been resorted to? Manifestly in order to obviate all questions as to concurrent or conflicting rights arising under the law of nations. Possibly, after these precedents and all that has been written on this subject, it may not be too much to say that, independently of Treaty, the three-mile belt of sea might at this day be taken as belonging, for these purposes, to the local State.

"So much for Treaties. Then how stands the matter as to usage, to which reference is so frequently made by the publicists, in support of their doctrine? When the matter is looked into, the only usage found to exist is such as is connected with navigation, or with revenue, local fisheries, or neutrality; and it is to these alone that the usage relied on is confined."

"It may well be, I say again, that, after all that has been said and done in this respect, after the instances which have been mentioned of the adoption of the three-mile distance, and the repeated assertion of this doctrine by the writers on public law, a nation which should now deal with this portion of the sea as its own, so as to make foreigners within it subject to its law, for the prevention and punishment of offences, would not be considered as infringing the rights of other nations. But I apprehend that, as the ability so to deal with these waters would result, not from any original or inherent right, but from the acquiescence of other States, some outward manifestation of the national will, in the shape of open practice or municipal legislation, so as to amount, at least constructively, to an occupation of that which was before unappropriated, would be necessary to render the foreigner not previously amenable to our general law, subject to its control."

"And this brings me to the second branch of the argument; namely, that the jurisdiction having been asserted as to the narrow seas at the time the statute passed, it must be taken to have been transferred by the statute. The answer to such a contention is, that, no reference being made in the statute to this now-exploded claim of sovereignty, we must read the statute as having transferred—as, indeed, it could alone transfer—such jurisdiction only as actually existed. Jurists are now agreed that the claim to exclusive dominion over the narrow seas, and consequent jurisdiction over foreigners for offences committed thereon, was extravagant and unfounded, and the doctrine of the three-mile jurisdiction has taken the place of all such pretensions. In truth, though largely asserted in theory, the jurisdiction was never practically exercised in respect of foreigners."

"Hitherto, legislation, so far as relates to foreigners in foreign ships in this part of the sea, has been confined to the maintenance of neutral rights and obligations, the prevention of breaches of the revenue and fishery laws, and, under particular circumstances, to cases of collision. In the two first, the legislation is altogether irrespective of the three-mile distance, being founded on a totally different principle; namely, the right of a State to take all necessary measures for the protection of its territory and rights, and the prevention of any breach of its revenue laws."

Such are the general principles of English law to-day as laid down by the Chief Justice of England. The jurisdiction of a State or country over its adjoining waters is limited to three miles from low-water mark along its sea-coast, and the same rule applies equally to bays and gulfs whose width exceeds six miles from headland to headland. Property in and dominion over the sea can only exist as to those portions capable of permanent possession; that is, of a possession from the land, which possession can only be maintained by artillery. At one mile beyond the reach of coast-guns, there is no more possession than in mid-ocean. This is the rule laid down by almost all the writers on international law, a few few extracts from whom we proceed to quote:—

"At present," says Vattel, "Law of Nations," book 1, ch. xxiii, §§ 289, 291, "the whole space of the sea within cannon-shot of the coast is considered as making a part of the territory; and, for that reason, a vessel taken under the guns of a neutral fortress is not a good prize."

"All we have said of the parts of the sea near the coast may be said more particularly and with much greater reason, of the roads, bays, and straits, as still more capable of being occupied, and of greater importance to the safety of the country. But I speak of the bays and straits of small extent, and not of those great parts of the sea to which these names are sometimes given,—as Hudson's Bay and the Straits of Magellan,—over which the empire cannot extend, and still less a right of property. A bay whose entrance may be defended may be possessed and rendered subject to the laws of the Sovereign; and it is of importance that it should be so, since the country may be much more easily insulted in such a place than on the coast, open to the winds and the impetuosity of the waves."

Professor Bluntschli, in his "Law of Nations," book 4, §§ 302, 309, states the rule in the same way:—

"When the frontier of a State is formed by the open sea, the part of the sea over which the State can from the shore make its power respected—*i.e.*, a portion of the sea extending as far as a cannon-shot from the coast—is considered as belonging to the territory of that State. Treaties or agreements can establish other and more precise limits."

NOTE.—The extent practised of this sovereignty has remarkably increased since the invention of far-shooting cannon. This is the consequence of the improvements made in the means of defence, of which the State makes use. The sovereignty of States over the sea extended originally only to a stone's throw from the coast; later to an arrow's shot; firearms were invented, and by rapid progress we have arrived to the far-shooting cannon of the present age. But still we preserve the principle: "*Terræ dominium finitur, ubi finitur armorum vis.*"

"Within certain limits, there are submitted to the sovereignty of the bordering State:—
"(*a.*) The portion of the sea placed within a cannon-shot of the shore.
"(*b.*) Harbours.
"(*c.*) Gulfs.
"(*d.*) Roadsteads."

NOTE.—Certain portions of the sea are so nearly joined to the *terra firma*, that, in some measure at least, they ought to form a part of the territory of the bordering State: they are considered as accessories to the *terra firma*. The safety of the State, and the public quiet, are so dependent on them, that they cannot be contented, in certain gulfs, with the portion of the sea lying under the fire of cannon from the coast. These exceptions from the general rule of the liberty of the sea can only be made for weighty reasons, and when the extent of the arm of the sea is not large; thus, Hudson's Bay and the Gulf of Mexico evidently are a part of the open sea. No one disputes the power of England over the arm of the sea lying between the Isle of Wight and the English coast, which could not be admitted for the sea lying between England and Ireland: the English Admiralty has, however, sometimes maintained the theory of "narrow seas;" and has tried, but without success, to keep for its own interest, under the name of "King's Chambers," some considerable extents of the sea.

Klüber "Droit des Gens Modernes de l'Europe (Paris, édition 1831)," vol. i, p. 216:—

"Au territoire maritime d'un Etat appartiennent les districts maritimes, ou parages susceptibles d'une possession exclusive, sur lesquels l'Etat a acquis (par occupation ou convention) et continué la souveraineté. Sont de ce nombre: (1), les parties de l'océan qui avoisinent le territoire continental de l'Etat, du moins, d'après l'opinion presque généralement adoptée, autant qu'elles se trouvent sous la portée du canon qui serait placé sur le rivage; (2), les parties de l'océan qui s'étendent dans le territoire continental de l'Etat, si elles peuvent être gouvernées par le canon des deux bords, ou que l'entrée seulement en peut être défendue aux vaisseaux (golfes, baies, et cales); (3), les détroits qui séparent deux continents, et qui également sont sous la portée du canon placé sur le rivage, ou dont l'entrée et la sortie peuvent être défendues (détroit, canal, bosphore, sond). Sont encore du même nombre, (4), les golfes, détroits, et mers avoisinant le territoire continental d'un Etat, lesquels, quoiqu'ils ne sont pas entièrement sous la portée du canon, sont néanmoins reconnus par d'autres Puissances comme mer fermée; c'est-à-dire, comme sousmis à une domination, et, par conséquent, inaccessibles aux vaisseaux étrangers qui n'ont point obtenu la permission d'y naviguer."

Ortolan, in his "Diplomatie de la Mer," pp. 145, 153 (édition 1864), after laying down the rule, that a nation had control over the navigation in a strait or road whose width did not exceed six miles, continues:—

"On doit ranger sur la même ligne que rades, et les portes, les golfes, et les baies, et tous les enforcements connus sous d'autres dénominations, lorsque ces enforcements, formés par les terres d'un même Etat, ne dépassent pas en largeur la double portée du canon, ou lorsque l'entrée peut en être gouvernée par l'artillerie, ou qu'elle est défendue naturellement par des îles, par des bancs, ou par des roches. Dans tous ces cas, en effet, il est vrai de dire que ces golfes ou ces baies sont en la puissance de l'Etat maître du territoire qui les enserre. Cet Etat en a la possession: tous les raisonnements que nous avons fait à l'égard des rades et des ports peuvent se répéter ici. Les bords et rivages de la mer qui baigne les côtes d'un Etat sont les limites maritimes *naturelles* de cet Etat. Mais pour la protection, pour la défense plus efficace de ces limites naturelles, la coutume générale des nations, d'accord avec beaucoup de Traités publics, permettre tracer sur mer, à une distance convenable des côtes, et suivant leurs contours, une ligne imaginaire qui doit être considérée comme la frontière maritime artificielle. Tout bâtiment qui se trouve à terre de cette ligne est dit être *dans les eaux* de l'Etat dont elle limite le droit de souveraineté et de juridiction."

Hautefeuille, "Droits et Devoirs des Nations Neutres," tom. 1, tit. 1, ch. 3, § 1:—

"La mer est libre d'une manière absolue, sauf les eaux baignant les côtes, qui font partie du domaine de la nation riveraine. Les causes de cette exception sont (1) que ces portions de l'océan sont susceptibles d'une possession continue; (2) que le peuple qui les possède peut en exclure les autres; (3) qu'il a intérêt, soit pour sa sécurité, soit pour conserver les avantages qu'il tire de la mer territoriale, à prononcer cette exclusion. Ces causes connues, il est facile de poser les limites. Le domaine maritime s'arrête à l'endroit où cesse la possession continue, où le peuple propriétaire ne peut plus exercer sa puissance, à l'endroit où il ne peut plus exclure les étrangers, enfin à l'endroit où, leur présence n'étant plus dangereuse pour sa sûreté, il n'a plus intérêt de les exclure.

"Or, le point où cessent les trois causes qui rendent la mer susceptible de possession privée est le même: c'est la limite de la puissance, qui est représentée par les machines de guerre. Tout l'espace

parcouru par les projectiles lancés du rivage, protégé et défendu par la puissance de ces machines, est territorial, et soumis au domaine du maître de la côte. La plus grande portée du canon monté à terre est donc réellement la limite de la mer territoriale.

"En effet, cet espace seul est réellement soumis à la puissance du souverain territorial, là, mais là seulement, il peut faire respecter et exécuter ses lois ; il a la puissance de punir les infracteurs, d'exclure ceux qu'il ne peut pas admettre. Dans cette limite, la présence de vaisseaux étrangers veut menacer sa sûreté ; au delà, elle est indifférente pour lui, elle ne peut lui causer aucune inquiétude, car, au delà de la portée du canon, ils ne peuvent lui nuire. La limite de la mer territoriale est réellement d'après le droit primitif, la portée d'un canon placé à terre.

"Le droit secondaire a sanctionné cette disposition ; la plupart des Traités qui ont parlé de cette portion de la mer ont adopté la même règle. Grotius, Hubner, Bynkershoek, Vattel, Galiani, Azuni, Klüber, et presque tous les publicistes modernes les plus justement estimés, ont pris la portée du canon comme la seule limite de la mer territoriale qui fut rationnelle et conforme aux prescriptions du droit primitif. Cette limite naturelle a été reconnue par un grand nombre de peuples, dans les lois et règlements intérieurs.

"Les côtes de la mer ne présentent pas une ligne droite et régulière ; elles sont, au contraire, presque toujours coupées de baies, de caps, &c. ; si le domaine maritime devait toujours être mesuré de chacun des points du rivage, il en résulterait des graves inconvénients. Aussi, est-on convenu, dans l'usage, de tirer une ligne fictive d'un promontoire à l'autre, et de prendre cette ligne pour point de départ de la portée du canon. Ce mode, adopté par presque tous les peuples, ne s'applique qu'aux petites baies, et non aux golfes d'une grande étendue, comme le golfe de Gascoigne, comme celui de Lyon, qui sont en réalité de grandes parties de mer complètement ouvertes, et dont il est impossible de nier l'assimilation complète avec la haute mer."

The latest English writer, Mr. Amos, in his edition of Manning's "Law of Nations," which is praised and quoted with approval by Lord Cockburn in Queen *v.* Keyn, extends the jurisdiction of a State to the waters of bays whose width is more than six miles and less than ten :—

"An obvious right, enjoyed by every State equally, is the claim to have an equal share in the enjoyment of such things as are in their nature common to all, whether from not being susceptible of appropriation, or from not having been as yet, in fact, appropriated. Such a thing, pre-eminently, is the open sea, whether treated for purposes of navigation or fishing . . . . Nevertheless, for some limited purposes, a special right of jurisdiction, and even (for a few definite purposes) of dominion, is conceded to a State in respect of the part of the ocean immediately adjoining its own coast-line. The purposes for which this jurisdiction and dominion have been recognized are, (1) the regulation of fisheries ; (2) the prevention of frauds on Customs laws ; (3) the exaction of harbour and lighthouse dues ; and (4) the protection of the territory from violation in time of war between other States. The distance from the coast-line to which this qualified privilege extends, has been variously measured ; the most prevalent distances being that of a cannon-shot, or of a marine league from the shore . . . . In the case of bays, harbours, and creeks, it is a well-recognized custom, provided the opening be not more than ten miles in width as measured from headland to headland, to take the line joining the headlands, and to measure from that the length of the distance of a cannon-shot, or of a marine league. The limiting provision here introduced was rendered necessary by the great width of some of the American bays, such as the Bay of Fundy and Hudson's Bay, in respect of which questions relating especially to rights of fishing had arisen. At one time, indeed, the distance of six miles, in place of that of ten miles, was contended for. It is held that, in the case of straits or narrow seas less than six miles in breadth, the general jurisdiction and control is equally shared by all the States the territories of which form the coasts-lines ; and that all the States are held bound, in times of peace at any rate, to allow a free passage at all times to the ships of war of all other States."

Martens's "Précis du Droit des Gens Modernes de l'Europe." (Pinheiro-Ferriera, Ed. Paris, 1864) §§ 40, 41 :—

"Ce qui vient d'être dit des rivières et des lacs est également applicable aux détroits de mer et aux golfes, surtout, en tant que ceux-ci ne passent la largeur ordinaire de rivières, ou la double portée du canon.

"De même une nation peut s'attribuer un droit exclusif sur ces parties voisines de la mer (mare proximum) susceptibles d'être maintenues du rivage. On a énoncé diverses opinions sur la distance à laquelle s'étendent les droits du maître du rivage. Aujourd'hui toutes les nations de l'Europe conviennent que, dans la règle, les détroits, les golfes, la mer voisine, appartiennent au maître du rivage, pour le moins jusqu'à la portée du canon qui pourrait être placé sur le rivage.

"On verra ci-après que la pleine mer ne peut devenir l'objet d'une propriété plus ou moins exclusive d'une part, parce que son usage est inépuisable et innocent en lui-même, d'autre part parce que, n'étant pas de nature à être occupée, personne ne peut s'opposer à son usage ; mais de ce que la mer n'est pas susceptible de l'appropriation de l'homme, par suite de l'impossibilité pour lui de la retenir sous son obéissance, et d'en exclure les autres hommes ; et aussi, à raison de son immensité et de sa qualité d'être inépuisable, il résulte que pour les parties de l'océan qui ne réunissent pas ces conditions, pour celles qui par leur nature peuvent subir la domination de l'homme et l'exclusion des autres, pour celles, enfin, dont l'usage commun ne saurait être maintenu sans nuire à la nation intéressée, et qui sont susceptibles de propriété, le principe de la liberté s'efface et disparaît. Cela a lieu notamment pour les mers territoriales et pour les mers fermées. Par l'expression de 'mers territoriales,' il faut entendre celles qui baignent les côtes d'une nation et la servent pour ainsi dire de frontière. Ces mers sont

soumises à la nation maîtresse de la côte qu'elles baignent, et peuvent être réduites sous la puissance de la nation propriétaire qui a dès lors le droit d'en exclure les autres. La possession est soutenue, entière, de même que s'il s'agissait d'un fleuve, d'un lac, ou d'une partie de territoire continental. Aussi tous les traités reconnaissent aux nations dans un intérêt de navigation, de pêche, et aussi de défense, le droit d'imposer leurs lois dans les mers territoriales qui les bordent, de même que tous les publicistes s'accordent pour attribuer la propriété de la mer territoriale à la nation riveraine. Mais on s'est longtemps demandé quelle était l'étendue de cette partie privilégiée de la mer. Les anciens auteurs portaient très-loins les limites du territoire maritime, les uns à soixante milles, c'était l'opinion générale au quatorzième siècle ; les autres à cent milles. Loccenius, 'de Jur. Marit.,' lib. v. cap. iv. § 6, parle de deux journées de chemin ; Valin, dans son "Commentaire sur l'Ordonnance de 1681," propose la sonde, la portée du canon, ou une distance de deux lieues.

"D'autres auteurs ont pensé que l'étendue de la mer territoriale ne pouvait être réglée d'une manière uniforme, mais devait être proportionée à l'importance de la nation riveraine. Au milieu de ces opinions contradictoires il faut, suivant Hautefeuille, 'Droits et Devoirs des Nations Neutres,' 2d edit. t. i. p. 83 et suiv., pour fixer ces principes, remonter aux causes qui ont fait excepter de la règle de la liberté des mers, les eaux baignant les côtes, et qui les ont fait ranger dans le domaine de la nation riveraine. Ces causes étant que ces portions de la mer sont susceptibles d'une possession continue ; que le peuple qui les possède peut en exclure les autres ; enfin, qu'il a intérêt à prononcer cette exclusion, soit pour sa sécurité, soit à raison des avantages que lui procure la mer territoriale, le domaine maritime doit cesser là où cesse la possession continue, là où cessent d'atteindre les machines de guerre. En d'autres termes, la plus grande portée du canon placé à terre est la limite de la mer territoriale, 'terræ potestas finitur, ubi finitur armorum vis ;' et nous devons ajouter que la plupart des Traités ont adopté cette règle ; beaucoup de peuples l'ont reconnue dans leurs lois et leurs règlements intérieurs ; presque tous les publicistes l'ont regardé comme rationnelle,—notamment Grotius, Hubner, Bynkershoek, Vattel, Galiani, Azuni, Klüber.

"Au reste, le domaine maritime ne se mesure pas de chacun des points du rivage. On tire habituellement une ligne fictive d'un promontoire à l'autre, et on la prend comme point de départ de la portée du canon ; cela se pratique ainsi pour les petites baies, les golfes d'une grande étendue étant assimilés à la pleine mer. La conservation du domaine de la mer territoriale par la nation riveraine, n'est pas subordonnée à l'établissement et à l'entretien d'ouvrages permanents, tels que batteries ou forts : la souveraineté de la mer territoriale n'est pas plus subordonée à son mode d'exercice que la souveraineté du territoire même.

"Ajoutons un mot sur les mers fermées ou intérieures, qui sont les golfes, rades, baies, ou parties de la mer qui ne communiquent à l'océan que par un détroit assez resserré pour être réputées faire partie du domaine maritime de l'Etat maître des côtes. La qualité de mer fermée est subordonnée à une double condition : il faut d'une part qu'il soit impossible de pénétrer dans cette mer sans traverser la mer territoriale de l'Etat, et sans exposer à son canon ; d'autre part il faut que toutes les côtes soient soumises à la nation maîtresse du détroit."

"Mais une nation ne peut-elle acquérir un droit exclusif sur des fleuves, des détroits, des golfes trop larges pour être couverts par les canons du rivage, ou sur les parties d'une mer adjacente qui passent la portée du canon, ou même la distance de trois lieues ? Nul doute d'abord qu'un tel droit exclusif ne puisse être acquis contre une nation individuelle qui consent à le reconnaître. Cependant il semble même que ce consentement ne soit pas un requisite essentiel pour une telle acquisition, en tant que le maître du rivage se voit en état de la maintenir à l'aide du local, ou d'une flotte, et que la sûreté de ses possessions territoriales offre une raison justificative pour l'exclusion des nations étrangères. Si de telles parties de la mer sont susceptibles de domination, c'est une question de fait de savoir lesquels de ces détroits, golfes, ou mers adjacentes, situés en Europe, sont libres de domination, lesquels sont dominés (clausa), ou quels sont ceux sur la liberté desquels on dispute."

De Cussey. "Phases et Causes Célèbres du Droit Maritime des Nations." (Leipzig, ed. 1856), liv. i, tit. 2, §§ 40, 41 :—

"Mais la protection du territoire de l'Etat du côté de la mer, et la pêche qui est la principale ressource des habitants du littoral, ont fait comprendre la nécessité de reconnaître un territoire maritime. Ou mieux encore une mer territoriale dépendant de tout Etat riverain de la mer ; c'est-à-dire, une distance quelconque à partir de la côte, qui fut réputée la continuation du territoire, et à laquelle devait s'étendre pour tout Etat maritime la souveraineté spéciale de la mer."

"Cette souveraineté s'étend aux districts et parages maritimes, tels que les rades et baies, les golfes, les détroits dont l'entrée et la sortie peuvent être défendues par le canon."

"Tous les golfes et détroits ne sauraient appartenir, dans la totalité de leur surface ou de leur étendue, à la mer territoriale des Etats dont ils baignent les côtes ; la souveraineté de l'Etat reste bornée sur les golfes et détroits d'une grande étendue à la distance qui a été indiquée au précédent paragraphe ; au delà, les golfes et détroits de cette catégorie sont assimilés à la mer, et leur usage est libre pour toutes les nations."

Many authorities maintain that whenever, under the law of nations, any part of the sea is free for navigation, it is likewise free for fishing by those who sail over its surface. But without insisting upon this position, the inevitable conclusion is, that, prior to the Treaty of Washington, the fishermen of the United States, as well as those of all other nations, could rightfully fish in the open sea more than three miles from the coast ; and could also fish at the same distance from the shore

in all bays more than six miles in width, measured in a straight line from headland to headland.

The privileges accorded by Article XVIII of that Treaty are, to take fish within the territorial waters of the British North American Colonies; and the limits of territorial waters have been thus defined by the law of nations.

It is not, however, to be forgotten that, at the time when the Treaty was framed, the privileges actually enjoyed by American fishermen corresponded precisely with the rules of international law as hereinbefore set forth. And it is apparent that the present Commission was not constituted as a Tribunal to decide upon grave questions of international law; but simply to estimate what, if anything, is the greater value of the privileges accorded to the citizens of the United States by Article XVIII beyond such as they previously practically enjoyed, over and above those accorded to the subjects of Her Majesty by Articles XIX and XXI of the Treaty of Washington.

It is the manifest duty of the Commissioners to proceed upon the basis of the *status* existing at the date of the Treaty, no matter what were the claims or pretensions of either national Government; of still less consequence is it what were the claims of Colonial authorities.

By the orders of the Home Government, before and at the date of the Treaty, the American fishermen were not excluded from any bays exceeding six miles in width from headland to headland. All larger bodies of water were then treated, by the command of Her Majesty, like the open sea; and in all such bays the territorial limit was measured along the shore, according to its sinuosities, three miles from low-water mark. The Commissioners are bound to adopt the same view. This position is insisted upon, because of its practical common sense and intrinsic rectitude, and not because any doubt is entertained as to the rules and principles of international law, by which the Honourable Commission ought to be governed.

DWIGHT FOSTER,
Agent of the United States.

APPENDIX D.

Reply on behalf of Her Britannic Majesty's Government to the Answer of the United States of America.

PART I.

CANADA.

I.

THAT portion of the Answer which first claims attention embodies the views presented by the United States as to the area of the British North American fisheries.

Two things are relied on—

1. It is submitted by the United States that "independently of Treaty," and for the "purposes of fishing," the territorial waters of every country extend three miles from low-water mark, to be measured along the contour of the shores of bays according to their sinuosities, and that the rule upon which this assertion is maintained is believed by the United States to have received a traditional recognition from other Powers, including Great Britain.

2. It is urged that it is the duty of the Commissioners to "treat the question practically, and proceed upon the basis of the status actually existing when the Treaty of Washington was adopted," according to "the practical extent of the privileges enjoyed by American fishermen" at and before that date.

The Commissioners are thus invited to dismiss from their consideration all claim to compensation for the privilege of fishing in such portions of British American bays greater than six miles in width at their mouths as are beyond three miles from the shore.

It is not understood that the Answer either raises or invites the discussion of any rules or doctrines of international law, save such as bear upon the question of what are to be considered the territorial waters of a maritime State for the purposes of exclusive fishing. The contention of the Answer in relation to these doctrines which requires special attention, is that which asserts that Great Britain and other Powers have traditionally recognized a rule, by which foreigners were excluded from fishing in those bays only which are six miles, or less, in width at their mouths.

It is distinctly asserted on the part of Her Majesty's Government that this alleged rule is entirely unknown to, and unrecognized by, Her Majesty's Government, and it is submitted that no instance of such recognition is to be found in the Answer, or the Brief accompanying the same, and that none can be produced.

And while abundant argument, supported by authorities, will be found in the Brief to be submitted to the Commissioners, to establish the view never abandoned by Great Britain, and entirely adverse to that now advanced by the United States, the admission by the United States that it is not the province of the Commission to decide upon questions of international law, does not seem to be at variance with the views of Her Majesty's Government, as to the mode of conducting the present inquiry, because it is clear that, entirely independent of the unsettled doctrines of international law, the rights of Great Britain and the United States, respectively, are to be ascertained by Commissioners who are directed to confine their inquiry

exclusively to the terms of the Treaty of Washington, and the Ist Article of the Convention of 1818.

It is asserted in the Answer, at page 3,* that the Commissioners who framed the Treaty of Washington, "decided not to enter into an examination of the respective rights of the two countries under the Treaty of 1818, and the general law of nations, but to approach the settlement of the question on a comprehensive basis." It is submitted that no such decision was ever come to by the Commissioners, and in proof of this assertion, attention is directed to the Protocols of the Joint High Commission preceding the Treaty. These Protocols prove that Her Majesty's Government were prepared to discuss the question "either in detail or generally, so as either to enter into an examination of the respective rights of the two countries under the Treaty of 1818, and the general law of nations, or to approach the settlement of the question on a comprehensive basis," and in answer to an inquiry on the part of the American Commissioners as to what, in the latter case, would be the proposition of the British Commissioners, the latter replied, "the restoration in principle of the Reciprocity Treaty of 1854." The American Commissioners having declined to proceed on the basis of the Reciprocity Treaty, negotiations were again resumed, and resulted in the adoption of the clauses in the Treaty of Washington already referred to in the "Case," and which, as if to remove the possibility of a doubt, expressly make the Convention of 1818, and the respective rights of the two countries under it, the basis upon which the value of the new concessions is to be measured.

The words of Article I of that Convention, used by the United States in renouncing for ever all liberty previously "claimed or enjoyed of taking fish *within three marine miles of any of the coasts, bays, creeks, or harbours* of Her Majesty's dominions in America," seem too clear and binding for dispute, whatever notions may have previously existed among writers as to the territorial jurisdiction of a nation over its adjacent waters.

This privilege so renounced for ever is conceded for twelve years by the Treaty of Washington, and the extent of territorial waters in question is easily ascertainable.

A portion of the first section of the Answer is devoted to extracts from public documents, which were prepared as instructions of a purely temporary character, and to prevent embarrassment and loss to United States' fishermen, and the section closes with an extract from the language used by the Lord Chief Justice of England in a recent criminal case.

The special attention of the Commissioners is directed to the entire inapplicability of these extracts.

Had the word "status" in the Answer been used as meaning the legal status under the Convention of 1818, then Her Majesty's Government would be in perfect accord with that of the United States. But as it is evidently intended to mean the state of facts existing during the periods when Her Majesty's Government either granted fishing licenses to American fishermen, or otherwise voluntarily relaxed for a time their undoubted rights, then Her Majesty's Government entirely dissents. In the latter case the express words of the Convention of 1818 would be ignored, and the Commissioners asked to adopt as a basis, in lieu of that Convention, certain indulgences which Her Majesty's Government were pleased, from motives of good will and friendship, to extend to the United States' fishermen. These relaxations of legal rights were only temporary in their nature, were always given with an express reservation of the undoubted rights of Her Majesty's Government, and cannot, on any principle of law, justice, or equity, be considered by the Commission with the object of prejudicing the Government so temporarily conceding them.

As an instance of such express reservation, attention is called to a telegraphic despatch from Lord Clarendon to the British Minister at Washington, protesting against the terms of a Circular from the Secretary of the United States' Treasury, dated the 16th May, 1870, addressed to Collectors of Customs, notifying them that the Dominion Government had terminated the system of granting fishing licenses to foreign vessels, and warning American fishermen of the legal consequences of encroaching upon prohibited limits.

This is dated the 7th June, 1870, and is as follows:—

"Take an opportunity to point out to Secretary of State that Mr. Boutwell's Circular of the 16th May, 1870, respecting the Canadian Inshore Fisheries, may lead to future misunderstanding, inasmuch

* Page 86 of this volume.

as it limits the maritime jurisdiction of the Dominion to three marine miles of the shores thereof, without regard to international usage, which extends such jurisdiction over creeks and bays, or to the stipulations of the Treaty of 1818, in which the United States renounce the right of fishing within three miles, not of the coast only, but of the bays, creeks and harbours of Her Majesty's dominions in America."

In the quotation given in the Answer from the instructions issued from time to time by Her Majesty's Government and the Minister of Marine and Fisheries of the Dominion of Canada, to the commanders of Government vessels engaged in protecting the fisheries, no mention of the express reservations which were invariably inserted of the rights of Her Majesty's Government under the Convention of 1818 is made; and it is deemed at present sufficient to call the attention of the Commission to these omissions and to the text of the instructions themselves, where they will be found fully and clearly made.

It is confidently submitted and urged on the part of Her Majesty's Government, that it is not "the manifest duty of the Commissioners" to award compensation on the basis of "*the practical extent of the privileges enjoyed by American fishermen at and before the Treaty of Washington*," unless those privileges were enjoyed legally, as a matter of right, and not temporarily, and by the favour of Great Britain; and it is further urged that the true and equitable basis upon which the Commissioners should proceed, is that of the legal status, at the date of the Treaty of Washington, of American fishermen in British waters under the Convention of 1818.

The quotation from the Judgment of the Lord Chief Justice of England in the case of the "Franconia," already alluded to, has no reference whatever to any subject involved in this inquiry, but to a question of an entirely different character; and it is sufficient to call the attention of the Commission to the Judgment itself, from which the quotation is made, reported, L. R., 2 Ex. Division, page 63, to prove its utter irrelevancy.

The attention of the Commission is called to the Judgment of the Judicial Committee of the Privy Council, delivered the 14th February, 1877, in the case of the Direct United States' Cable Company against the Anglo-American Telegraph Company, in which Judgment the following language is used:—"There was a Convention made in 1818 between the United States and Great Britain, relating to the fisheries of Labrador, Newfoundland, and His Majesty's other possessions in North America, by which it was agreed that the fishermen of the United States should have the right to fish on part of the coast (not including the part of the Island of Newfoundland on which Conception Bay lies), and should not enter any 'bays' in any other part of the coast, except for the purpose of shelter and repairing damages, and purchasing wood, and obtaining water, and no other purposes whatever. It seems impossible to doubt that this Convention applied to all bays, whether large or small, on that coast, and consequently to Conception Bay."

II.

Section 2 of the Answer is devoted to a consideration of the reciprocal privileges accorded to Her Majesty's subjects by Articles XIX and XXI of the Treaty of Washington, and contests the right of the Colony of Newfoundland to be considered in the sum to be awarded.

In this section it is contended that no account is to be taken of the right "to admit fish and fish oil free of duty from the United States into Canada and Prince Edward Island in the estimate and adjustment of equivalents which the Commissioners are directed to make." This proposition is not assented to, but, on the contrary, it is contended that the Commissioners cannot ignore these concessions "in their adjustment of equivalents." Article XXII of the Treaty provides that, having regard to the privileges accorded by the United States to the subjects of Her Britannic Majesty—as those privileges are stated in Articles XIX and XXI—the Commissioners shall determine the compensation to be paid by the United States to Her Britannic Majesty, in return for the privileges accorded to the citizens of the United States under Article XVIII. It is contended in the Answer that the privileges accorded by the United States to the subjects of Her Majesty, and having regard to which the amount of compensation is to be awarded, are the absolute benefits which Canadians will derive from the free admission of their fish and fish oil into the United States, without regard to the reciprocal rights of the citizens of the United States to the free admission of their fish and fish oil into Canada. Such a

contention is not based upon a proper construction of Articles XXI and XXII. Article XXII expressly directs the Commissioners, in making their award, to have regard to the privileges accorded by the United States to the subjects of Great Britain, *as these privileges are stated* in Articles XIX and XXI. The right or privilege, as stated in the latter Article, is not the absolute right of one country to export free into the other, but a reciprocal right conferred and to be enjoyed in common. The value of this privilege to Canada is simply the reciprocal value as stated in the Article itself, and in putting a pecuniary estimate upon it the *reciprocal* character of the privilege cannot be ignored.

III.

The advantages so explicitly set forth in the Case of freedom to transfer cargoes, outfit vessels, obtain ice, procure bait, and engage hands, &c., are not denied in the Answer. Nor is it denied that these privileges have been constantly enjoyed by American fishermen under the operation of the Treaty of Washington. Neither is the contention on the part of Her Majesty's Government that all these advantages are necessary to the successful pursuit of the inshore or outside fisheries attempted to be controverted. But it is alleged in the 3rd section of the Answer that there are Statutes in force, or which may be called into force, to prevent the enjoyment by American fishermen of these indispensable privileges.

It is presumed that by these "former inhospitable Statutes," as they are termed by the United States, are meant the following, viz. :—

1. The Imperial Act 59 Geo. III, cap. 38.
2. The Acts of the Parliament of Canada, 31 Vict., cap. 61, passed 1868: 33 Vict., cap. 15, passed 1870; and 34 Vict., cap. 33, passed 1871.
3. The Act of Parliament of Prince Edward Island, 6 Vict., cap. 14, passed 1843.
4. The Act of Parliament of New Brunswick, 16 Vict., cap. 69, passed 1853.
5. The Act of Parliament of Nova Scotia, 27 Vict., cap. 94, passed 1864.

It is scarcely necessary to mention that these Statutes were passed by the several Parliaments solely to enforce the provisions contained in the Convention of 1818, and they are entirely suspended for the period during which Great Britain has conceded the fishery privileges under the Treaty of Washington to the inhabitants of the United States, by the following enactments :—

1. The Act of the Imperial Parliament, 35 and 36 Vict., cap. 45.
2. The Act of the Dominion of Canada, 35 Vict., cap. 2, entitled an Act relating to the Treaty of Washington, 1871.
3. The Act of Parliament of Prince Edward Island, 35 Vict., cap. 2.

Previous to the date of the Treaty of Washington, American fishermen were, by the Ist Article of the Convention of 1818, admitted to enter the bays and harbours of His Britannic Majesty's dominions in America for the purpose of shelter, and of purchasing wood, and of obtaining water, and "*for no other purpose whatever.*"

By the terms of Article XVIII of the Treaty of Washington, United States' fishermen were granted "permission to land upon the said coasts and shores and islands, and also upon the Magdalen Islands, for the purpose of drying their nets and curing their fish."

The words "*for no other purpose whatever*" are studiously omitted by the framers of the last-named Treaty, and the privilege *in common* with the subjects of Her Britannic Majesty to take fish and to land for fishing purposes, clearly includes the liberty to purchase bait and supplies, tranship cargoes, &c., for which Her Majesty's Government contend it has a right to claim compensation.

It is clear that these privileges were not enjoyed under the Convention of 1818, and it is equally evident that they are enjoyed under the Treaty of Washington.

IV.

In section 3 of the Answer it is stated that the fishing pursuits of American fishermen in British tertitorial waters are limited to the mackerel and herring fisheries; and that the halibut and cod fisheries, including the sub-varieties of hake, haddock, cusk, and pollock, belong "exclusively" to the open sea. This statement is altogether erroneous, as evidence will fully establish. It will further be proved, not only that United States' citizens actually fish within British waters for the various kinds of fishes and baits named in the Case, but also that the deep-sea

fisheries proper, which are admittedly pursued in the vicinity of British American coasts, could not be carried on profitably, if, indeed, at all, by American fishermen without the privilege of resorting to the inshores for the purpose of procuring bait, and without availing themselves of facilities for preserving the same in a fit state for effective use, which the Treaty of Washington affords. It is admitted on page 8* of the Answer, that the herring thus procured forms "the best bait for cod and other similar fish," but asserted that it is obtained chiefly by purchase, because the American fishermen "find it more economical to buy than to catch it."

It has been shown that this privilege of purchasing bait is derived through the provisions of the Treaty. In some places within the limits now thrown open to them, as will be proved, United States' citizens, since the Washington Treaty, catch bait for themselves, where formerly they used to buy it.

Notwithstanding the statement to the contrary at page 8 of the Answer, it can be shown in evidence that the American fishermen do land on the British shores to haul and dry their nets and cure their fish.

On page 9 it is alleged that the increased produce of the fisheries obtained by British subjects during the past seven years is due to the "benign influences" of the Treaty of Washington. This Her Majesty's Government distinctly deny, and contend that it has been the result of progress and improvement, from increased numbers of men and materials, from improved facilities, and from greater development, coincident with the system of protection and cultivation applied to them.

The reciprocal concession of fishing privileges in American waters being absolutely valueless, as set forth in the Case, cannot be taken into account.

The Commissioners will readily perceive, on referring to the table appended to the Case—

1. That the increase of catch by British subjects consists principally of those kinds of fish which are not affected in any way whatever by the remission of the United States' Customs duties under the Treaty of Washington, inasmuch as fresh fish was admitted free of duty into the United States at the time of the Treaty of Washington, and for some time previously.

2. That the aggregate annual value of fish caught by the British subjects increased in much greater ratio for the four years preceding the complete operation of the Treaty than for succeeding years.

3. That the value of the British catch in 1872—the year before the Treaty took effect as regards Customs duties—amounted to more than double that of 1869, while the value of 1875 was considerably less than that of 1873.

The statement made in the Answer that, since the date of the Washington Treaty, the American cod and mackerel fisheries have declined, cannot for a moment be admitted. On the contrary, it is asserted that they have shown a gradual and progressive increase over the average catch of those years which preceded the signing of the Treaty.

The important statement hazarded on page 20,† that "almost the only fish taken by the Americans within the three-mile limit off the coasts of the British Provinces are the mackerel, and that of the entire catch of these fish only a very small fractional part is so taken," Her Majesty's Government feel called upon to deny in the strongest terms. Not only will it be shown that codfish in limited quantities, and herring in large quantities, are so taken, but that by far the larger proportion of the catch of mackerel in British waters is taken within "the three-mile limit;" and the right to fish in the entire extent of waters claimed by the United States as "the open ocean free to all" is practically valueless, when not coupled with the privileges accorded by the Treaty of Washington; and further that without the liberty of fishing within this limit the entire fishery would have to be abandoned by the American fleet as useless and unremunerative.

In the language of John Quincy Adams, one of the United States' Commissioners at Ghent, in a work published by him so long ago as 1822—

"The Newfoundland, Nova Scotia, Gulf of St. Lawrence, and Labrador fisheries are, in nature and in consideration both of their value and of the right to share in them, *one* fishery. To be cut off from the enjoyment of that right would be to the people of Massachusetts similar in kind, and comparable in degree, with an interdict to the people of Georgia or Louisiana to cultivate cotton or sugar. To be cut off even from that portion of it which was within the exclusive British jurisdiction, in the strictest sense, within the Gulf of St. Lawrence and on the coast of Labrador, would have been like an interdict upon the people of Georgia or Louisiana to cultivate with cotton or sugar three-fourths of those respective States."

* Page 86 of this volume.

† Page 92.

And Andrews, at page 35 of his official Report 1852, to the Secretary of the United States' Treasury, says :—

"A free participation in the sea fisheries near the shores of the Colonies is regarded as the just prescriptive privilege of our fishermen. Without such privilege our deep-sea fisheries in that region will become valueless."

And United States' Commander Shubrick, in 1853, reported :—

"The shores of Prince Edward Island abound with fish of all kinds. The mackerel strike in early in the season, *and can only be taken close inshore.*" (Ex. Doc. 1853-54, No. 21, page 32.)

Numbers of similar authorities can be produced.

With regard to the statement in page 10* of the Answer, that for a number of years past the value of the mackerel fishery in British waters has diminished, while during the same period the quantity and quality of these fish taken off the coast of New England has greatly improved, it is sufficient to mention that the result of the present season's fishing, so far, in American waters, has been very small, and the indications are that the remainder of the season will also be poor. On the other hand, the waters of the British Canadian territories teem with mackerel as in former years.

The catch of mackerel in British waters by Canadian fishermen has actually increased during several years past. Recent reports show that the prospects for the current season are good, and that American fishing vessels are preparing to turn them to profitable account, the mackerel fishery off the United States shores having failed this year. The "Cape Ann Weekly Advertiser" of June 14th, 1877, notices the early appearance of mackerel in the Bay of St. Lawrence, and anticipates "a more successful season than that of 1876, and that quite a large fleet will engage in the Bay fishery." The same journal of June 29th, 1877, records "a good mackerel catch" along the eastern shore of Nova Scotia. The Boston "Commercial Bulletin" of July 7, 1877, states that "mackerel are plenty" at Prince Edward Island; also that "quite a large fleet" of mackerel fishing vessels had arrived at Boston and Gloucester from the United States coast, "but most of them report no catch, and the average will not exceed a few barrels per vessel." The same paper, under date of July 14, 1877, states on official authority that the catch of mackerel "is very light," the returns to July 12 this year being only 28,043 barrels, against 81,193 barrels to July 1 last year (1876). The "Cape Ann Weekly Advertiser" of July 13, 1877, contains the following announcement;—

"A few small mackerel have been taken off shore, sufficient to meet the local demand for fresh mackerel, but the fleet have met with ill-success, and none of consequence have been landed. . . . The entire receipts for July *from a large fleet* will not exceed 800 barrels." . . . "The schooner 'Allen Lewis,' from the Magdalen Islands, for Booth Bay, reports small codfish plenty at the Magdalens, and numerous schools of large mackerel in the North Bay, between East Point, Prince Edward Island, and Port Hood. The vessel was hove to, and several large mackerel taken. The skipper of the 'Allen Lewis' thinks the prospect for the mackerel fishery in the Bay as good as he ever knew it."

These extracts may be taken with many others as proof of the uncertain character of the mackerel fishery on the American coast, although the Answer describes it as being "unsurpassed by any in the world" (p. 19†). They at the same time afford fresh indications of the continued dependence of the American mackerel fishermen on the British inshores, which really are in a thriving condition, and yield increased returns every year.

Certain expressions used in the Answer which reflect unjustly on the Dominion fisheries and fishermen cannot be passed over in silence. They are contained in the following paragraphs:—

"All descriptions of fish found in British waters also abound along this portion of the coast of the United States,"—that is, down to the thirty-ninth parallel of north latitude.—"If the provincial fishermen invested the same amount of capital in the business, and exerted equal enterprise, industry and skill, they would find the American waters fully as valuable to them as theirs are to fishermen of the United States" (p. 18‡). This admission of value conflicts with the assumption (p. 13) that the inshore fisheries possess no "commercial or intrinsic value."

At pages 19 and 20,§ after describing the United States inshore fisheries for mackerel as being unsurpassed by any in the world, it is said that "they combine

* Page 88 of this volume. † Page 91. ‡ Page 90. § Pages 91 and 92.

advantages, compared with which the Dominion fisheries are uncertain, poor in quality, and vastly less in quantity. The Canadian fisheries are a long voyage from any market whatever, and involve far more exposure to loss of vessels and life. These fisheries along the shores of the United States are now open to the competition of the cheap-built vessels, cheap-fed crew, and poorly-paid labour of the Dominion fishermen, who pay trifling taxes, and live, both on board their vessels and at home, at less than half the expense of American fishermen. It is only from lack of enterprise, capital, and ability, that the Dominion fishermen have failed to use them."

It might suffice to remark, in answer to these statements, that the conditions are not at all analogous. The Dominion fishermen have at their own doors the richest fisheries in the world. They produce from them an annual value far exceeding that of the fisheries carried on by New England fishermen in their own waters. It would be simply absurd for them therefore to make long and costly voyages to American waters for the purpose of engaging there in fishing operations which fail to support American fishermen, as evidenced by their annual appearance in great numbers on the coasts of Canada. It will be shown that, according to the testimony of public men and others in the United States, the American fisheries in former years have been on the verge of ruin,—that American fishermen have pursued their calling in despair, although aided by liberal bounties, drawbacks and allowances,—and that their business has been in a "sinking state" because of their exclusion from the inshore fisheries of the British Provinces. It seems, therefore, somewhat out of place to claim for them such superiority at the expense of others; particularly so in view of the fact that the fishing classes of a population numbering 4,000,000 produce more fish from the waters of Canada than the New England contingent of 40,000,000 of people can produce in their own fisheries, which are said to be (p. 18*) "nearly as extensive territorially, and equally valuable," as those of Canada, abounding in "all descriptions of fish found in British waters."

V.

The Answer (pp. 18 and 19)* lays much stress on the importance to Canadian fishermen of the menhaden bait fishery on the coasts of the New England States. The menhaden is here represented to be the best bait for mackerel, and is said to inhabit exclusively the American coast. An entirely fictitious value has been attached to this fishery. British fishermen do not frequent United States waters for the purpose of catching bait of any kind, or for any other purposes connected with fishing, consequently the privilege of entering those waters to catch menhaden is of no practical value. Any bait of that description which they require may be purchased as an article of commerce.

There are not now, nor have there ever been, Treaty stipulations to prevent British fishermen from entering American waters to buy bait, if they prefer to do so. As a matter of fact, whatever menhaden bait British fishermen use, is either purchased from American dealers or from Canadian traders, who import and keep it for sale like any other merchandise. Reference is made in the Answer to the possible contingency of legislation prohibiting the export or sale of menhaden bait, the implied consequence being a serious disadvantage to Canadian fishermen in prosecuting the mackerel fishery. It would in such contingency be necessary to use other baits equally good, or resort to some other method of fishing, such as that described at page 10, enabling the fishermen to dispense with bait. Moreover, it is well known that menhaden are now caught in the open sea, many miles distant from the American coast. The Answer asserts, at page 19,* that "it is entirely an inshore fishery;" also that menhaden "are caught solely with seines near the shore." It can be proved that menhaden are chiefly caught off shore, frequently "out of sight of land."

Mr. S. L. Boardman, of Augusta, Maine, in an interesting report to the State Board of Agriculture, of which he is Secretary, published in 1875, at page 60, says:—

"Parties engaged in taking menhaden now go off ten or twenty miles from shore, whereas they formerly fished near the coast, and they now find the best and most profitable fishing at that distance."

This fish is included among the shore fishes described by Professor S. F. Baird as having suffered "an alarming decrease" along the inshores of the United States, owing partly to excessive fishing throughout their spawning time in order to supply the oil factories.

* Pages 90 and 91 of this volume.

Chapter 5 of the Answer deals with "the specific benefits which the Treaty directs the Commission to regard in its comparison and adjustment of equivalents." The admission of British subjects to United States' fishing grounds has been dealt with at length in the third chapter of the Case. There is nothing in the Answer on this subject calling for any reply, excepting the statement at page 20, that Dominion fishermen "have in the United States' waters to-day over 30 vessels equipped for seining, which, in company with the American fleet, are sweeping the shores of New England." Leaving out of question the "American fleet," which has nothing whatever to do with the matter, the correctness of the statement is directly challenged, in so far as it implies that these 30 vessels, or any of them, are British bottoms, owned by Dominion fishermen; and the United States is hereby called upon to produce evidence in its support.

VI.

The free admission of fish into the markets of the United States is claimed in the Answer to be of enormous pecuniary value to the Canadian exporter. In support of this contention certain extracts are given on page 20, purporting to be contained in a despatch from Lord Elgin to Mr. Webster, dated June 24, 1851, and in quoting these extracts, it is stated that Her Majesty's Government were prepared to throw open the fisheries of the British North American Colonies to the United States fishermen, if the United States Government would admit fish free of duty.

The quotations given are not contained in a despatch from Lord Elgin, who was then Governor-General of Canada, and not British Minister at Washington, but in an extract inclosed in a despatch addressed on June 24, 1851, by Sir H. Bulwer to Mr. Webster, and being given without the despatch in which they were inclosed, are made to convey a meaning at variance with the actual proposal made. The despatch with the extract is as follows:—

"Sir, "*Washington*, 24 *June*, 1851.

"I have already expressed to you at different periods, and especially in my note of the 22nd March last, the disappointment which was experienced in Canada, when, at the close of the last Session of Congress, it was known that no progress had been made in the Bill which had been brought forward for three years successively, for reciprocating the measure which passed the Canadian Legislature in 1847, and which granted to the natural produce of this country an entry, free of duty, into Canada, whensoever the Federal Legislature of the United States should pass a measure similarly admitting into the United States the natural produce of the Canadas.

"This disappointment was greater, inasmuch as the Canadian Government has always adopted the most liberal commercial policy with respect to the United States, as well in regard to the transit through its canals, as in regard to the admission of manufactured goods coming from this country.

"I have now the honour to inclose to you the copies of an official communication which I have received from the Governor-General, Lord Elgin, by which you will perceive that unless I can hold out some hopes that a policy will be adopted in the United States, similar to that which has been adopted in Canada, and which the Canadian authorities would be willing, if met in a corresponding spirit, to carry out still farther, the Canadian Government and Legislature are likely forthwith to take certain measures which, both in themselves and their consequences, will effect a considerable change in the commercial intercourse between the Canadas and the United States.

"I should see with great regret the adoption of such measures, and I am induced to hope, from the conversations I have recently had with you, that they will be unnecessary.

"The wish of Her Majesty's Government, indeed, would be rather to improve than impair all relations of friendship and good neighbourhood between Her Majesty's American possessions and the United States, and I feel myself authorized to repeat to you now, what I have at different times already stated—to Mr. Clayton and yourself—viz., that Her Majesty's Government would see with pleasure any arrangement, either by Treaty or by legislation, establishing a free interchange of all natural productions, not only between Canada and the United States, but between the United States and all Her Majesty's North American Provinces; and, furthermore, I am willing to say that, in the event of such an arrangement, Her Majesty's Government would be ready to open to American shipping the waters of the River St. Lawrence, with the canals adjoining, according to the terms of the letter which I addressed to Mr. Clayton, on the 27th March, 1850, for the information of the Committee on Commerce in the House of Representatives, and to which I take the liberty of referring you, whilst I may add that Her Majesty's Government would, in this case, be likewise willing to open to American fishermen the fisheries along the coasts of Nova Scotia and New Brunswick, according to the conditions specified in the inclosed extract from instructions with which I am furnished.

"The willingness to grant to American citizens, on such reasonable conditions, two important privileges, so long enjoyed exclusively by the subjects of Great Britain, will testify clearly to the spirit by which the British Government is on this occasion animated; and, as affairs have now arrived at that crisis in which a frank explanation of the views of either party is necessary for the interests and right understanding of both, I take the liberty of begging you to inform me whether you are disposed, on the part of the United States, to enter into such a Convention as would place the commercial relations between the United States and the North American Colonies on the footing which I

have here proposed, or whether, in the event of there appearing to you any objection to proceed by Convention in this matter, you can assure me that the United States' Government will take the earliest opportunity of urgently recommending Congress to carry out the object aforesaid by the means of legislation.

"I avail, &c.
(Signed) "H. L. BULWER.

"Hon. D. Webster,
"&c. &c."

(Extract.)

"Her Majesty's Government are prepared, on certain conditions, and with certain reservations, to make the concession to which so much importance seems to have been attached by Mr. Clayton, viz., to throw open to the fishermen of the United States the fisheries in the waters of the British North American Colonies, with permission to those fishermen to land on the coast of those Colonies for the purpose of drying their nets and curing their fish; provided that in so doing they do not interfere with the owners of private property, or with the operations of British fishermen.

"Her Majesty's Government would require, as an indispensable condition, in return for this concession, that all fish, either fresh or cured, imported into the United States from the British North American possessions, in vessels of any nation or description, should be admitted into the United States duty free, and upon terms in all respects of equality with fish imported by citizens of the United States.

"N.B.—As the concession above stated applies solely to the sea fishery, the fisheries in estuaries and mouths of rivers are not of course included.

"Her Majesty's Government do not propose that any part of this arrangement should apply to Newfoundland."

How, after reading the above, can it be asserted that Her Majesty's Government made an offer to throw open the fisheries in return for the free admission of fish? This offer was part only of a general proposition to put the commercial relations between the United States and the British North American Colonies upon a better footing, and it was expressly made contingent upon the establishment of *the reciprocal free interchange of all natural productions.*

VII.

The 4th section, and a very large additional portion of the Answer, is devoted to a consideration of the advantages alleged to be derived by British subjects from the provisions of the Treaty of Washington. These are:—1st, increased catch of fish taken by Colonial fishermen, as the result of the admission of American fishermen into British waters; 2nd, incidental benefits arising to the inhabitants of the Canadian fishing villages, and others on the coast of the maritime provinces, from traffic with American fishermen.

This subject is introduced for the purpose of diminishing any compensation to which Great Britain may be entitled. In the first place, these alleged benefits are not founded in fact, and, secondly, their consideration is beyond the duty of the Commissioners and the scope of the inquiry.

The attention of the Commission is directed to the entire absence of anything whatever in the Treaty to warrant the introduction of this large mass of extraneous matter in the Answer, inasmuch as the Commissioners, when estimating any advantage which may accrue to Great Britain under the Treaty, are confined to the subjects named in Articles XIX and XXI.

There are, it will be apparent, many reciprocal advantages which both nations may enjoy, as the result of the Treaty, to certain classes of individuals not within the province of the Commission to consider, and those above alluded to are clearly and unmistakably among the number.

To support these assertions in the Answer, lengthy extracts are quoted from speeches delivered in the Canadian House of Commons, upon the occasion of the debate on the adoption of the Treaty of Washington.

The speakers, it must be considered, were addressing themselves to the Treaty of Washington as a whole, and not simply to the Fishery Clauses of that Treaty. In dealing with these clauses, not one of those speakers ventured the assertion or opinion that the advantages to be derived by Canada were in any way or sense equivalent to those conferred upon the United States. They spoke, and the assembly by them addressed was impressed, with the full knowledge of the clauses which provide for the assessment and payment to Canada of full compensation for the privileges secured by Article XXIII of the Treaty.

It is reasonable to assume, considering especially the occasion and circumstances

of the debate, the numerous issues there raised inapplicable to the present discussion, and the forcible arguments offered in speeches not quoted, that the Commissioners will only give such weight to opinions as are relevant to, and consistent with, the testimony to be produced before them.

The debate in the United States' Senate on the subject of the adoption of the Treaty of Washington was held with closed doors, and thus it is not possible to cite the opinions then offered. It may, however, be mentioned that many eminent statesmen and public writers in the United States maintain that free access to the British American fisheries is highly promotive of her commerce, and absolutely essential to her mercantile and naval greatness.

And when the Reciprocity Treaty was under discussion before the United States' Senate in 1852, distinguished American statesmen fully acknowledged the value of the Canadian fisheries to the fishermen of the United States. Mr. Secretary Seward said :—

"Will the Senate please to notice that the principal fisheries in the waters to which these limitations apply, are the mackerel and the herring fisheries, and that these are what are called 'shoal fisheries;' that is to say, the best fishing for mackerel and herrings is within three miles of the shore. Therefore, by that renunciation, the United States renounced the best mackerel and herring fisheries. Senators, please to notice, also, that the privilege of resort to the shore constantly to cure and dry fish, is very important. Fish can be cured sooner, and the sooner cured the better they are, and the better is the market price. This circumstance has given to the Colonies a great advantage over us in this trade. It has stimulated their desire to abridge the American fishing as much as possible; and, indeed, they seek naturally enough to procure our exclusion altogether from the fishing grounds."

Further on, alluding to the construction of the Convention of 1818, as regards large bays, Mr. Seward said:—

"While that question is kept up, the American fisheries, which were once in a most prosperous condition, are comparatively stationary or declining, although supported by large bounties. At the same time the provincial fisheries are gaining in the quantity of fish exported to this country, and largely gaining in their exportations abroad.

"Our fishermen want all that our own construction of the Convention gives them, and want and must have *more*—they want and must have the privilege of fishing within the three inhibited miles, and of curing fish on the shore."

Senator Hamlin, of Maine, after describing the magnitude and importance of the American fisheries "as the great fountains of commercial prosperity and naval power," declared that if American fishermen were kept out of these inshore waters, the "immense amount of property thus invested will become useless, and leave them in want and beggary, or in prison in foreign gaols."

In the House of Representatives, Mr. Scudder, of Massachusetts, referring to the mackerel, said :—

"These fish are taken in the waters nearer the coast than the codfish are. A considerable proportion, from one-third to one-half, are taken on the coasts, and in the bays and gulfs of the British Provinces. The inhabitants of the Provinces take many of them in boats and with seines. The boat and seine fishery is the more successful and profitable, and would be pursued by our fishermen, were it not for the stipulations of the Convention of 1818, betwixt the United States and Great Britain, by which it is contended that all the fisheries within three miles of the coasts, with few unimportant exceptions, are secured to the Provinces alone."

Mr. Tuck, of New Hampshire, said :—

"This shore fishery which we have renounced is of great value, and extremely important to American fishermen.

* * * * * *

"From the first of September to the close of the season, the mackerel run near the shore, and it is next to impossible for our vessels to obtain fares without taking fish within the prohibited limits.

* * * * * *

"The truth is, our fishermen need absolutely, and must have, the thousands of miles of shore fishery which have been renounced, or they must always do an uncertain business. If our mackerel men are prohibited from going within three miles of the shore, and are forcibly kept away (and nothing but force will do it), then they may as well give up their business first as last. It will be always uncertain.

"They (the American fishermen) want the shore fisheries; they want a right to erect and maintain structures on shore to cure cod-fish as soon as taken, thus saving cost, and making better fish for market; and believing their wishes to be easy of accomplishment, they will not consent to the endurance of former restrictions, the annoyances and troubles of which they have so long felt."

The foregoing statements are amply sustained by Reports which have been published by the United States' Government and by other American statesmen and writers on this subject, and which can be laid before the Commission.

VIII.

The United States contend, at page 31* of the Answer, that the remission of duties to Canadian fishermen during the four years which have already elapsed under the operation of the Treaty has amounted to about 400,000 dollars annually; and in connection with this statement the following principle is laid down:—

"When a tax or duty is imposed upon only a small portion of the producers of any commodity, from which the great body of its producers are exempt, such tax or duty necessarily remains a burden upon the producers of the smaller quantity, diminishing their profits, and cannot be added to the price, and so distributed among the purchasers and consumers."

Without controverting the correctness of this principle in its application to certain conditions of international commerce, it cannot be admitted to be universally correct, but the accuracy of the statement that the remission of duties has amounted to 400,000 dollars annually, or anything like that amount, is challenged. In the United States the demand for mackerel is large, but not unlimited. That demand cannot ordinarily be supplied by fish taken in United States' waters, and it will be proved that the average prices obtained by the Canadian exporter into the United States, during those years in which foreign fishermen were excluded from British American waters, in face of the duty of 2 dollars per barrel, have been quite equal to the prices realized since these waters have been thrown open to American fishermen, and the duties removed.

Upon a careful examination of all the facts to be submitted, the Commissioners will, it is confidently believed, be satisfied that the remission of duties upon mackerel, coupled with the throwing open of Canadian fishing grounds to the American fishermen, has not resulted in pecuniary profit to the British fisherman, but, on the contrary, to the American dealer or consumer. At the same time it is frankly admitted that during those periods when American fishermen enjoyed, as stated at page 9† of the Answer, the privilege of fishing in Canadian waters, and Canadian-caught fish were subject to duty, that duty may have been paid to a certain extent by the exporter, increasing or lessening in proportion as the catch of United States' vessels in Canadian waters was small or great.

In conclusion, it is submitted that the principle insisted on by the United States on page 31* of the Answer, in regard to *the burden of duty falling upon the producer*, already quoted, is conclusive in showing the value at which the United States estimate the compensation to be paid for the concessions granted to them by the Treaty of Washington.

In this relation, Her Majesty's Government calls particular attention to the offer made by the United States' Commissioners during the negotiation preceding that Treaty, as appears from the Protocols of the Conference. That offer is expressed in the following words:—

"That inasmuch as Congress had recently more than once expressed itself in favour of the abolition of the duties on coal and salt, they would propose that coal, salt, and fish be reciprocally admitted free, and that, inasmuch as Congress had removed the duty from a portion of the lumber heretofore subject to duty, and as the tendency of legislation in the United States was toward the reduction of taxation and of duties in proportion to the reduction of the public debt and expenses, they would further propose that lumber be admitted free of duty from and after the 1st July, 1874."

The British Commissioners declined the offer, on the ground of its inadequacy, unless supplemented by a money payment; and it was subsequently withdrawn.

This offer of the American Commissioners embraced the free admission into the United States of fish and fish oil, coal, and salt, to which lumber was to be added after the 1st July, 1874.

The Treaty, as subsequently agreed upon, confined the reciprocal remission of duty to fish and fish oil.

The difference, then, between the offer of the American Commissioners and the actual Treaty concessions, lies in the free admission of fish and fish oil, while coal, salt, and lumber are still subject to duty. Her Majesty's Government are prepared to prove that upwards of 17,000,000 dollars would have been the aggregate remis-

* Page 96 of this volume. † Page 87.

sions upon these three last-named articles for the term of years over which the Treaty extends, after deducting the duties upon the same articles when imported into Canada from the United States; and upon the principle enunciated as an axiom in the Answer of the United States, it may be fairly assumed that this sum of 17,000,000 dollars is the value which the United States' High Commissioners themselves placed upon the fishery privileges which they obtained for their country under the Treaty of Washington, over and above the privileges conceded to Great Britain, and now enjoyed under the Treaty.

PART II.

NEWFOUNDLAND.

In the Answer to the Case, it is contended that "In regard to Newfoundland no special remarks seem to be required at this point, except that by Article XXXII the provisions and stipulations of Articles XVIII to XXV inclusive are extended to that Island, so far as they are applicable. But there is no previous mention of Newfoundland in the Treaty; and it seems a strained and unnatural construction of Article XXXII to hold that by this general language it was intended to make the provisions as to this Commission applicable thereto. The United States assert that the jurisdiction of the Commissioners does not extend to inquiring whether compensation should be made for the inshore fisheries of that Island, both because the language of the Treaty does not authorize them to do so, and because the extensive rights to the inshore fisheries of that Island, and to dry and cure fish upon its shores, already possessed by the United States under the Convention of 1818, render it extremely improbable that any idea of possible compensation to that Island could have been entertained by either of the High Contracting Powers when the Treaty was framed."

This contention on the part of the United States, to exclude from the jurisdiction of the Commissioners the claim of the Colony of Newfoundland for compensation, is submitted to be wholly untenable, and it can scarcely be supposed that such a position is intended to be seriously urged by the United States. It will be seen by reference to Article XXXII that it is provided that—"The provisions and stipulations of Articles XVIII to XXV of this Treaty, inclusive, shall extend to the Colony of Newfoundland, as far as they are applicable." If it had been contemplated to exclude Newfoundland from a claim for compensation, the provisions and stipulations of Articles XXII to XXV inclusive, which have reference only to the assertion of the British claim for compensation, and the mode of adjustment thereof, would not have been expressly extended to Newfoundland, but the Articles XVIII to XXI inclusive, would have been alone sufficient for securing the mutual concessions therein contained. No language could have been employed more plainly providing for the right of Newfoundland, conjointly with the Dominion of Canada, to claim compensation for the greater value of the concessions as regards the Colony made to the United States over those conceded by the latter to Newfoundland. The assertion made that the United States possessed extensive rights to the inshore fisheries of Newfoundland appears to render it desirable that the nature and extent of these rights should be clearly placed before the Commissioners. By Article XIII of the Treaty of Utrecht, A.D. 1713, it is stipulated:—

"The Island called Newfoundland, with the adjacent islands, shall, from this time forward, belong of right wholly to Great Britain; and to that end the town and fortress of Placentia, and whatever other places in the said Island are in the possession of the French, shall be yielded and given up within seven months from the exchange of the ratifications of this Treaty, or sooner, if possible, by the Most Christian King, to those who have a commission from the King of Great Britain for that purpose. Nor shall the Most Christian King, his heirs and successors, or any of their subjects, at any time hereafter, lay claim to any right to the said Island and islands, or to any part of it or them. Moreover, it shall not be lawful for the subjects of France to fortify any place in the said Island of Newfoundland, or to erect any buildings there, besides stages made of boards, and huts necessary and usual for drying of fish, or to resort to the said Island, beyond the time necessary for fishing and drying of fish. But

it shall be allowed to subjects of France to catch fish and to dry them on land in that part only, and in no other besides that, of the said Island of Newfoundland, which stretches from the place called Cape Bonavista to the northern point of the said Island, and from thence running down the western side reaches as far as the place called Point Riche. But the island called Cape Breton, as also all others, both in the mouth of the River St. Lawrence, and in the Gulf of the same name, shall hereafter belong of right to the French, and the Most Christian King shall have all manner of liberty to fortify any place or places there."

And by Article V of the Treaty of Versailles, A.D. 1783, it is further agreed that,—

"His Majesty the Most Christian King, in order to prevent the quarrels which have hitherto arisen between the two nations of England and France, consents to renounce the right of fishing, which belongs to him in virtue of the aforesaid Article of the Treaty of Utrecht, from Cape Bonavista to Cape St. John, situated on the eastern coast of Newfoundland, in fifty degrees north latitude; and His Majesty the King of Great Britain consents, on his part, that the fishery assigned to the subjects of His Most Christian Majesty, beginning at the said Cape St. John, passing to the north, and descending by the western coast of the Island of Newfoundland, shall extend to the place called Cape Ray, situated in forty-seven degrees fifty minutes latitude. The French fishermen shall enjoy the fishery which is assigned to them by the present Article, as they had the right to enjoy that which was assigned to them by the Treaty of Utrecht."

The declaration of His Britannic Majesty accompanying the last named Treaty is as follows:—

"The King, having entirely agreed with His Most Christian Majesty upon the Articles of the Definitive Treaty, will seek every means which shall not only ensure the execution thereof with his accustomed good faith and punctuality, and will besides give, on his part, all possible efficacy to the principles which shall prevent even the least foundation of dispute for the future. To this end, and in order that the fishermen of the two nations may not give cause for daily quarrels, His Britannic Majesty will take the most positive measures for preventing his subjects from interrupting in any manner, by their competition, the fishery of the French, during the temporary exercise of it which is granted to them upon the coasts of the Island of Newfoundland, but he will for this purpose cause the fixed settlements which shall be formed there to be removed. His Britannic Majesty will give orders that the French fishermen be not incommoded in cutting the wood necessary for the repair of their scaffolds, huts, and fishing vessels."

"The XIIIth Article of the Treaty of Utrecht, and the method of carrying on the fishery, which has at all times been acknowledged, shall be the plan upon which the fishery shall be carried on there; it shall not be deviated from by either party; the French fishermen building only their scaffolds, confining themselves to the repair of their fishing vessels, and not wintering there; the subjects of His Britannic Majesty, on their part, not molesting in any manner the French fishermen during their fishing, nor injuring their scaffolds during their absence."

"The King of Great Britain, in ceding the islands of St. Pierre and Miquelon to France, regards them as ceded for the purpose of serving as a real shelter to the French fishermen, and in full confidence that these possessions will not become an object of jealousy between the two nations; and that the fishery between the said islands and that of Newfoundland shall be limited to the middle of the channel."

The "extensive rights to the inshore fisheries" of Newfoundland, alleged to be possessed by the United States prior to the Washington Treaty, consisted, first, of a right to participate, in common with British subjects, in such rights of fishing on the northern and western parts of the coast, between Quirpon Island and Cape Ray, as British subjects possessed after the concessions made to the French by the aforesaid Treaties of A.D. 1713 and 1783; secondly, the liberty, in common with British subjects, to take fish on the southern coast from Cape Ray to the Rameau Islands. The first is of very limited value considering the large concessions previously made to the French, and the second extends over a comparatively short line of coast only. The coast of Newfoundland from the Rameau Islands to Cape Ray, and thence north to Quirpon Island, is too remote, and is not suitable as a basis for carrying on the deep-sea and bank fisheries, the eastern and south eastern coasts now thrown open to the United States being the parts of the Island which can be alone availed of for that purpose with real advantage. The United States moreover undertook by Treaty with France, in 1801 (Article XXVII), that—

"Neither party will intermeddle in the fisheries of the other on its coasts, nor disturb the other in the exercise of the rights which it now holds or may acquire on the coast of Newfoundland, in the Gulf of St. Lawrence, or elsewhere on the American coast northward of the United States, but the whale and seal fisheries shall be free to both in every quarter of the world."

Therefore "the extensive rights" of the United States on the coasts of Newfoundland dwindle down to the mere liberty, in common with British subjects, to take

fish between Cape Ray and the Rameau Islands, and to dry and cure fish in the unsettled bays, harbours, and creeks of that part of the coast. It is impossible to conceive, having regard to the important privileges conceded by the Washington Treaty, that the extremely limited rights enjoyed by the United States under the Convention of 1818, could in any way have been entertained by the High Contracting Powers as operating against the undoubted claim of the Colony of Newfoundland for compensation. It is asserted on behalf of Newfoundland, that the United States have never claimed for their fishermen the right to enter any of the bays of that Island, other than those between Quirpon Island and Cape Ray, and thence to the Rameau Islands, except "for the purpose of shelter and of repairing damages therein, of purchasing wood and of obtaining water," as provided by the Convention of 1818.

It will be shown by conclusive testimony that, whether the contention on the part of the United States regarding the limit or extent of territorial waters, and the rights in bays, gulfs, and inlets, be maintainable or not, it has no appreciable practical effect, so far as concerns the claim for compensation made by Newfoundland, inasmuch as the cod and other fisheries of that Island, set forth in the Case as producing annually over 6,000,000 dollars by the labour of a limited number of operatives, and which are now by Article XVIII of the Treaty of Washington thrown open to the fishermen of the United States, are carried on within three miles of the coast line following the sinuosities of the shores. The bait fishery, from which the United States fishermen can now, by virtue of the same Article, procure all the bait requisite for the successful prosecution of the deep-sea, bank, and inshore fisheries, is also carried on within the said three-mile limit. The fact that such a large annual amount of produce, principally of codfish, is drawn from the waters along our coast, and within the admitted territorial limits of the jurisdiction of the Colony of Newfoundland, effectually refutes the assertion by the United States that "the cod fishery is solely a deep-sea fishery, and not a subject within the congnizance of this Commission." The privilege of landing on the coast of Newfoundland for the purpose of curing fish, drying nets, &c., characterized in the Answer as "customs belonging to the primitive mode of fishing," is nevertheless highly valued by the United States, inasmuch as its insertion has always been insisted on in all Treaties relating to the fisheries between the United States and Great Britain, and it has been practically availed of, and may in the future be reasonably anticipated to become more generally used, the climate of Newfoundland being especially adapted to the production of the best quality of dry codfish suitable for southern and tropical markets.

The claim preferred by Newfoundland is based alone upon the new privileges conceded by the Washington Treaty, and does not embrace a demand under any other Treaty or Convention. And it is submitted that, in estimating compensation, the Commissioners should not confine their jurisdiction and consideration merely to the expressed specific, but to all necessary incidental privileges which before could not be claimed, and were not enjoyed as they have been, or may be, under this Treaty.

The specific and consequential concessions have already been set forth in the Case, and ought not to be restricted to the limits proposed for awarding compensation in the Answer.

So far as Newfoundland is concerned, these concessions are of great value to the United States, and of corresponding detriment to British fishermen residing on the coast.

The restrictions in the Treaty of 1818 cannot be considered as in present operation as regards the rights conferred on, and exercised by, the United States under the Washington Treaty.

The free and uninterrupted exercise of these rights by the United States' fishermen on the Newfoundland coast since this Treaty came into effect, may be accepted as a practical proof of the interpretation placed by the United States upon the Treaty of Washington.

Evidence will be submitted to prove that the United States is not a market for Newfoundland produce, except to a very limited extent, and that neither the abrogation of the Reciprocity Treaty, nor the passing of the Washington Treaty, did in any way affect exports of the Colony to the United States, or the value of its produce, as the shipments of Newfoundland fish to the United States form so insignificant an item of export. But as a matter of fact, since the operation of the present Treaty, fish shipments to the United States have declined, as the fishermen

of that nation, from the increased advantages conferred on them, can now supply their own markets. The assumption, therefore, that the Treaty has opened up to Newfoundland a free market with 40,000,000 of people, consumers of its produce, is utterly untenable, this being in reality but a barren right, as the people of the United States are not to any marked extent, as compared with those of Great Britain, the Mediterranean, West Indies, or Brazil, consumers of Newfoundland dry codfish. Only in years of great scarcity in the United States' markets is Newfoundland hard cured fish called for to supply the deficiency. Having shown how small a percentage of the annual exports of Newfoundland finds its way to the markets of the United States, it is plain that the remission of duties thereon, trivial in amount as they will be shown to be, cannot for a moment be considered as any adequate set-off to the extensive fishing privileges ceded to the United States by the Colony of Newfoundland.

As regards the herring fishery on the Coast of Newfoundland, it is availed of to a considerable extent by the United States' fishermen, and evidence will be adduced of large exportations by them in American vessels, particularly from Fortune Bay and the neighbourhood, both to European and their own markets.

The presence of United States' fishermen upon the coast of Newfoundland, so far from being an advantage, as is assumed in the Answer, operates most prejudically to Newfoundland fishermen. Bait is not thrown overboard to attract the fish, as asserted, but the United States' Bank fishing vessels, visiting the coast in such large numbers as they do, for the purpose of obtaining bait, sweep the coves, creeks, and inlets, thereby diminishing the supply of bait for local catch, and scaring it from the grounds where it would otherwise be an attraction to the cod.

No incidental benefits have heretofore accrued to the people of Newfoundland from traffic with United States' fishermen under the operation of any Treaty. Since the abrogation of the Reciprocity Treaty, it is true, as stated in the Answer, that large numbers of United States' mackerel fishing vessels have been diverted from that fishery to the Bank fishery of Newfoundland, and hence the presence at this time of a large fleet of United States' cod-fishing vessels upon the coast of that Island.

It has been stated in the Case that no Newfoundland fishermen ever visit the coast of the United States for fishing purposes, and it is now asserted that, even though the fisheries there may be valuable to the United States, they are utterly valueless to Newfoundland, not from lack of enterprise on the part of Newfoundlanders, as alleged, but because they have a teeming fishery at their own door, and could not advantageously resort to localities so remote. The contrary, however, is the case with the United States, whose fishermen are compelled to seek foreign fishing grounds.

The assertion that the United States' cod fishery has declined in amount and value, if this be sustained, can hardly be admitted as an argument against the claim for compensation, but it may very fairly, and with force, be contended that, in view of the material and unquestionable benefits conferred upon the United States by the Washington Treaty, and the free exercise of those privileges, the falling off would have been much more considerable had the Treaty not existed.

The allegation, on the part of the United States, "that they desire to secure the privilege of using our fisheries, not for their commercial or intrinsic value, but for the purpose of removing a source of irritation," is not maintainable, for, while the Treaty of Washington obviates the necessity of a continuance of that vigilance in the protection of British rights within territorial waters of the Island, by throwing open all its preserves to the free use of the citizens of the United States, it must be remembered that such necessary protection was not the consequence of any right on the part of the United States, but the immediate result of a system of encroachment by the fishermen of that country in British waters not in accordance with the observance of international rights—for, notwithstanding the Convention of 1818, they have continually attempted to participate in privileges exclusively belonging to the subjects of Her Britannic Majesty, thus causing much annoyance and vexation between the two nations, and forcing, as it were, the present arrangement, to avoid difficulties between two peoples whose mercantile, as well as social and hereditary connections, should be characterized by respect for mutual rights.

APPENDIX K.

Brief on behalf of Her Majesty's Government in reply to the Brief on behalf of the United States.

THE extent to which the dominion and jurisdiction of a maritime state extends on its external sea coast has not always, or by different nations, been treated with unanimity. After the introduction of fire-arms (See "Anna" 5 Rob. 385) that extent or distance, upon the then reason of the thing,—*terræ dominium finitur ubi finitur armorum vis*, as cited by Lord Stowell,—was said to be usually recognized to be about three miles from the shore, but now that the range of modern artillery has been so largely increased, if not upon other grounds, it is probable that a greater distance would be claimed by many nations, including the United States of America. The practical, and therefore real and true reason of the rule is stated by Kent, "Commentaries" I, page 32, where, after commenting on a citation of Azuni, he says: "All that can reasonably be asserted is, that the dominion of the sovereign of the shore over the contiguous sea extends as far as is requisite for his safety and for some lawful end." No dispute has arisen touching the distance from the external line of coast from which American fishermen have been excluded from taking fish, and therefore that subject may be rejected from the present discussion.

It is admitted by all authorities, whether writers on international law, judges who have interpreted that law, or statesmen who have negotiated upon or carried it into effect in Treaties or Conventions, that every nation has the right of exclusive dominion and jurisdiction over those portions of its adjacent waters which are included by promontories or headlands within its territories. The rule is thus stated in Wheaton's International Law (second edition by Mr. Lawrence, page 320): "The maritime territory of every state extends to the ports, harbours, *bays*, mouths of rivers, and adjacent parts of the sea, inclosed by headlands belonging to the same state."

Upon examination of Article I of the Convention of 1818, mentioned in the XVIIIth Article of the Treaty of Washington, it will be ascertained how far the privilege has been conceded by the latter Article to United States' fishermen to use bays in British North America.

The following is Article XVIII of the Treaty of Washington:—

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

"It is understood that the above-mentioned liberty applies solely to the sea fishery, and that the salmon and shad fisheries, and all other fisheries in rivers and the mouths of rivers, are hereby reserved exclusively for British fishermen."

Article I of the Convention of 1818 is as follows:—

"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, hereabove described, and of the coast of Labrador; but so soon as the same or any portion thereof shall be settled, it shall not be lawful for the said fishermen to dry or cure fish at such portion so settled, without previous agreement for such purpose with the inhabitants, proprietors, or possessors of the ground. And the United States hereby renounce forever, any liberty heretofore enjoyed or claimed by the inhabitants thereof, to take, dry, or cure fish on or within three marine miles of any of the coasts, bays, creeks, or harbours of His Britannic Majesty's dominions in America not included within the above-mentioned limits. Provided, however, that the American fishermen shall be admitted to enter such bays or harbours for the purpose of shelter, and of repairing damages therein, of purchasing wood, and of obtaining water, and for no other purpose whatever. But they shall be under such restrictions as shall be necessary to prevent their taking, drying, or curing fish therein, or in any other manner whatever abusing the privileges hereby reserved to them."

The controversy turns upon the true effect of the renunciation on the part of the United States, "of any liberty heretofore enjoyed or claimed by the inhabitants thereof to take, dry, or cure fish on or within three marine miles of any of the coasts, bays, creeks, or harbours of His Britannic Majesty's dominions in America," not included within certain above-mentioned limits.

On the part of Great Britain it is maintained that the United States' fishermen were prohibited from fishing within three marine miles of the *entrance* of any of such bays, creeks, or harbours of His Britannic Majesty's dominions in America; while the United States' Government contend that the United States' fishermen were permitted by that Article to fish in the said bays, creeks, or harbours, provided they did not approach within three miles of the shore in the pursuit of their calling.

The correspondence between the Government of Great Britain and that of the United States, a portion of which is set out in the United States' Brief, shows that, with the exception of the Bay of Fundy, which, for exceptional reasons, and by the indulgence of Great Britain, was differently treated, Her Majesty's Government has uniformily contended for the construction now relied on.

This correspondence, as well as the utterances of American statesmen, support the construction contended for by Great Britain.

Mr. Stevenson, United States' Minister in London, in 1841, March 27, writing to Lord Palmerston, then Foreign Secretary, puts the two views very clearly. "The Provincial authorities," he says, "assume a right to exclude the vessels of the United States from all their bays (even including those of Fundy and Chaleurs), and likewise to prohibit their approach within three miles of a line drawn from headland to headland, instead of from the indents of the shores of the Provinces. The fishermen of the United States believe that they can with propriety take fish anywhere on the coasts of the British Provinces if not nearer than three miles to land."

But Mr. Everett, also United States' Minister in London, in 1844, May 25, puts a different construction upon the Treaty of 1818. In his letter to Lord Aberdeen of May 25, 1844, quoted in the United States' Brief (pages 15, 16, 17, and 18*) he says:—

"It was notoriously the object of the Article of the Treaty in question, to put an end to the difficulties which had grown out of the operations of the fishermen from the United States along the coasts, and upon the shores of the settled portions of the country, and for that purpose to remove their vessels to a distance not exceeding three miles from the same. In estimating this distance the undersigned admits it to be *the intent of the Treaty, as it is in itself reasonable, to have regard to the general line of the coast, and to consider its bays, creeks, and harbours—that is, the indentations usually so accounted—as included within that line.* But the undersigned cannot admit it to be reasonable, instead of thus following the general directions of the coast, to draw a line from the south-westernmost point of Nova Scotia, to the termination of the north-eastern boundary between the United States and New Brunswick; and to consider the arms of the sea which will thus be cut off, and which cannot, on that line, be less than sixty miles wide, as one of the bays on the coast from which American vessels are excluded. By this interpretation the fishermen of the United States would be shut out from the waters distant, not three, but thirty miles, from any part of the Colonial coast. The undersigned cannot perceive that any assignable object of the restriction imposed by the Convention of 1818, on the fishing privilege accorded to the citizens of the United States by the Treaty of 1783, requires such

* Pages 103 and 104 of this volume.

a latitude of construction. It is obvious that by the terms of the Treaty, the furthest distance to which fishing vessels of the United States are obliged to hold themselves from the Colonial coasts and bays, is three miles. But owing to the peculiar configuration of these coasts, there is a succession of bays indenting the shores both of New Brunswick and Nova Scotia, within any distance not less than three miles—a privilege from the enjoyment of which they will be wholly excluded—in this part of the coast, if the broad arm of the sea which flows up between New Brunswick and Nova Scotia is itself to be considered one of the forbidden bays."

Here in plain, unambiguous language, Mr. Everett represents to Lord Aberdeen that the Bay of Fundy ought not to be treated as a bay from which United States' fishermen were to be excluded under the Convention of 1818, *because the headlands were not only sixty miles apart, but one of them was not British.* Moreover, he points out that "owing to the peculiar configuration of these coasts" (*i. e.* the coasts of the Bay of Fundy itself), "there is a succession of bays indenting the shores both of New Brunswick and Nova Scotia (*i. e.*, the two shores of the Bay of Fundy), within any distance not less than three miles," from which last named bays the American fishermen had a right to approach, and from which privilege they were necessarily excluded by holding the whole body of the Bay of Fundy to be British territorial water.

It is by no means conceded that because on both coasts of the Great Bay of Fundy large bays exist which, according to the British contention, American fishermen are forbidden to approach, Mr. Everett was right in his argument that the Bay of Fundy is really open sea, yet there is at all events a plausibility about the reasoning which cannot attach to the contention of the United States in reference to any other bay on the British American coasts.

Not a word is to be found in this letter affording the slightest countenance to the doctrine contended for in the Answer and Brief of the United States, viz., that no bay was intended to be included in the Convention of 1818, except bays of no greater width at the mouths than six miles. Had such a doctrine been in the mind of Mr. Everett when he wrote this letter, it may be assumed that he would not have refrained from bringing it under Lord Aberdeen's notice. But so far from setting up such a doctrine, he says that he "admits it to be the intent of the Treaty, as it is in itself reasonable, to have regard to the general line of the coast, and to consider its *bays, creeks, and harbours*—that is, *indentations usually so accounted—as included within that line.*" What line? Clearly the line within three miles from which all American fishing vessels are excluded under the Convention. Mr. Everett never ventured to hint that the Bay of Miramichi, or the Bay of Chaleurs, did not fall within the words of the Convention of 1818. He argues that, if the United States' fishermen are to be excluded from the Bay of Fundy, "two entirely different limitations would exist in reference to the right of shelter reserved to American vessels on the shores of Her Majesty's Colonial possessions. They would be allowed to fish within three miles of the place of shelter along the greater part of the coast, while in reference to the entire extent of shore within the Bay of Fundy, they would be wholly prohibited from fishing along the coast, and would be kept at a distance of twenty or thirty miles from any place of refuge in case of extremity."

This argument impliedly admits that, whatever may be the case as to the Bay of Fundy, United States' fishermen were, by the Treaty of 1818, excluded, except for purposes of necessity, from other bays along the coast of Her Majesty's Colonial possessions, and from fishing within three miles of those bays.

The British Government, however, in 1845, whilst maintaining as a matter of strict construction that the Bay of Fundy was rightfully claimed by Great Britain, as a bay within the meaning of the Convention of 1818, relaxed the application of this construction to that bay, and "allowed the United States' fishermen to pursue their avocations in any part of it, provided they should not approach, except in cases specified in the Treaty of 1818, within three miles of the entrance of any bay on the coast of Nova Scotia or New Brunswick."

This proviso shows clearly the construction put at that time (1845), and before, by the British Government, upon the word "bay" in the Convention of 1818, on both points that the dimensions of the bay were immaterial, and that no approach was permissible within three miles of the entrance of a bay.

In a State paper, dated July 6, 1852, Mr. Webster, Secretary of State, although contending that the wording of the Convention of 1818 was not conformable to the *intentions* of the United States as one of the Contracting Parties, says:—

"It would appear, that by a strict and rigid costruction of this Article (Ist Article of Convention of 1818), fishing vessels of the United States are precluded from entering into the bays or harbours of the British Provinces, except for the purposes of shelter, repairing damages, and obtaining wood and water. A bay, as is usually understood, is an arm or recess of the sea entering from the ocean between capes or headlands; *and the term is applied equally to small and large tracts of water thus situated.* It is common to speak of Hudson's Bay, or the Bay of Biscay, although they are very large tracts of water.

"The British authorities insist that England has a right to draw a line from headland to headland, and to capture all American fishermen who may follow their pursuits inside of that line. *It was undoubtedly an oversight* in the Convention of 1818 to make so large a concession to England, since the United States had usually considered that those vast inlets, or recesses of the ocean, ought to be open to American fishermen as freely as the sea itself, to within three miles of the shore."

Had this language been used by so great and experienced a statesman as Mr. Webster, in any ordinary debate, it would be testimony of the most weighty character against the views put forth on this subject in the Answer of the United States. But when it is borne in mind that Mr. Webster used these words in his official capacity as Secretary of State, they must be considered as conclusive.

Mr. Rush, who negotiated the Treaty of 1818, in a letter to Secretary Marcy, dated 18th July, 1853, says:—

"These are the decisive words in our favour. They mean no more than that our fishermen, whilst fishing in the waters of the Bay of Fundy, should not go nearer than three miles to any of those small inner bays, creeks, or harbours which are known to indent the coasts of Nova Scotia and New Brunswick. To suppose they were bound to keep three miles off from a line drawn from headland to headland on the extreme outside limits of that bay—a line which might measure fifty miles or more, according to the manner of drawing or imagining it—would be a most unnatural supposition.

"Similar reasons apply to all other large bays and gulfs. In signing the Treaty, we believed that we retained the right of fishing in the sea, whether called a bay, gulf, or by whatever name designated. Our fishermen were waiting for the word, not of exclusion, but of admission to these large outer bays or gulfs."

This reasoning of Mr. Rush evades the question. He admits the right of exclusion from some bays, but can only say as to larger bays (not defining or even describing what he means by larger bays) that it is not to be supposed the right of fishing in them would be signed away by the American negotiators, a supposition, however, which, it appears, Mr. Webster and other American statesmen did entertain and express.

Senator Soule, in the Senate, August 5, 1852, referring to the words of Mr. Webster, already cited, said:—

"Is England right? If we trust the Secretary of State, in the view which he takes of her claims, it would seem as if the terms of the letter of the Treaty were on her side. This Mr. Webster peremptorily admits, while others but debate it upon mere technicalities of language."

After quoting from Webster, Senator Soule continued:—

"Here the whole is surrendered; there is no escape from the admission. It was an oversight to make so large a concession to England! The concession was then made, was it not? If so, the dispute is at an end; and yet it were a hard task to justify the summary process through which England has sought to compel us to compliance with the concession, particularly as she had, to say the least of it, suffered our fishermen to haunt the Bay of Fundy, by express allowance in 1844."

On August 12, 1852, Senator Butler, though expressing a desire to make further inquiries into the subject, said:—

"We cannot go beyond the Treaty of 1818; and that is, What is a British bay? What is one of the bays and harbours of Great Britain?"

And after speaking of the clear concessions to American fishermen, on some of the coasts, bays, &c., of Newfoundland, Senator Butler adds:—

"But so far as regards the bays of Nova Scotia and New Brunswick, we have no right under the terms of the Treaty to fish in them if they can be regarded as British bays."

On August 14, 1852, Senator Seward, answering the members of the Senate who had criticised the passage above quoted from Mr. Webster, said:—

"I cannot assent to the force of the argument of the honourable Senator from Louisiana. I am the more inclined to go against it, because I think it is getting pretty late in the day to find the Secretary

of State wrong in the technical and legal construction of an instrument. Let us test the argument. The honourable Senator says, that where the Government occupies both sides of the coast, and where the strait through which the waters of the bay flow into the ocean is not more than six miles wide, then there is dominion over it."

"Now, then, the Gut of Canso is a most indispensable communication for our fishermen from the Atlantic Ocean to the Northumberland Straits and to the Gulf of St. Lawrence, for a reason which any one will very readily see, by referring to the map; yet the Gut of Canso is only three-quarters of a mile wide. I should be sorry to adopt an argument which Great Britain might turn against us, to exclude us from that important passage." * * * * *

"Again I recall the honourable Senator's argument, viz:—

"'Two things unite to give a country dominion over an inland sea. The first is, that the land on both sides must be within the dominion of the Government claiming jurisdiction, and then that the strait is not more than six miles wide; but that if the strait is more than six miles wide, no such jurisdiction can be claimed.'

"Now, sir, this argument seems to me to prove too much. I think it would divest the United States of the harbour of Boston, all the land around which belongs to Massachusetts or the United States, while the mouth of the bay is six miles wide. It would surrender our dominion over Long Island Sound,—a dominion which I think the State of New York and the United States would not willingly give up. It would surrender Delaware Bay; it would surrender, I think, Albermarle Sound and the Chesapeake Bay; and I believe it would surrender the Bay of Monterey, and perhaps the Bay of San Francisco on the Pacific coast."

Senator Tuck, during the same debate, said:—

"Perhaps I shall be thought to charge the Commissioners of 1818 with overlooking our interests. They did so in the important renunciation which I have quoted; but they are obnoxious to no complaints for so doing. In 1818, we took no mackerel on the coasts of British possessions, and there was no reason to anticipate that we should ever have occasion to do so. Mackerel were then found as abundantly on the coast of New England as anywhere in the world, and it was not till years after that this beautiful fish, in a great degree, left our waters. The mackerel fishery on the provincial coasts has principally grown up since 1838, and no vessel was ever licensed for that business in the United States till 1828. The Commissioners in 1818 had no other business but to protect the cod fishery, and this they did in a manner generally satisfactory to those most interested."

The document, dated April 12, 1866, partially quoted at page 28 of the United States' Brief, would convey a far different meaning if given in full. The Commissioners are desired to notice that the extract there given is in the text immediately preceded by the following:—

"Her Majesty's Government are clearly of opinion that, by the Convention of 1818, the United States have renounced the right of fishing, not only within three miles of the Colonial shores, but within three miles of a line drawn across the mouth of any British bay or creek. But the question, What is a British bay or creek? is one which has been the occasion of difficulty in former times.

"It is therefore, *at present*, the wish of Her Majesty's Government neither to concede nor, *for the present*, to enforce any rights in this respect which are in their nature open to any serious question."

It must be remembered that at the date of this document the American fishermen were passing from the free use of all Canadian fisheries granted by the Reciprocity Treaty to the limitations of the Convention of 1818, and Her Majesty's Government, through friendly feelings, desired to give American fishermen some time to return quietly to the system created by the Convention of 1818.

With regard to the Memorandum quoted at page 32 of the Brief, Her Majesty's Government are not aware that any such Memorandum was communicated by them to the Government of the United States, and the United States' Agent is challenged to produce any record of such communication having been officially made to the United States' Government by the British Representative at Washington.

As a matter of fact, a private Memorandum in such terms was sent to Her Majesty's Representative at Washington, but accompanied by distinct instructions not to bring it under the consideration of the Government of the United States at the time.

The matter with reference to which it was written was a project for the appointment of a Joint Commission which might serve to remove occasion for future misunderstanding.

The quotation given in the Brief is as follows:—

"The right of Great Britain to exclude American fishermen from waters within three miles of the coast is unambiguous, and it is believed, uncontested. But there appears to be some doubt what are the waters described as within three miles of bays, creeks, and harbours. Where a bay is less than six miles broad, its waters are within the three miles limit, and therefore clearly within the meaning of

the Treaty: but when it is more than that breadth, the question arises whether it is a bay of Her Britannic Majesty's dominions.

"This is a question which has to be considered in each particular case, with regard to international law and usage. When such a bay, &c., is not a bay of Her Majesty's dominions, the American fishermen will be entitled to fish in it, except within three miles of the 'coast; when it is a bay of Her Majesty's dominions,' they will not be entitled to fish within three miles of it, that is to say (it is presumed), within three miles of a line drawn from headland to headland."

The following are, however, the subsequent passages in the Memorandum, which are entirely omitted in the Brief:—

"It is desirable that the British and American Governments should come to a clear understanding in the case of each bay, creek, or harbour, what are the precise limits of the exclusive rights of Great Britain, and should define these limits in such a way as to be incapable of dispute, either by reference to the bearings of certain headlands, or other objects on shore, or by laying the lines down on a map or chart.

"With this object, it is proposed that a Commission should be appointed, to be composed of representatives of Great Britain, the United States, and Canada, to hold its sittings in America, and to report to the British and American Governments their opinion, either as to the exact geographical limits to which the renunciation above quoted applies, or, if this is impracticable, to suggest some line of delineation along the whole coast, which, though not in exact conformity with the words of the Convention, may appear to them consistent in substance with the just rights of the two nations, and calculated to remove occasion for future controversy."

"It is not intended that the result of the Commission should necessarily be embodied in a new Convention between the two countries, but if an agreement can be arrived at, it may be sufficient that it should be in the form of an understanding between the two Governments, as to the practical interpretation which shall be given to the Convention of 1818."

It would be difficult for the Commissioners, with the context of the Memorandum thus before them, to understand, even if this document had been officially communicated to the United States' Government, how by it any doctrine was laid down to vary or alter the Convention of 1818, and it is submitted that nothing was intended by the Memorandum, as in fact nothing was expressed therein in any manner waiving or abandoning the rights secured to Great Britain by that Convention.

As to the instructions from Mr. Mitchell, quoted at pages 31 and 32* of the Brief, it is only necessary to say, that instead of contributing to the establishment of the "status" claimed in the Brief, they are of a character to prevent any such misapprehension. They re-affirm the doctrine of the headlands in its fullest sense: but in view of impending negotiations, which resulted in the Washington Treaty, the authorities, both in England and in Canada, were desirous of removing all obstacles by the temporary relaxation of their rights, and thereby promoting a friendly and amicable settlement. This consideration may explain the language of Mr. Rogers, in his letter to the Admiralty of April 30, 1870, quoted at page 30* of the Brief.

It may be here added that the Joint High Commissioners, when the Washington Treaty was in course of negotiation, could not and did not ignore the difference which had from to time arisen as to the interpretation of the 1st Article of the Convention of 1818. In fact, these differences had given birth to the Reciprocity Treaty of 1854, and being revived by the termination of that Treaty in 1866, the Joint High Commission was proposed primarily to dispose of that difficulty. In the order of the subjects to be submitted to that Commission, according to the letter from Mr. Fish to Sir E. Thornton, 30th January, 1871, the question of the fisheries is first mentioned. It was "deemed of importance to the good relations which they were ever anxious should subsist and be strengthened between the United States and Great Britain, that a friendly and complete understanding should be come to between the two Governments as to the extent of the rights which belong to the citizens of the United States, and Her Majesty's subjects, respectively, with reference to the fisheries on the coasts of Her Majesty's possessions in North America, and as to any other questions, &c."

Had the "status" contended for in the United States' Brief been contemplated, it is reasonable to suppose that it would have been formally adopted or referred to in the Treaty. Not only, however, are the Protocols of the Conference silent on this subject, but no record exists that such a status was ever entertained as a basis of negotiation on the part of either Government. On the contrary, and as if to exclude the possibility of doubt, the words of the Convention of 1818 are adopted in their integrity, and thus constituted the legal and actual basis on which the indemnity to be paid is to be assessed.

* Page 111 of this volume.

The question therefore is simply one of construction of words. The particular expressions in the 1st Article of the Convention, which have furnished the occasion of a disputed construction, are "on or within three marine miles of any of the coasts, bays, creeks, or harbours of His Britannic Majesty's dominions." For the solution of this question it will be convenient, in the first place, to state certain principles of interpretataion to which recourse may be had when there is any ambiguity in the terms of a Treaty.

In the first place it is an universal rule, dictated by common sense, for the interpretation of contracts, and equally applicable to all instruments, that if there is anything ambiguous in the terms in which they are expressed, they shall be explained by the *common* use of those terms in the country in which the contracts were made.—Pothier, *Obligations*, No. 94, "Ce qui peut paraitre ambigu dans un contrat, s'interprète par ce qui est d'usage dans le pays."

In the second place it is an admitted principle, that for the meaning of the *technical* language of jurisprudence, we are to look to the laws and jurisprudence of the country, if the words have acquired a plain and positive meaning. ("*The Huntress*," Davie's *Admiralty* [American] *Reports*, page 100. Flint *v.* Flemyng, 1 Barnwall and Adolphus, 48.)

In the third place, as Treaties are contracts belonging to the Law of Nations, and the Law of Nations is the common property of all nations, and, as such, a part and parcel of the law of every country (De Lovio *v.* Boit, 2 Gallison's *Admiralty* [American] *Reports*, page 398. Buvot *v.* Burbot, cited by Lord Mansfield in Triquet and others *v.* Peach, 3 Burrows, page 1481); if we have recourse to the usage of nations, or to the decisions of Courts in which the Law of Nations is administered, for the definition of terms which occur in such contracts, and which have received a plain and positive meaning, we are not going beyond the law of either of the countries which are parties to the Treaty.

Vattel says that it is not allowable to interpret what has no need of interpretation. If the meaning be evident, and the conclusion not obscure, you have no right to look beyond or beneath it, to alter or add to it by conjecture. Wolff adds, that to do so, is to remove all certainty from human transactions. To affix a particular sense, founded on etymology or other reasons, upon an expression, in order to evade the obligation arising from the customary meaning, is a fraudulent subterfuge aggravating the guilt of one fœdifragous party—"*fraus enim adstringit non dissolvit perjurium.*"

These rules are adopted by T. D. Woolsey, late President of Yale College, (New York, 1877), page 185, § 109, in his Introduction to the Study of International Law.

The Convention of 1818 was a contract between Great Britain and the United States, and is to be construed like any other contract. The rule for such construction is well laid down by Mr. Addison, in his work on contracts (seventh Edition), at page 164. He says: "Every contract ought to be so construed that no clause, sentence, or word, shall be superfluous, void, or insignificant; every word ought to operate in some shape or other, *nam verba debent intelligi cum effectu ut res magis valeat quam pereat.*"

In *Robertson v. French* (4 East 137), Lord Ellenborough says that the terms of a contract "are to be understood in their plain, ordinary, and popular sense, unless they have generally, in respect to the subject matter (as by the known usage of trade or the like) acquired a peculiar sense distinct from the popular sense of the same words."

In the case of Shore *v.* Wilson (9 Clark and Finnelly, pages 565, 566), Lord Chief Justice Tindal, speaking of the construction of written instruments, says: "When the words of any written instrument are free from any ambiguity in themselves, and where external circumstances do not create any doubt or difficulty as to the proper application to claimants under the instrument, or to the subject matter to which the instrument relates, such instrument is always to be construed according to the strict, plain, and common meaning of the words themselves, and evidence *dehors* the instrument, for the purpose of explaining it according to the surmised or alleged intention of the parties, is utterly inadmissible."

In fact, Judges, Arbitrators, or Commissioners who would disregard such rules, would assume the right of recasting the law or the Treaties to suit their own fancy, instead of enforcing the execution of a clear contract. In this instance the two parties agree not to invite this Commission to travel over such ground, and Her Majesty's Government are confident that the Commissioners will adhere to the

instructions contained in the Washington Treaty, which directs them to estimate the value of the privileges added by Article XVIII to those already enjoyed under Article I of the Convention of 1818.

As regards the power of Arbitrators, such as the Commissioners in this instance, to interpret terms of Treaties, Hertslet's Treaties, vol. iii. page 518, contain the following precedent:—

Great Britain and the United States having referred a difficulty, growing out of the Treaty of Ghent (1814), to the arbitration of the Emperor of Russia, to interpret the *intentions* of the parties, as contained in an Article of that Treaty, His Imperial Majesty stated that he considered himself bound "strictly to adhere to the grammatical interpretation of Article I, &c." And, on a further reference to His Majesty (same vol. page 521), the Emperor was of opinion that the question could only be decided according to the literal and grammatical meaning of Article I of the Treaty of Ghent. A notice of this decision is to be found in Lawrence's second edition of Wheaton, pages 495, 496.

The Emperor of Russia, in dealing with this question, acted in accordance with the rules laid down in Phillimore's International Law, vol. ii, page 72, as follows:— "LXIX. *Usual interpretation* is, in the case of Treaties, that meaning which the practice of nations has affixed to the use of certain expressions and phrases, or to the conclusions deducible from their omissions, whether they are or are not to be understood by necessary implications. A clear usage is the best of all interpreters between nations, as between individuals; and it is not legally competent to either nation or party to recede from its verdict." And at page 73 the same author says: "The principal rule has already been adverted to, namely, to follow the ordinary and usual acceptations, the plain and obvious meaning of the language employed. This rule is, in fact, inculcated as a cardinal maxim of interpretation equally by civilians and by writers on international law."

The interpretation contended for by the United States' Government requires that we should, in effect, insert the words "of the shore" in the Article itself, as understood, although not expressed, either before the words "of any of the coasts, bays, creeks, or harbours," &c., as necessary to make those words operative, or as authorized by usage, or before the words "bays, creeks, or harbours," as demanded by the context, and indispensable to prevent a conflict with other provisions of the Treaty.

Such an interpretation, however, is, in the first place, not required to make the words "of any of the coasts" operative. Assuming that we should be justified in applying to the language of the Treaty the decisions of the Admiralty Courts of the United States, where any words have received a judicial interpretation, the Treaty being a contract according to the Law of Nations, and the Admiralty Courts in the United States being tribunals which administer that law, we find that the term "coast" has received a judicial interpretation expressly with reference to territorial jurisdiction; and that, according to that interpretation, the word "coasts" signifies "the parts of the land bordering on the sea, and extending to low water mark;" in other words, "the shores at low water."

This question was formally taken into consideration in the year 1804, in the case of the "Africaine," a French corvette, captured by a British privateer off the bar of Charleston, and on the outside of the Rattlesnake Shoal, which is four miles at least from land. (Bee's *Admiralty Reports*, page 205.) On this occasion, the Commercial Agent of the French Republic claimed the corvette to be restored as captured within the jurisdiction of the United States, and it was contended in argument, in support of the claim, that the term "coasts" included also the shoals to a given distance; and that all geographers and surveyors of sea-coasts understood, by the term "coasts," the shoals along the land. Mr. Justice Bee, however, who sat in the Court of Admiraly, in Charleston, overruled this argument, and after observing that the interpretation of coasts, in the large sense of the word, might possibly be correct in a *maritime* point of view, decided that "coasts," in reference to *territorial jurisdiction*, is equivalent to shores, and must be construed to mean "the land bordering on and washed by the sea extending to low-water mark."

That the words "shores" and "coasts" are equivalent terms, according to the *common* sense of these terms in the jurisprudence of the United States, may be gathered from the language of various Acts of Congress. For instance, the Revenue Act of 1799 (*Laws of the United States*, vol. iii, page 136), assigns districts to the collectors of revenue, whose authority to visit vessels is extended expressly

to a distance of four leagues from the coast; and the districts of these collectors in the case of the Atlantic States are expressly recited as comprehending "all the waters, shores, bays, harbours, creeks, and inlets" within the respective States. This Act of Congress has also received a judicial interpretation, according to which the authority of revenue officers to visit vessels is held to extend over the high seas to a distance of four leagues from the shore of the main land. Again, the Judiciary Act of June, 1794, uses the words "coasts" and "shores" not as alternative, but as equivalent terms according to judicial decisions on this very point, when it speaks of the "territorial jurisdiction of the United States extending a marine league from the 'coasts' or 'shores' thereof."

It would thus appear that it is not necessary to understand the word "shore" before "coasts" in order that the latter word should be fully intelligible. It remains to consider whether such an understanding would be authorized by usage on the principle laid down by Pothier: "L'usage est d'une si grande autorité pour l'interprétation des Conventions, qu'on sousentend dans un contrat les clauses qui sont d'usage, quoiqu'elles ne soient pas exprimées." (*Obligations*, No. 95.)

No such usage, however, of nations prevails, applicable to the term "coasts." Islands indeed, which are adjacent to the land, have been pronounced by Lord Stowell to be natural appendages of the coasts on which they border, and to be comprised within the bounds of territory. ("*The Anna*," 5 *Robertson's Reports*, page 385.) The assertion, therefore, of an usage to understand the word "shore" before "coasts" in Treaties, would tend to limit the bounds of territorial jurisdiction allowed by Lord Stowell in the case just cited, in which a question was involved to which the United States' Government was a party, and in favour of whose claim, on the ground of violated territory, Lord Stowell pronounced.

It remains next to consider what is the true construction of the expressions within three marine miles of any of the "bays, creeks, or harbours." That the words "bays," "creeks," and "harbours," have all and each a distinct sense, separate from and supplemental to the word "coasts," to which effect must be given, where there are reciprocal rights and obligations growing out of the Treaty in which these words have been introduced, is consonant with the rules for interpreting contracts, which have been dictated by right and reason, and are sanctioned by judicial decisions. Mr. Justice Story may be cited as an authority of the highest eminence, who has recognized and applied this principle in construing a statute of the United States. "The other words," he says, "descriptive of place in the present statute (Statute 1825, c. 276, s. 22), which declare that 'if any person or persons on the high seas, or in any arm of the sea, or in any river, haven, creek, basin, or bay, within the Admiralty jurisdiction of the United States, and out of the jurisdiction of any particular State,' &c., give great additional weight to the suggestion that the 'high seas' meant the open unenclosed ocean, or that portion of the sea which is without the *fauces terræ* on the sea coast, in contradistinction to that which is surrounded or inclosed between narrow headlands or promontories; *for if the 'high seas' meant to include other waters, why should the supplemental words 'arm of the sea, river, creek, bay,' &c., have been used?*" (United States *v.* Grush, 5 Mason's *Admiralty Reports*, page 298.)

This view of Mr. Justice Story is in accordance with Pothier's rule, "Lorsqu'une clause est susceptible de deux sens, on doit plutôt l'entendre dans celui dans lequel elle peut avoir quelque effet, que dans celui dans lequel elle ne'en pourrait avoir aucun." (*Obligations*, No. 92.)

The word "bay" itself has also received *a plain and positive meaning* in a judicial decision of a most important case before the Supreme Court of the United States, upon the construction of the 8th section of the Act of 1790, cap. 9.:—A murder had been committed on board the United States' ship of war "Independence," lying in Massachusetts Bay, and the question was whether any Court of the State of Massachusetts, or only the Circuit Court of the United States, as a Court of Admiralty and Maritime Jurisdiction, had jurisdiction over a murder committed in such a bay. Chief Justice Marshall in delivering the opinion of the Court defined "bays" to be "*inclosed parts of the sea.*" (United States *v.* Bevan, 3 Wheaton's *Reports*, page 387.)

Again, Mr. Justice Story in a question of indictment for assault, with intent to kill, under the Crimes Statute of 1825, cap. 276, sec. 22, which declares, "that if any person or persons upon the high seas, or in any arm of the sea, or in any river, haven, creek, basin, or bay within the Admiralty jurisdiction of the United States, and out of the jurisdiction of any particular State, on board any vessel, shall commit

an assault," &c., decided that the place where the murder was committed (the vessel lying at such time between certain islands in the mouth of the Boston River), was an arm of the sea.

"An arm of the sea," he further said, "may include various descriptions of waters, where the tide ebbs and flows. It may be a river, harbour, creek, basin, or bay." (United States *v.* Grush, 5 Mason, 299.)

It would thus appear that the word "bay" has received a positive definition as a term of jurisprudence, which is in accordance with the common use of the term in text books on the Law of Nations, which invariably speak of "bays" as "*portions of sea inclosed within indents of coasts*," and not as indents of coast.

Assuming, therefore, as established beyond reasonable doubt, that the word "bay" signifies an arm or elbow of the sea inclosed within headlands or peaks, and not an indent of the coast, we may consider what is the true intention of the expression "within three marine miles of a bay." Are such miles to be measured from the outer edge or chord of the bay, or from the inner edge or arc of the bay? In the first place it may be observed that the inner edge or arc of a bay touches the coast, and if the distance is to be measured from the shore of the bay, the word "bay" itself has virtually no distinct signification from "coast," and has no supplemental force; *primâ facie*, therefore, this interpretation does not recommend itself on the grounds already stated.

Again: the interpretation which is given to the measure of distance from bays, must be given to the measure of distance from creeks and harbours, both of which, by the Municipal Law of the United States, equally as of Great Britain, are *infra corpus comitatus*, and whose waters are subject to the provisions of the Municipal Law precisely as the shores of the land itself. But it may assist in determining this question to keep in mind the rule that in contracts, "on doit interpréter une clause par les autres clauses contenues dans l'acte, soit qu'elles précèdent ou suivent." (Pothier, *Obligations*, No. 96.) In other words, a subsequent clause may serve to interpret a former clause, if the latter be at all ambiguous. Accordingly, we find the renunciation of the liberty to fish within three marine miles of any of the bays, creeks, or harbours of His Britannic Majesty's dominions, followed by the proviso that American fishermen shall be permitted to *enter* such bays and harbours for certain specified purposes other than taking fish. In other words, they may prosecute their voyage for other purposes than fishing *within the entrance* of any bay or harbour, but may not take fish within three marine miles of any bay or harbour, *i. e.*, within three marine miles of the *entrance* of any bay or harbour. If this interpretation be not adopted, the proviso would be absurd; for if American fishermen are impliedly permitted to fish within three marine miles of the *shore* of any bay or harbour, they are permitted to *enter* such bay or harbour, if the breadth of the mouth be more than six miles, and the distance of the head of the bay or harbour from the entrance be more than three miles, for another purpose than for the purpose of shelter, or of repairing damages, or of purchasing wood, or of obtaining water. But the Convention expressly says, "*for no other purpose whatever*." If, therefore, they cannot *enter* any bay or harbour for the purpose of prosecuting their occupation of fishing, it cannot be intended that they should be allowed to fish within three marine miles of the *shore* of any bay or harbour, as the two provisisons would be inconsistent. Accordingly, as the question resolves itself into the alternative interpretation of *shore* or *entrance*, it follows that the correct interpretation which makes the language of the entire Article consistent with itself, is within three marine miles of the *entrance* of any bay, such entrance or mouth being, in fact, *part of the bay itself*, and the bay being approachable by fishing vessels only in the direction of the mouth or entrance.

That a bay of sea water wider than six miles at its mouth may be within the body of a county, is laid down by Lord Hale in his Treatise *De Jure Maris et Brachiorum ejusdem* (Hargrave's *Tracts*, chap. 4): "An arm or branch of the sea which lies within the *fauces terræ*, where a man may reasonably discern between shore and shore is, or at least may be, within the body of a county." This doctrine has been expressly adopted by Mr. Justice Story in De Lovio *v.* Boit (2 Gallison's *Reports*, page 426, second edition), in which, to use the language of Mr. Wheaton's argument in United States *v.* Bevans (3 Wheaton's *Reports*, page 358), "all the learning on the civil and criminal jurisdiction of the Admiralty is collected together." There is, consequently, no doubt that the jurisdiction of the Municipal Law over bays is not limited to bays which are less than six miles in breadth, or three miles in depth, since the general rule is, as was observed by the same eminent Judge in United

States *v.* Grush (5 Mason, page 300) : "That such parts of rivers, arms, and creeks of sea, are deemed to be within the bodies of counties, where persons can see from one side to the other."

That the jurisprudence of the United States has recognized the principle of Courts of Municipal Law exercising jurisdiction over bays at a distance more than three miles from the shore, is shown by the decision of the Supreme Court in the case of Church *v.* Hubbard (2 Cranch's *Reports*, page 187). In this case an American brigantine, the "Aurora," when at anchor in the Bay of Para on the coast of Brazil, and four or five leagues from Cape Paxos, was seized and condemned by the Portugese authorities for a breach of the laws of Portugal on a matter of illicit trade. Chief Justice Marshall, in delivering the opinion of the Court, said—"Nothing is to be drawn from the laws or usages of nations, which proves that the seizure of the 'Aurora' by the Portuguese Government was an act of lawless violence."

The same principle was also involved in the opinion of the Attorney-General of the United States upon the seizure of the British vessel "Grange" by a French frigate, within the Bay of Delaware, and which was accordingly returned to the owners. In his Report to the United States' Government (14th May, 1793), the Attorney-General observed "that the 'Grange' was arrested in the Delaware, *within the capes*, before she had reached the sea," that is, in that part of the waters of the Delaware which is called *the Bay of Delaware*, and which *extends to a distance of sixty miles within the capes.* It is worthy of remark that the Bay of Delaware is not within the body of a county, its northern headland, Cape May, belonging to the State of New Jersey in property and jurisdiction, and its southern headland, Cape Henlopen, being part of the State of Delaware, yet the whole bay was held to be American territory.

The same principle was also involved in the judgment of the Supreme Court of the United States in the case of Martin and others *v.* Waddell (16 Peter's *Reports*, 367), in which it was agreed on all sides that the prerogative of the Crown, prior to the American Revolution, extended over all bays and arms of the sea, from the River St. Croix to the Delaware Bay.

Again, in the Report of the Committee of Congress (November 17, 1807) on the affair of the Little Belt, it was maintained that the British squadron had anchored *within the capes of Chesapeake Bay and within the acknowledged jurisdiction of the United States*, whilst it seems that the alleged violation of territory had taken place at a distance of three leagues from Cape Henry, the southern headland of the Bay of Chesapeake.

This assertion of jurisdiction was in accordance with the instructions sent, May 17, 1806, from Mr. Madison to Messrs. Monroe and Pinckney, according to which it was to be insisted that the extent of the neutral immunity should correspond with the claims maintained by Great Britain around her own territory; and that no belligerent right should be exercised within the chambers formed by headlands, or anywhere at sea, within the distance of four leagues, *or from a right line from one headland to another.*

What those claims were, as maintained by Great Britain, may be gathered from the doctrine laid down by Sir Leoline Jenkins in his Report to His Majesty in Council, December 5, 1665 (Life of Sir Leoline Jenkins, vol. ii, page 726) in the case of an Ostend vessel having been captured by a Portuguese privateer, about four leagues west of Dover, and two Dutch leagues from the English shore, in which case a question arose whether the vessel had been taken within one of the King of England's chambers, *i. e.*, within the line (a straight one having been drawn) from the South Foreland to Dungeness Point, on which supposition she would have been under the protection and safeguard of the English Crown.

The same eminent Judge, in another Report to the King in Council (vol. ii, page 732), speaks of one of those recesses commonly called "your Majesty's chambers," being bounded by a straight line drawn from Dunemore, in the Isle of Wight, to Portland (according to the account given of it to the Admiralty in 1664). He says, "It grows very narrow westward, and is scarce in any place four leagues broad, I mean from any point of this imaginary line to the opposite English shore."

And in a third Report, October 11, 1675 (vol. ii, page 780), he gives his opinion that a Hamburg vessel captured by a French privateer should be set free, upon a full and clear proof that she was within one of "your Majesty's chambers at the time of seizure, which the Hamburgher in his first memorial sets forth as being eight leagues at sea over against Harwich."

This doctrine is fully in accordance with the text-books. Thus Azuni writes in his "*Droit Maritime de l'Europe*," chap. ii, art. 3, § 3:

"Les obligations relatives aux ports sont également applicables aux baies et aux golfes, attendu qu'ils font aussi partie de la souveraineté du Gouvernement, dans la domination, et le territoire duquel ils sont places, et qui les tient également sous sa sauvegarde : en consequence, l'asile accordé dans une baie ou dans un golfe, n'est pas moins inviolable que celui d'un port, et tout attentat commis dans l'un comme dans l'autre, doit être regardé comme une violation manifeste du droit des gens."

Valin, *Comment. à l'Ordonnance de France*, tit. "Des Rades," art. i, may be cited in confirmation of this doctrine.

The words used in the Ist Article of the Convention of 1818 are, "On the coast of Newfoundland, on the shores of the Magdalen Islands, on the coasts, bays, harbours, and creeks from Mount Joly, &c."

The word "on" is thus used as applicable to shores, coasts, bays, creeks, and harbours, and the United States renounce any liberty to take, dry, or cure fish, on, or within three marine miles of any of the coasts, bays, creeks, or harbours.

It is admitted that the liberty to fish is renounced within three miles of the coasts. If the contention of the United States that this renunciation applies only to a specified distance from the shores of the coasts, bays, creeks, and harbours, and is to be ascertained by a line following the bays, creeks, and the indents thereof, at a distance of three miles, be right, then shores or coasts, if synonymous with shores, is the only necessary word, and the words, "bays, creeks, and harbours," are without meaning—a construction which would be contrary to the rule which equires that effect be given to every word.

The word "bay" then must have a meaning.

The distance therefore from headland to headland ought not to and cannot be confined to a measure of six miles in order to give exclusive dominion within the bay formed by the headlands.

The general principle is that navigable waters included in bays between two headlands belong to the Sovereign of the adjoining territory, as being necessary to the safety of the nation and to the undisturbed use of the neighbouring shores. (Puffendorff, b. 3, c. 5; Vattel, b. 1, ch. 33.)

The difficulty of limiting the extent to which this privilege should be carried is thus stated by Azuni:

"It is difficult to draw any precise or determinate conclusion amidst the variety of opinions as to distance to which a State may lawfully extend its exclusive dominion over the sea adjoining its territories, and beyond those portions of the sea which are embraced by harbours, gulfs, bays, &c., and estuaries, and over which its jurisdiction unquestionably extends." Azuni on the Maritime Laws of Europe, 1, page 206.

After commenting on this passage of Azuni, which he cites, Kent says, "Considering the great extent of the line of the American coasts, we have a right to claim for fiscal and defensive regulations a liberal extension of maritime jurisdiction, and it would not be unreasonable, as I apprehend, to assume, for domestic purposes connected with our safety and welfare, the control of the waters on our coasts, though included within lines stretching from quite distant headlands, as, for instance, from Cape Ann to Cape Cod, and from Nantucket to Montauk Point, and from that point to the Capes of the Delaware, and from the South Cape of Florida to the Mississippi. It is certain that our Government would be disposed to view with some uneasiness and sensibility, in the case of war between some other maritime Powers, the use of the waters of our coast far beyond the reach of cannon shot, as cruizing ground for belligerent purposes."

Chancellor Kent therefore considers that some distance between the headlands of more than six miles would properly be insisted on by the United States for securing the objects above mentioned, the safety of the territory, and other lawful ends.

The right of exclusive fishing is undoubtedly a lawful end. (Vattel, b. 1, c. 23.) And where the nation has an exclusive right, it is entitled to keep the exercise of that right in its own power, to the exclusion of others.

In the Convention of 1818 no limited construction was put upon the word "bay." The Treaty employs as distinct terms the words "coasts, bays, creeks, and harbours." "Bay," therefore, should be taken in the plain and ordinary sense of the term, to mean a portion of the sea, inclosed between headlands, which, together with the shores within them, belong to the same nation.

The entrance to this bay is marked or ascertained by a line drawn from headland to headland, whatever be the depth of the bay, and though the line drawn from headland to headland exceed six marine miles.

The United States renounced the right to take fish in such bays. The Treaty of Washington, 1871, frees them from such renunciation. The restriction or exclusion is altogether removed. The case of the Queen *v.* Keyn (L.R. 2 Ex. Div. 63), so much relied on in the Answer and Brief of the United States, affords no support whatever to the position there taken. The question involved in that case was whether or not a foreigner commanding a foreign vessel could legally be convicted of manslaughter committed whilst sailing by the *external coast of England*, within three miles from the shore, in the prosecution of a voyage from one foreign port to another.

The Court, by a majority of seven Judges to six, held the conviction bad, on the ground that the jurisdiction of the Common Law Courts only extended to offences committed within the realm, and that at Common Law such realm did not extend on the external coasts beyond low-water mark. None of the Judges, however, doubted that Parliament had full power to extend the laws of the realm to a zone of three miles around the outer coast if it saw fit so to do. The Lord Chief Justice of England, by whose casting judgment the conviction was quashed, not only guarded himself expressly against being understood as throwing any doubt whatever upon the jurisdiction of the Courts over inland or territorial waters, but emphatically affirmed such jurisdiction.

"But," says he, (p. 162) "only so much of the land of the outer coast as was uncovered by the sea, was held to be within the body of the adjoining county. If an offence was committed in a bay, gulf, or estuary, *inter fauces terræ*, the Common Law would deal with it because the parts of the sea so circumstanced were held to be within the body of the adjacent county or counties; but along the coast on the external sea the jurisdiction of the Common Law extended no further than to low water mark."

Again, at page 197, he thus expresses himself:—

"To come back to the subject of the realm, I cannot help thinking that some confusion arises from the term 'realm,' being used in more than one sense. Sometimes it is used, as in the Statute of Richard II, to mean the land of England *and the internal sea within it*, sometimes as meaning whatever the sovereignty of the Crown of England extended or was supposed to extend over. When it is used as synonymous with territory, I take the true meaning of the term 'realm of England' to be the territory to and over which the Common Law of England extends. In other words, all that is within the body of any county, to the exclusion of the high seas, which come under a different jurisdiction only because they are not within any of those territorial divisions into which, amongst other things for the administration of the law, the kingdom is parcelled out. At all events I am prepared to abide by the distinction taken in the Statutes of Richard II., between the realm and the sea."

This clearly shows that as far back as the time of Richard II, beyond which legal memory is not permitted to run, the realm of England was known and understood to include within its bounds those inland waters which were enclosed from the high seas between headlands.

The Answer of the United States (page 5) quotes with approbation the strong condemnatory language of the Lord Chief Justice, and holds it out to the Commissioners and the world as applicable to the contention of Great Britain in this matter. If the language was really so applied, it might be considered as damaging to the case of Great Britain, but if it has no reference to any question now before the Commission, then it is submitted that its presence in the Answer is calculated to mislead. In the course of his judgment, Sir Alexander Cockburn, referring to claims made by England centuries ago, not merely to exclusive dominion over the four seas, but to the right to preserve the peace of the King in all seas, and even to treat as pirates the crews of those foreign vessels which refused to strike their colours to a King's ship on any sea, proceeds as follows (pages 174, 175):—

"Venice, in like manner laid claim to the Adriatic, Genoa to the Ligurian Sea, Denmark to a portion of the North Sea. The Portuguese claimed to bar the ocean route to India and the Indian seas to the rest of the world, while Spain made the like assertion with reference to the West. All these vain and extravagant pretensions have long since given way to the influence of reason and common sense."

The remainder of the passage quoted in the Answer is to be found at page 196 of the Report, where, referring to the jurisdiction of the Admiral, which extended over the whole ocean as regards British ships, and to the reasoning of some older

authorities which sought from that circumstance to extend the realm of England over the whole ocean, the Lord Chief Justice says:—

"These assertions of sovereignty were manifestly based on the doctrine that the narrow seas are part of the realm of England. But that doctrine is now exploded. Who at this day would venture to affirm that the sovereignty thus asserted in those times now exists? What English lawyer is there who would not shrink from maintaining, what foreign jurist who would not deny, what foreign government which would not repel such a pretension?"

In what possible way this language can be made to bear upon the present inquiry, Her Majesty's Government are at a loss to understand.

Sir Robert Phillimore, one of the Judges who agreed with the Lord Chie Justice in the conclusion that the conviction ought not to stand, was equally careful to put the consideration of the law governing bays and inland waters out of the case. He says (page 71):—

"The question as to dominion over portions of the seas inclosed within headlands, or contiguous shore, such as the King's Chambers, *is not now under consideration.*"

The King's Chambers referred to by Sir Robert Phillimore are themselves well-known bays or inland waters on the English coast, inclosed within headlands, many of them as large or larger at the mouths than are the bays of Miramichi or Chaleurs.

It is confidently claimed by Her Majesty's Government that the case of the "Franconia," so far from affording any support to the Answer of the United States, is an authority in favour of the right of Her Majesty to exercise sovereign and exclusive jurisdiction over all "bays" and other inland waters lying on the coast of British America, inclosed with headlands, be the distance between such headlands what it may.

A subsequent case directly in point and containing an interpretation of the *very word in the very instrument* now under discussion, has been decided by the Judicial Committee of the Privy Council, the highest Appellate Court in the realm in relation to all British Colonial matters, as lately as the 14th February, 1877. The case is that of *The Direct United States Cable Company (Limited), Appellants* v. *The Anglo-American Telegraph Company (Limited) and others Respondents,* reported in the Law Reports Appeal cases, vol. ii, page 394. The suit was one in which the Respondent Company had obtained an injunction against the Appellant Company restraining them from laying a telegraph cable in Conception Bay, Newfoundland, and thereby infringing rights granted by the Legislature of that island to the Respondent Company. The Appellant Company contended that Conception Bay (which is rather more than twenty miles wide at its mouth and runs inland between forty and fifty miles) was not British territorial waters, but a part of the high seas. The buoy and cables complained of were laid within the bay at a distance of more than three miles from the shore. The contention of the Respondent Company was not sustained, and the injunction was retained. The Judgment of the Judicial Committee was delivered by Lord Blackburn, and the attention of the Commission is directed to the following quotation from the Judgment, which, so far as judicial interpretation can affect that object, must be held to set the question at rest:—

"Before proceeding to discuss the second question, it is desirable to state the facts which raise it.

"Conception Bay lies on [the eastern side of Newfoundland, between two promontories, the southern ending at Cape St. Francis, and the northern promontory at Split Point. No evidence has been given, nor was any required, as to the configuration and dimensions of the bay, as that was a matter of which the Court could take judicial notice.

"On inspection of the Admiralty chart, the following statement, though not precisely accurate, seems to their Lordships sufficiently so to enable them to decide the question:—

"The bay is a well-marked bay, the distance from the head of the bay to Cape St. Francis being about forty miles, and the distance from the head of the bay to Split Point being about fifty miles. The average width of the bay is about fifteen miles, but the distance from Cape St. Francis to Split Point is rather more than twenty miles.

"The Appellants have brought and laid a telegraph cable to a buoy more than thirty miles within this bay. The buoy is more than three miles from the shore of the bay, and in laying the cable, care has been taken not at any point to come within three miles of the shore, so as to avoid raising any question as to the territorial dominion over the ocean within three miles of the shore. Their Lordships therefore are not called upon to express any opinion on the questions which were recently so much discussed in the case of the Queen *v.* Keyn (the 'Franconia' case).

"The question raised in this case, and to which their Lordships confine their judgment, is as to

the territorial dominion over a bay of configuration and dimensions such as those of Conception Bay above described.

"The few English common law authorities on this point relate to the question as to where the boundary of counties ends, and the exclusive jurisdiction at common law of the Court of Admiralty begins, which is not precisely the same question as that under consideration: but this much is obvious, that, when it is decided that any bay or estuary of any particular dimensions is or may be a part of an English county, and so completely within the realm of England, it is decided that a similar bay or estuary is or may be part of the territorial dominions of the country possessing the adjacent shore.

"The earliest authority on the subject is to be found in the grand abridgement of Fitzherbert, 'Corone 399,' whence it appears that in the 8 Edward II, in a case in Chancery (the nature and subject matter of which does not appear), Staunton Justice expressed an opinion on the subject. There are one or two words in the common printed edition of Fitzherbert which it is not easy to decipher or translate, but subject to that remark this is a translation of the passage: 'Nota per Staunton Justice, that that is not sañce [which Lord Coke translates 'part'] of the sea where a man can see what is done from one part of the water and the other, so as to see from one land to the other; that the coroner shall come in such case and perform his office, as well as coming and going in an arm of the sea, there where a man can see from one part of the other of the [a word not deciphered], that in such a place the country can have conusance, &c.'

"This is by no means definite, but it is clear Staunton thought some portions of the sea might be in a county, and within the jurisdiction of the jury of that county, and at that early time, before cannon were in use, he can have had in his mind no reference to cannon shot.

"Lord Coke recognizes this authority, 4 Institute, 140, and so does Lord Hale. The latter, in his Treatise, 'De Jure Maris,' part 1, cap. 4, uses this language: 'That arm or branch of the sea which lies within the 'fauces terræ,' where a man may reasonably discern between shore and shore, is, or at least may be, within the body of a county, and therefore within the jurisdiction of the sheriff or coroner. Edward II, Corone 399.'

"Neither of these great authorities had occasion to apply this doctrine to any particular place, nor to define what was meant by seeing or discerning. If it means to see what men are doing, so, for instance, that eye-witnesses on shore could say who was to blame in a fray on the waters resulting in death, the distance would be very limited; if to discern what great ships were about, so as to be able to see their manœuvres, it would be very much more extensive; in either sense it is indefinite. But in Regina *v.* Cunningham (Bells C. C. 86) it did become necessary to determine whether a particular spot in the Bristol Channel, on which three foreigners on board a foreign ship had committed a crime, was within the county of Glamorgan, the indictment having, whether necessarily or not, charged the offence as having been committed in that county.

"The Bristol Channel, it is to be remembered, is an arm of the sea dividing England from Wales. Into the upper end of this arm of the sea the River Severn flows. Then the arm of the sea lies between Somersetshire and Glamorganshire, and afterwards between Devonshire and the counties of Glamorgan, Carmarthen, and Pembroke. It widens as it descends, and between Port Eynon Head, the lowest point of Glamorganshire, and the oppposite shore of Devon, it is wider than Conception Bay; between Hartland Point, in Devonshire, and Pembrokeshire it is much wider. The case reserved was carefully prepared. It describes the spot where the crime was committed as being in the Bristol Channel between the Glamorganshire and Somersetshire coasts, and about ten miles or more from that of Somerset. It negatived the spot being in the River Severn, the mouth of which, it is stated, was proved to be at King's Road, higher up the Channel, and that was to be taken as the finding of the jury. It also showed that the spot in question was outside Penarth Head, and could not therefore be treated as within the smaller bay formed by Penarth Head and Lavernock Point. And it set out what evidence was given to prove that the spot had been treated as part of the county of Glamorgan, and the question was stated to be whether the prisoners were properly convicted of an offence within the county of Glamorgan. The case was much considered, being twice argued, and Chief Justice Cockburn delivered judgment, saying, 'The only question with which it becomes necessary for us to deal, is, whether the part of the sea on which the vessel was at the time when the offence was committed, forms part of the body of the county of Glamorgan, and we are of opinion that it does. The sea in question is part of the Bristol Channel, both shores of which form part of England and Wales, of the county of Somerset on the one side, and the county of Glamorgan on the other. We are of opinion that looking at the local situation of this sea, it must be taken to belong to the counties respectively by the shores of which it is bounded; and the fact of the Holms, between which and the shore of the county of Glamorgan, the place in question, is situated, having always been treated as part of the parish of Cardiff, and as part of the county of Glamorgan, is a strong illustration of the principle on which we proceed, namely, that the whole of this inland sea between the counties of Somerset and Glamorgan, is to be considered as within the counties, by the shores of which its several parts are respectively bounded. We are therefore of opinion that the place in question is within the body of the county of Glamorgan.' The case reserved in Cunningham's case incidentally states that it was about ninety miles from Penarth Roads (where the crime was committed) to the mouth of the Channel, which points to the headlands in Pembroke, and Hartland Point in Devonshire, as being the fauces of that arm of the sea. It was not, however, necessary for the decision of Cunningham's case to determine what was the entrance of the Bristol Channel, further than that it was below the place where the crime was committed, and though the language used in the Judgment is such as to show that the impression of the Court was, that at least the whole of that part of the Channel between the counties of Somerset and Glamorgan was within those counties, perhaps that was not determined. But this much was determined, that a place in the sea, out of any river, and where the sea was more than ten miles wide, was within the county of Glamorgan, and consequently, in every sense of the words, within the territory of Great Britain. It also shows that usage and the manner in which that

portion of the sea had been treated as being part of the county was material, and this was clearly Lord Hale's opinion as he says, not that a bay is part of a county, but only that it may be.

"Passing from the common law of England to the general law of nations, as indicated by the text writers on international jurisprudence, we find an universal agreement that harbours, estuaries, and bays, landlocked, belong to the territory of the nation which possesses the shores round them, but no agreement as to what is the rule to determine what is 'bay' for this purpose.

"It seems generally agreed that where the configuration and dimensions of the bay are such as to show that the nation occupying the adjoining coasts also occupies the bay, it is part of the territory; and with this idea most of the writers on the subject refer to defensibility from the shore as the test of occupation; some suggesting, therefore, a width of one cannon shot from shore to shore, or three miles; some a cannon shot from each shore, or six miles; some an arbitrary distance of ten miles. All of these are rules which, if adopted, would exclude Conception Bay from the territory of Newfoundland, but also would have excluded from the territory of Great Britain that part of the Bristol Channel which in Regina *v.* Cunningham was decided to be in the county of Glamorgan. On the other hand the diplomatists of the United States, in 1793, claimed a territorial jurisdiction over much more extensive bays, and Chancellor Kent in his commentaries, though by no means giving the weight of his authority to this claim, gives some reasons for not considering it altogether unreasonable.

"It does not appear to their Lordships that jurists and text writers are agreed what are the rules as to dimensions and configurations, which, apart from other considerations, would lead to the conclusion that a bay is or is not a part of the territory of the State possessing the adjoining coasts; and it has never, that they can find, been made the ground of any judicial determination. If it were necessary in this case to lay down a rule, the difficulty of the task would not deter their Lordships from attempting to fulfil it. But in their opinion it is not necessary so to do. It seems to them that, in point of fact, the British Government has for a long period exercised dominion over this bay, and that their claim has been acquiesced in by other nations, so as to show that the bay has been for a long time occupied exclusively by Great Britain, a circumstance which in the tribunals of any country would be very important. And, moreover (which in a British tribunal is conclusive), the British Legislature has by Acts of Parliament declared it to be part of the British territory, and part of the country made subject to the Legislature of Newfoundland.

"To establish this proposition it is not necessary to go further back than to the 59 Geo. III, c. 38, passed in 1819, now nearly sixty years ago.

"There was a Convention made in 1818 between the United States and Great Britain, relating to the fisheries of Labrador, Newfoundland, and His Majesty's other possessions in North America, by which it was agreed that the fishermen of the United States should have the right to fish on part of the coasts (not including the part of the Island of Newfoundland on which Conception Bay lies), and should not enter any 'bays' in any part of the coast, except for the purposes of shelter and repairing damages, and purchasing wood, and obtaining water, and no other purposes whatever. It seems impossible to doubt that this Convention applied to all bays, whether large or small, on that coast, and consequently to Conception Bay. It is true that the Convention would only bind the two nations who were parties to it, and, consequently, that though a strong assertion of ownership on the part of Great Britain, acquiesced in by so powerful a State as the United States, the Convention though weighty is not decisive."

The meaning of the word "bay" being settled, what therefore did the United States renounce, when they renounced the right to take fish within three marine miles of any of the coasts, bays, harbours, and creeks?

It is admitted they could not take fish within three marine miles of the coast. It has been shown that they could not fish in the bay. Some right or privilege outside the bay is therefore renounced. But how far outside? The distance is expressly given—three marine miles.

But from what point is this distance to be measured. Not from the shore or coast, for that construction would render the word "bay" superfluous. If any place within the bay had been intended, the Treaty would have said so. The entrance of the bay must therefore be the point whence the three miles are to be measured. The entrance is defined by the line drawn from headland to headland, and the three miles must be measured seawards from that line which defines and marks the sea limit of the bays, as a corresponding three miles are to be measured from the line or boundary of the shore.

This restriction not to fish within three marine miles of any bay, is of importance in considering the whole argument of the United States.

The restrictions are, fishing in and within three miles of any bay. They are quite distinct in sense and wording. That the United States' fishermen might not enter any bay for the purpose of fishing, is made quite distinct by the permission given to enter such bays for other specified purposes; and when the further restriction is added that they are not to take fish within three marine miles of any bay, the conclusion is inevitable that by the Convention of 1818, the United States' fishermen were excluded from fishing within three marine miles of the entrance of or line drawn across from the headlands which form the bay.

APPENDIX J.

Speeches of Counsel before the Halifax Commission.

At the Conference held on the 5th of September, 1877.

Mr. Foster.—I will read the motion that was presented on the 1st instant:—

"The Counsel and Agent of the United States ask the Honourable Commissioners to rule, declaring that it is not competent for this Commission to award any compensation for commercial intercourse between the two countries, and that the advantages resulting from the practice of purchasing bait, ice, supplies, &c., and from being allowed to transship cargoes in British waters, do not constitute a foundation for award of compensation, and shall be wholly excluded from the consideration of this tribunal."

The object, may it please the Commission, of this motion, is to obtain, if it be possible, and place on record, a decision declaring the limits of your jurisdiction, and thus to eliminate from the investigation matters which we believe to be immaterial, and beyond the scope of the powers conferred upon you. The XXIInd Article of the Treaty of Washington is the charter under which we are acting, and this provides that—

"Inasmuch as it is asserted by the Government of Her Britannic Majesty, that the privileges accorded to the citizens of the United States, under Article XVIII of this Treaty are of greater value than those accorded by Articles XIX and XXI of this Treaty to the subjects of Her Britannic Majesty, and this assertion is not admitted by the Government of the United States, it is further agreed that Commissioners shall be appointed to determine, having regard to the privileges accorded by the United States to the subjects of Her Britannic Majesty, as stated in Articles XIX and XXI of this Treaty, the amount of any compensation, which, in their opinion, ought to be paid by the Government of the United States to the Government of Her Britannic Majesty, in return for the privileges accorded to the citizens of the United States under Article XVIII of this Treaty."

The subject of our investigation, then, is the amount of any compensation which ought to be paid by the United States to Her Majesty, in return for the privileges accorded to the citizens of the United States under Article XVIII of the Treaty, and that is all. The other Articles referred to in this section, Articles XIX and XXI, are set-offs, or equivalents, received by Her Majesty's subjects for the Concession made by Her Majesty's Government to United States' citizens under Article XVIII. When we turn to Article XVIII we find that the High Contracting Parties agreed as follows:—

"It is agreed by the High Contracting Parties that, in addition to the liberty secured to the United States' fishermen by the Convention between Great Britain and the United States, signed at London on the 20th day of October, 1818, of taking, curing, and drying fish on certain coasts of the British North American Colonies therein defined, the inhabitants of the United States shall have, in common with the subjects of Her Britannic Majesty, the liberty for the term of years mentioned in Article XXXIII of this Treaty, to take fish of every kind, except shell-fish, on the sea-coasts and shores, and in the bays, harbours, and creeks of the Provinces of Quebec, Nova Scotia, and New Brunswick, and the Colony of Prince Edward Island, and of the several islands thereunto adjacent,

without being restricted to any distance from the shore, with permission to land upon the said coasts, and shores and islands, and also upon the Magdalen Islands, for the purpose of drying their nets and curing their fish; provided that, in so doing they do not interfere with the rights of private property, or with British fishermen, in the peaceable use of any part of the said coasts in their occupancy for the same purpose. It is understood that the above-mentioned liberty applies solely to the sea fishery, and that the salmon and shad fisheries, and all other fisheries in rivers and the mouths of rivers are hereby reserved exclusively for British fishermen."

The concession made to the citizens of the United States is the right to fish inshore without being excluded three miles from the shore, as they were excluded by the renunciation contained in the Treaty of 1818. It gives the further right to land on the coasts and shores and islands, for the purpose of drying nets and curing fish, provided that in so doing they do not interfere with the rights of private property for British fishermen, having the peaceable use of any part of the said coasts in occupancy for the same purpose. The liberty of inshore fishing, and that of landing on uninhabited and desert coasts, where no private rights, or rights of private property will be interfered with, for the two purposes of drying their nets and curing their fish, are all the concessions which Article XVIII contains. Now, as we understand it, the jurisdiction of this Commission extends to appraise these two privileges, and nothing more, but the British claim seeks compensation for various incidental advantages, and a variety of other considerations. The inhabitants of the United States traffic with the Colonists. They buy ice of them, they buy of them fish for bait, and they buy of them other supplies. They have commercial intercourse with them, they sell to them small codfish, better adapted for the British markets than those of the United States. They exchange flour, kerosene, and other necessaries of life with the British fishermen, receiving in return bait and fish. For all these things compensation is demanded at your hands.

In addition to that, every description of damage that has been done, or which may be done hereafter by our fishermen, is made the foundation of claims for compensation. The Treaty speaks of compensation to be awarded in return for privileges accorded to the citizens of the United States, while the case made, and the evidence offered, claims damages as well.

Have any of our fishing vessels lee-bowed—I believe that is the proper phrase —British fishing boats in former years, or are they likely to do it again? Are the fishing grounds hurt by "gurry" thrown into the water? Have families been alarmed by American fishermen on shore? Every description of injury and outrage, intentional or unintentional, great or small, going back to a period as far as human memory extends, is laid before you as ground for damages. The Colonial Governments have erected lighthouses on their coasts at dangerous points, and the perils of navigation are thereby diminished, so they present an estimate of the cost, and a list of the number of the lighthouses, and gravely ask you to take these things into consideration in making up your award. Whatever has to do with fishing, or fishermen, or fishing vessels, directly or indirectly, nearly or remotely, is brought before you, and made the foundation of a claim. The British case and its evidence seems to me to be a drag-net, more extensive than the purse seine of which we have heard so much, gathering in everything that can be thought of, and laying it before you, if by any means, consciously or unconsciously, the amount of such award as you shall render may thereby be affected. Now it seems to us, under these circumstances, to be a plain duty to ascertain, if we can, and to have recorded exactly, the grounds of your jurisdiction, as in your judgment they exist. We understand, as I have said, that you are simply to determine the value of the inshore fisheries, and the value of the right of landing to cure fish and dry nets, where this can be done without interfering with private property, or British fishermen drying nets. From the beginning we have protested against any more extensive claim being made; this protest will be found distinctly and unequivocally made on page 8 of the "Answer," where it is said:—

"Suffice it now to observe, that the claim of Great Britain to be compensated for allowing United States' fishermen to buy bait and other supplies of English subjects, has no semblance of foundation in the Treaty, by which no new right of traffic is conceded."

And in the recapitulation at the close of the "Answer," the United States maintain, that the various incidental and reciprocal advantages of the Treaty, such

as the privileges of trafficking, and purchasing bait, and other supplies, are not a subject of compensation, because the Treaty of Washington confers no such rights on the inhabitants of the United States, who now enjoy them merely by sufferance, and who can at any time be deprived of them by the enforcement of existing laws, or the re-enactment of former oppressive statutes. We say, first, that you have no jurisdiction over such matters as a subject of compensation, because the Treaty confers none upon you, and nothing of the kind is denominated in the bond. We say, secondly, that we have no vested rights under the Treaty regarding commercial intercourse of this description; and that as regards such intercourse, the inhabitants of the United States stand in the same relation to the subjects of Her Majesty as they did before this Treaty was negotiated. These two points, though running somewhat together, are nevertheless distinct. And we base our contention upon the plain language of the Treaty, in which not one word can be found relating to the right to buy or sell, to traffic or transfer cargoes—the whole language is limited to the privilege of the inshore fisheries, both in Artice XVIII, where these privileges are conferred, and in Article XXII, which provides for the appointment of this Commission. Of course, it is not necessary for me to call your attention to the fact that Commissioners, arbitrators, referees, and every other description of tribunals, are limited in their powers by the terms of the instrument under which they act; and that, if they include in any award a thing upon which they are not authorized to decide, the entire award is thereby vitiated, and their whole action becomes *ultra vires*, and void. I cannot anticipate that there will be any denial of this plain proposition.

Now, the Commissioners will be pleased to observe, and our friends on the other side to take notice, that the United States utterly repudiate any obligation either to make compensation, or pay damages for any of these matters; that they maintain, as they have from the first, that the question submitted here is solely and exclusively the adjustment of equivalents relating to the inshore fisheries; and that the United States will not be under the slightest obligation to submit to an award including anything more than these things. Turning to the Treaty again, we find that there are Commercial Articles in it, but these are not Articles with which this tribunal is concerned. From Article XXVI to XXXI, inclusive, various commercial privileges are given to the citizens of the two countries. These Articles relate to the navigation of the lakes, rivers, and canals, to the conveyance of goods transshipped in bond free of duty, to the carrying trade; and as to them the Treaty of Washington is a Reciprocity Treaty; as to these matters, that which is conceded on the one side is an equivalent for that which is conceded on the other; and the mutual concessions are the sole equivalents for each other. Indeed, who ever heard of a Treaty of Commercial Reciprocity, where a money payment, to be ascertained by arbitration, was to balance concessions granted by the one side to the other? It is enough to say that in these commercial clauses of the Treaty, as in all other commercial arrangements that have ever been made between the two countries, there is no stipulation for compensation. It may be well to inquire on what footing the commercial relations between the United States and Great Britain do rest. How have they stood for more than a generation past—for nearly a hundred years? My friend Mr. Trescot has investigated the Treaties, and the result, as I understand it, is this—that the Commercial Convention of 1815, originally entered into for four years, was extended during ten years more by the Convention of 1818, and extended again indefinitely in 1827. The last clause of the IInd Article of the Convention of 1815, after providing as to the duties to be levied on the products of each country, &c., and as to commercial intercourse between the United States and Her Majesty's subjects in Europe, states:—

"The intercourse between the United States and His Britannic Majesty's possessions in the West Indies, and on the Continent of North America, shall not be affected by any of the provisions of this Article, but each party shall remain in the complete possession of its rights, with respect to such an intercourse."

Thus the commercial intercourse between the two countries is provided for by the Treaty of 1815, which, as I understand it, under its various extensions, is in force to-day. It refers back to former and pre-existing rights, to find which it is necessary to go still further back—to the Treaty of 1794, commonly known as Jay's Treaty. Turning to that we find that the IIIrd Article deals with the special

relations between the United States and the British North American Colonies. It might be supposed—and the argument perhaps might be correct, though I do not say whether this would be the case or not—that the war of 1812 abrogated the provisions of the Treaty of 1794. Were it not that the Commercial Convention of 1815, referring to previous existing rights, quite manifestly, I think, treats as still in force the provisions of this Article of the Treaty of 1794. I will not read the whole Article, but it stipulates "that all goods and merchandize, whose importation into His Majesty's said territories in America shall not be entirely prohibited, may freely, and for the purposes of commerce, be carried into the same, in the manner aforesaid, by the citizens of the United States, and that such goods and merchandize shall be subject to no higher or other duties than are payable by His Majesty's subjects, on importing the same into the said territories; and in like manner, that the goods and merchandize, whose importation into the United States shall not be wholly prohibited, may freely, for the purposes of commerce, be carried into the same by His Majesty's subjects, and that such goods and merchandize shall be subject to no higher or other duties than are payable by the citizens of the United States, on importing the same in American vessels into the Atlantic ports of the said States;"—and mark this, "that all goods not prohibited from being exported from the said territories respectively, may, in like manner, be carried out of the same by the two parties respectively, on paying duty as aforesaid," that is to say, as I understand it, the inhabitants of each country going for the purposes of commerce to the other country, may export its goods, so long as their exportation is not wholly prohibited, upon the same terms as to export duties as would be imposed on Her Majesty's subjects. Then the Article, after some other paragraphs, closes thus:—"As this Article is intended to render, in a great degree, the local advantages of each party common to both, and thereby to promote a disposition favourable to friendship and good neighbourhood, it is agreed that the respective Governments will mutually promote this amicable intercourse, by causing speedy and impartial justice to be done, and necessary protection to be extended to all who may be concerned therein."

Gentlemen,—Such I understand to be the footing on which commercial intercourse stands between the two countries to-day, if there is any Treaty that governs commerce between the British North American Provinces and the United States. And if this is not the case, the relations between the two countries stand upon that comity and commercial freedom which exist between all civilized countries. The effect of these provisions, to employ an illustration, is this: If the Government of Newfoundland chooses to prohibit its own people from exporting fish for bait, in which export, it is testified, they carry on a trade of 40,000*l.* or 50,000*l.* annually with St. Pierre, it can also, by the same law, prohibit United States' citizens from carrying away such articles, but not otherwise. As I understand the effect of this commercial clause, whatever may be exported from the British Provinces by anybody—by their own citizens, by Frenchmen, or by citizens of other nations at peace with them, may also be exported by citizens of the United States on the same terms, as to export duty, that apply to the rest of the world. If, then, Newfoundland sees fit to conclude that the sale of bait fish—caplin, or herring, or squid, and ice, is injurious to its interests, and therefore forbid its export altogether, that prohibition may extend to the citizens of the United States; but the citizens of the United States have there the same privileges with the rest of the world; they cannot be excluded from the right to buy and take bait out of the harbours of Newfoundland, unless the rest of the world is also excluded. However, this is of remote consequence, and perhaps of no consequence, to the subject under discussion.

The material thing is this: under the Treaty of Washington we cannot prevent such legislation. The Treaty of Washington confers upon us no right whatever to buy anything in Her Majesty's dominions. The Treaty of Washington is a Treaty relating to fishing, and to nothing else. I am aware of the ground taken in the reply filed by the British Agent. It is this:—

"Previous to the date of the Treaty of Washington, American fishermen were, by the 1st Article of the Convention of 1818, admitted to enter the bays and harbours of His Britannic Majesty's dominions in America for the purpose of shelter and of purchasing wood, and of obtaining water, and *for no other purpose whatever.*

"By the terms of Article XVIII of the Treaty of Washington United States' fishermen were granted 'permission to land upon the said coasts and shores and islands, and also upon the Magdalen Islands, for the purpose of drying their nets and curing their fish.'

"The words, '*for no other purpose whatever*,' are studiously omitted by the framers of the last-named Treaty, and the privilege *in common* with the subjects of Her Britannic Majesty, to take fish and to land for fishing purposes, clearly includes the liberty to purchase bait and supplies, transship cargoes, &c., for which Her Majesty's Government contend it has a right to claim compensation."

Well, as the quotation stands, to my mind it would be a *non sequitur*, but when you turn to the Ist Article of the Convention of 1818, you find that under it the conclusion quoted is a renunciation accompanied by two provisos:—

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

This was a renunciation of the right to fish inshore, and it is followed by this further proviso:—

"Provided, however, that the American fishermen shall be admitted to enter such bays or harbours for the purpose of shelter and of repairing damages therein, of purchasing wood, and of obtaining water, and for no other purpose whatever."

This coupled the renunciation of the inshore fishery with the proviso that there may be resort to British waters for shelter and repairs, and for obtaining wood and water. Then it goes on to say:—

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

Whenever American fishermen seek British ports for shelter, or go there to repair damages to their vessels, or for wood and water, they shall be under restrictions to prevent them from taking or curing fish therein. Now it was to remove those restrictions which prevented them from taking, drying, and curing fish, that the language framed in the XVIIIth Article of the Treaty of Washington was adopted, which gives the citizens of the United States liberty to take fish, and permission to land upon the said coasts and islands, and also on the Magdalen Islands, for the purpose of drying nets and curing fish. You will observe that the United States renounced the right to the inshore fisheries in 1818, but these are regained by the provisions of the XVIIIth Article of the Treaty of Washington. The United States retain the right of resorting to British ports for shelter, repairs, and purchasing wood and water, subject to such regulations as would prevent their citizens drying fish on the shore; and the object of this Article is to add to the inshore fisheries the right to dry nets and cure fish on the shore, and this superadded right is limited to parts of the coast where it does not interfere with private property, or the similar rights of British fishermen. Now, what argument can be constructed from provisions like these to infer the creation of an affirmative commercial privilege, or the right to purchase supplies and transship cargoes, I am at a loss to imagine. It seems to me that if I were required to maintain that under the right conceded to dry nets and cure fish on unoccupied and unowned shores and coasts, taking care not to interfere with British fishermen, couched in language like that, the United States had obtained a right to buy what the policy of the British Government might forbid to be sold, I should not have one word to say for myself. I cannot conceive how a commercial privilege can be founded upon that language, or how you can construct an argument upon that language in support of its existence. But, gentlemen, this is not to be decided by the strict language of the Treaty alone. We know very well what the views of Great Britain on such subjects are, and we know what the policy of Her Majesty's Government was just before this Treaty was entered into. On the 16th February, 1871, Earl Kimberley wrote to Lord Lisgar as follows:—

"The exclusion of American fishermen from resorting to Canadian ports, except for the purpose of shelter, and of repairing damages therein, purchasing wood, and of obtaining water, might be warranted by the letter of the Treaty of 1818, and by the terms of the Imperial Act 59 Geo. III, cap. 38; but Her Majesty's Government feel bound to state, that it seems to them an extreme measure, inconsistent with the general policy of the Empire, and they are disposed to concede this point to the United States' Government, under such restrictions as may be necessary to prevent smuggling, and to

guard against any substantial invasion of the exclusive rights of fishing which may be reserved to British subjects."

A month later, on the 17th March, 1871, another letter from Earl Kimberley to Lord Lisgar gives to the Colonial Authorities this admonition:—

"I think it right, however, to add that the responsibility of determining what is the true construction of a Treaty made by Her Majesty with any foreign Power, must remain with Her Majesty's Government, and that the degree to which this country would make itself a party to the strict enforcement of Treaty rights may depend not only on the literal construction of the Treaty, but on the moderation and reasonableness with which those rights are asserted."

In such a spirit, and with these views of commercial policy, the Treaty of Washington was negotiated; and can one believe that it was intended to have a valuation by arbitration of the mutual privileges of international commerce? Gentlemen, suppose that the Canadian Representative on the Joint High Commission, when the XVIIIth Article was under consideration, had proposed to amend it by adding in language something like this:—And the said Commission shall further award such compensation as, in their judgment, the United States ought to pay for its citizens being allowed to buy ice, and herring, squid and caplin, of Canadians and Newfoundlanders, and for the further privilege of being allowed to furnish them with flour and kerosene oil and other articles of merchandize, in exchange for fish and ice, and for the further privilege of being allowed to sell them small codfish; suppose I say that an amendment in these or similar words had been suggested to the members of the High Joint Commission; fancy the air of well-bred surprise with which it would have been received by Earl Grey and Professor Bernard and others. Imagine England—free-trade England—which forced commercial intercourse upon China with cannon, asking for an arbitration to determine on what price England, that lives by selling, will trade with the inhabitants of other countries.

I venture to express the belief that the ground which has been taken here is not the ground that will be sustained by the English Government, and that my friend, the British Agent, will receive from Her Majesty's Ministers the same instructions that I shall certainly receive from the President of the United States, viz., that at the time when the Treaty of Washington was negotiated, no one dreamed that such claims as I have been referring to would be made, and that neither Government can afford to insist upon, or submit to, anything of the kind, because it is contrary to the policy of the British Empire, and contrary to the spirit of civilization. If the language were at all equivocal, these considerations would be decisive, but with the express limits to your authority laid down, they hardly need to be asserted.

The next question is, whether the motion that has been made should be decided by you at the present stage in your proceedings. We have brought it before you at the earliest convenient opportunity.

The case of the British Government was not orally opened, and in our pleadings we had interposed a denial of the existence of any such jurisdiction. If the matter had been discussed in an opening, we might have replied to it, but as it was we could not. The case proceeded with the introduction of evidence. Now, if the evidence offered in support of these claims could have been objected to, we should have interposed the objection that such evidence was inadmissible; but we could not do that, and why? Because the Treaty expressly requires the Commission to receive such evidence as either Government may choose to lay before it; to avoid the manifold inconvenience likely to result from discussing the admissibility of evidence, it was stipulated, and we have allowed—I suppose with the approbation of the Commissioners—every piece of evidence to come in without objection. We conceived that we were under obligation to do so. We could not bring the question up earlier, and we bring it up now, just before our case commences, and say that we ought to have it now decided: first, as a matter of great convenience, because the course of our evidence will be affected by your decision. There is much evidence which we shall be obliged to introduce if we are to be called upon to waive the comparative advantages of mutual traffic, that would otherwise be dispensed with, and that we think ought to be dispensed with. Moreover, we maintain that we are entitled to have your decision now on grounds of precedent. A precisely similar question arose before the Geneva Arbitration. The United States made a claim for

indirect or consequential damages. That claim appeared in the case of the United States and its evidence, which were filed on the 15th December. The British case was filed at the same time, and on the 15th of the next April, Lord Tenterden addressed this note to the Arbitrators :—

"*Geneva, April* 15, 1872.

"The Undersigned, Agent of Her Britannic Majesty, is instructed by Her Majesty's Government to state to Count Sclopis, that, while presenting their Counter-Case, under the special reservation hereinafter mentioned, in reply to the case which has been presented on the part of the United States, they find it incumbent upon them to inform the Arbitrators that a misunderstanding has unfortunately arisen between Great Britain and the United States as to the nature and extent of the claims referred to the tribunal by the 1st Article of the Treaty of Washington.

"This misunderstanding relates to the claims for indirect losses put forward by the Government of the United States, under the several heads of—(1.) 'The losses in the transfer of the American commercial marine to the British flag.' (2.) 'The enhanced payments of insurance.' (3.) 'The prolongation of the war, and the addition of a large sum to the cost of the war and the suppression of the the rebellion.' Which claims for indirect losses are not admitted by Her Majesty's Government to be within either the scope or the intention of the reference to arbitration.

"Her Majesty's Government have been for some time past, and still are, in correspondence with the Government of the United States upon this subject; and, as this correspondence has not been brought to a final issue, Her Majesty's Government being desirous (if possible) of proceeding with the reference as to the claims for direct losses, have thought it proper in the meantime to present to the Arbitrators their Counter-Case (which is strictly confined to the claims for direct losses), in the hope that, before the time limited by the Vth Article of the Treaty, this unfortunate misunderstanding may be removed.

"But Her Majesty's Government desire to intimate, and do hereby expressly and formally intimate and notify to the Arbitrators, that this Counter-Case is presented without prejudice to the position assumed by Her Majesty's Government in the correspondence to which reference has been made, and under the express reservation of all Her Majesty's rights, in the event of a difference continuing to exist between the High Contracting Parties as to the scope and intention of the reference to arbitration.

"If circumstances should render it necessary for Her Majesty to cause any further communication to be addressed to the Arbitrators upon this subject, Her Majesty will direct that communication to be made at or before the time limited by the Vth Article of the Treaty.

"The Undersigned, &c. (Signed) "TENTERDEN."

Thereupon, after some further fruitless negotiations, the Arbitrators, of their own motion, proceeded to decide and declare that the indirect claims made by the United States were not within the scope of the arbitration, thus removing all misunderstanding by a decision eliminating immaterial matters from the controversy. The decision was made, and put on record, exactly in the method which we ask you to pursue here. We say that we are entitled to have such a decision, on the ground of precedent, as well as of convenience; and we say further that we are entitled to have it on the ground of simple justice. No tribunal has ever been known to refuse to declare what, in its judgment, was the extent of its jurisdiction. To do so, and receive evidence applicable to the subject as to which its jurisdiction is controverted, and then to make a general decision, the result of which renders it impossible ever to ascertain whether the tribunal acted upon the assumption that it had, or had not, jurisdiction over the controverted part of the case, would be the extremity of injustice.

If an award were to be made under such circumstances, nobody ever would know whether it embraced the matter respecting which jurisdiction was denied or not. In illustration I may mention the Geneva Arbitration. Suppose that it had gone forward, without any declaration by the Arbitrators, that they excluded the indirect losses, and then suppose that a round sum had been awarded, would not Great Britain have had a right to assume that this round sum included the indirect claims, to which it never meant to submit? So will it be here; unless there is placed upon record the ruling of the Commissioners as to this point, it never will be possible for us to know, or for the world to know, upon what ground you have proceeded; whether you believe that we are to pay for commercial intercourse or not. No one will know how this is, unless upon our motion you decide one way or the other. For our assistance then in conducting the case, for convenience, and for the information of our respective Governments, we ask you to make this decision; and it is entirely obvious that if no decision is made, it must necessarily be assumed that these controverted claims are by you deemed to be a just ground of award. We never can know the contrary, unless you say so; and if you are to say so, we think that convenience and justice both require that you should say so at such an early

day as to enable us to shape the conduct of our case in conformity with your decision.

Mr. Thomson.—I would like to know whether anything more is to be said on the subject by our learned friends opposite.

Mr. Foster.—We understand that, as is the case in connection with every other motion, the party moving has the right, in this instance, to open and close the argument.

Mr. Thomson.—I make this observation simply because, in the course of the American Agent's remarks, he said that Mr. Trescot had given particular attention to the Treaties, and hence I assumed that he was about to be followed by Mr. Trescot. It would be obviously unjust to the counsel acting on behalf of Her Majesty's Government if they should now be called upon to answer the argument that has been made without hearing all that is really to be said on the other side. I understand that the other side have an undoubted right to reply to anything which we may say, but if Mr. Trescot is afterwards to start a new argument, as I rather infer from Mr. Foster's remarks he will do, this might put another phase on the matter.

Mr. Trescot.—As I understand the position taken by Mr. Foster, it is very plain, and stated with all the fulness and precision necessary. He takes the ground that the commercial relations between Great Britain and the United States stand either on ordinary international comity or upon Treaty regulations. If upon the latter, then they rest upon the Treaty of 1794, the third permanent Article of which did determine the commercial relations which were to exist between the United States and the British North American Colonies, because in 1815 the Commercial Convention, then adopted and extended in 1815 and 1827, renewed that Article, even if it should be contended, as I think it never has been before by the British Government, that the permanent Articles of the Treaty of 1794 were abrogated by the war of 1812. The negotiators of the Convention of 1815 took the IIIrd Article of the Treaty of 1794 as a basis, but not being able to agree as to certain modifications, decided to omit the Article, and to declare that: "The intercourse between the United States and His Britannic Majesty's possessions in the West Indies and on the Continent of North America shall not be affected by any of the provisions of this Article [*i.e.*, the Article of the Convention of 1815 in reference to the commercial relations between the United States and the possessions of His Britannic Majesty in Europe], *but each party shall remain in the complete possession of its rights with respect to such intercourse*," those rights being, as we contend, the old rights established by the Treaty of 1815. But the question has not a very important bearing upon our present contention, and has been suggested simply in reply to what we understand is to be one of the positions on the other side, viz., that if we deny that commercial privileges were granted by the Treaty of 1871, and are not therefore proper subjects of compensation in this award, then we have no right whatever to these commercial privileges; and I can say in reply to the very proper inquiry of my friend Mr. Thomson, that in any remarks I may make that is the extent of the position which will be taken, but I do not expect to refer to the point at all.

Mr. Thomson.—In reference to the time at which this motion should be heard, in view of the arguments which the learned Agent of the United States has used, I shall not, on behalf of Her Majesty's Government, call upon this Commission to say this is an improper time for that purpose. We have no objection that this application on the part of the counsel of the United States' Government should be heard at length, and so they may be enabled to understand at all times, on all reasonable occasions, the exact ground upon which we stand. There is nothing unreasonable in the view which has been put forward by them in this respect. They are entitled to know whether the Commission is going to take the matter named in their notice of motion, into consideration or not. We therefore have no objection that your Excellency and your Honours should determine this point at once, and we do not complain of the time at which the motion is made. I shall now come to the substance of the motion. The Agent of the United States has travelled out of the record, and has referred to lighthouses, and other matters not contained in this motion. He also alluded to the injuries which were committed on our coasts by the American fishermen, and he says that we have put them all forward in our case as subjects for compensation. I am not here now to consider the question whether we have done so or not. I at present only intend to discuss

whether the matters included in this motion are matters coming within the jurisdiction of this Court or not. I read the motion; it states:—

"The counsel and Agent of the United States ask the Honourable Commissioners to rule declaring that it is not competent for this Commission to award any compensation for commercial intercourse between the two countries, and that the advantages resulting from the practice of purchasing bait, ice, supplies, &c., and from being allowed to transship cargoes in British waters, do not constitute any foundation for an award of compensation, and shall be wholly excluded from the consideration of this tribunal."

The tribunal will see that these are the words inviting discussion; and these I am here to answer, and nothing else. Satisfactory answers could be given to the other matters to which Mr. Foster has called attention, if this were the proper time to give them. As to the lighthouses, for instance, it is quite obvious that these make the value of the fisheries themselves very much greater to the Americans than they would be otherwise; but I say again, that I am not going to discuss that question now. If it should arise hereafter, I shall do so. We shall undoubtedly be obliged to discuss it eventually at the end of the case, but the question now is, whether it falls within the jurisdiction of this tribunal to award to Great Britain any pecuniary compensation for the rights which the Americans have undoubtedly exercised since the Washington Treaty was negotiated, of coming into our waters, and, instead of taking bait with their own lines and nets, as by the terms of that Treaty they have a right to do, purchasing it from our citizens, of buying ice here as well, and of getting supplies and transshipping their cargoes. It is said in the reply of Her Majesty (page 8, I think) that these privileges are clearly incidental; that, looking at the whole scope and meaning of the Treaty, it is clear that these are incidental privileges for which the American Government can afford to pay. The words of our reply, read by Mr. Foster, are these:—

"By the terms of Article XVIII of the Treaty of Washington, United States' fishermen were granted permission to land upon the said coasts and shores and islands, and also upon the Magdalen Islands, for the purpose of drying their nets and curing their fish. The words, *for no other purpose whatever*, are studiously omitted by the framers of the last-named Treaty, and the privilege, *in common* with the subjects of Her Britannic Majesty, to take fish and to land for fishing purposes, clearly includes the liberty to purchase bait and supplies, transship cargoes, &c., for which Her Majesty's Government contend it has a right to claim compensation.

"It is clear that these privileges were not enjoyed under the Convention of 1818, and it is equally evident that they are enjoyed under the Treaty of Washington."

Well, that is the argument which was put forward by Her Majesty's Government, but whether that argument commends itself to the judgment of this tribunal or not, is not for me to say, though to my mind it is a very strong and very forcible one. Referring to the wording of the Treaty itself, and to the Convention of 1818, the 1st section of the latter states:—

"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 Belleisle, and thence northwardly indefinitely along the coast, without prejudice, however, to any of the exclusive rights of the Hudson's Bay Company. And that the American fishermen shall also have liberty for ever to dry and cure fish in any of the unsettled bays, harbours, and creeks of the southern part of the coast of Newfoundland hereabove described, and of the coast of Labrador; but so soon as the same or any portion thereof shall be settled, it shall not be lawful for the said fishermen to dry or cure fish at such portion so settled, without previous agreement for such purpose with the inhabitants, proprietors, or possessors of the ground. And the United States hereby renounce for ever any liberty heretofore enjoyed or claimed by the inhabitants thereof to take, dry, or cure fish on or within three marine miles of any of the coasts, bays, creeks, or harbours of His Britannic Majesty's dominions in America, not included in the above-mentioned limits; provided, however, that the American fishermen shall be admitted to enter such bays or harbours for the purpose of shelter and of repairing damages therein, of purchasing wood, and of obtaining water, and for no other purposes 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."

Now, in reference to the Washington Treaty, you will find this language used in the commencement of the XVIIIth Article: —

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

I call attention to the fact that in this very Treaty of Washington, the framers have made as the basis of it, not only the Convention of 1818, but the 1st section of it, and in that section are contained the strong and positive declaration that the Americans shall have the right (and only that right), of coming into British waters for the purposes of obtaining shelter, repairing damages, and of securing wood and water, and *for no other purpose whatever.* I will now read Article XVIII of the Washington Treaty, and the argument I wish to found upon it is this: That the High Contracting Parties, or rather the High Commissioners, had before them, when they framed that Treaty, the Convention of 1818, the 1st Article of which contains these words :—

"That the American fishermen shall be admitted to enter such bays or harbours for the purpose of shelter, and of repairing damages therein, of purchasing wood, and of obtaining water, and *for no other purpose whatever.*"

One would suppose that under ordinary circumstances it would have been sufficient to have stopped with the statement, that they should be admitted "for the purpose of shelter, &c., and of obtaining water," but the framers of the Convention of 1818 were particular to add, "and for no other purpose whatever."

They not only so restricted the Americans by affirmative words, but also by negative words. The High Contracting Parties having this before them, gave the Americans the liberty of coming upon our shores to fish on equal terms with our fishermen, and to take bait, &c. To my mind, the High Commissioners considered that the framers of the Convention of 1818 deemed it necessary to insert the words, "and for no other purpose whatever," to make it absolutely certain that the Americans could only come in for shelter, repairs, wood, and water, and should enjoy no rights as incidental to that privilege, and that they purposely omitted those words in the Treaty of Washington. It may, therefore, be well supposed, that if the Americans were to be restricted to the very letter of the Treaty, the same negative words would have been used, and undoubtedly had those words been used in the Treaty, there would be an end of the argument. If that had been the intention of the High Commissioners, they would have gone on in this Treaty to state in Article XVIII :—

"It is agreed by the High Contracting Parties that, in addition to the liberty secured to the United States' fishermen by the Convention between Great Britain and the United States, signed at London on the 20th day of October, 1818, of taking, curing, and drying fish on certain coasts of the British North American Colonies therein defined, the inhabitants of the United States shall have, in common with the subjects of Her Britannic Majesty, the liberty for the term of years mentioned in Article XXXIII of this Treaty, to take fish of every kind, except shell-fish, on the sea-coasts and shores, and in the bays, harbours, and creeks of the Provinces of Quebec, Nova Scotia, and New Brunswick, and the Colony of Prince Edward Island, and of the several islands thereunto adjacent, without being restricted to any distance from the shore, with permission to land upon the said coasts and shores and islands, and also upon the Magdalen Islands, for the purpose of drying their nets and curing their fish, and *for no other purpose whatever.*"

But these words were not used.

Now these are the words which the learned Agent of the United States, and

the learned counsel who are associated with him, seek, in my judgment, to interpolate into this Treaty. The framers of the Convention of 1818, were very cautious as to its wording; the framers of the Treaty of Washington had that Convention before them, and it must, therefore, I think, be fairly assumed that if it had been the intention of either of the High Contracting Parties, in this instance, that the Americans should simply have the bare rights named in the Treaty, and nothing else, they would have followed the example set before them by the Convention of 1818, and used these strong negative words, "and for no other purpose whatever." I say that this argument is a fair and just one, of course its weight is to be determined by this tribunal. I am by no means putting it forward as a conclusive argument, but still the fact that they did not do so is of great weight in my mind, though to what extent its weight will affect the decision of this tribunal is not for me to say, but it does appear to me to be a very strong argument indeed. Had it been intended to restrict the United States' fishermen, and, to use the language of Mr. Foster, confine them merely to what was mentioned in the bond, the High Commissioners would have added "and for no other purpose whatever;" and therefore their leaving that language out is open to the construction that the Americans were entitled to all the incidental advantages which that Treaty would necessarily be understood to confer.

Is it not a rather extraordinary argument on the part of the United States that this privilege of theirs related only to their right of coming in and fishing on equal terms with our citizens, and to landing and to drying their nets and curing their fish, and that the moment they had dried their nets and cured their fish, they were forthwith to take to their boats and go back to their vessels; and that by landing for any other purpose whatever they are clearly liable for infraction of the provisions of this Treaty? It is certainly a curious view which Mr. Foster presents, with regard to their mode of bartering along the coast, when he intimates that they land merely to exchange a gallon or two of kerosene oil or a barrel of flour for fish, and in effect declares—for this is the result of his argument—that for so doing the Americans are liable to punishment.

Mr. Foster.—I said that they could be excluded by statute.

Mr. Thomson.—I will show you, before I am through, that these American fishermen can by no possibility whatever come into our waters without incurring the risk of forfeiture, if Mr. Foster's reading of this Treaty be accepted as correct. This would be the result of his argument: if you confine them to the very terms of the bond, to use the language of Mr. Foster, then it is clear that if they land for the purpose of giving a barrel of flour in exchange for fish, or of purchasing fish, at that moment their vessels are liable to forfeiture. This is a strange construction to put upon the Treaty, and these are the strange results which will necessarily follow if this tribunal adopt the view presented by the American Agent.

But there is another matter to be considered, and it is this: In 1854 the Reciprocity Treaty was passed, and under that Treaty the Americans came in to fish on our coasts generally. They exercised the same rights as they do now, and no person then ever complained of them for buying bait under the terms of that Treaty, though it did not in express terms authorize their purchase of bait, or their getting supplies of any kind on our shores; still they did so. By a kind of common consensus of opinion, it was understood that they had a right to do so, and no person complained of it. And in view of the course which then was pursued, this Treaty was framed. Mr. Foster has put this case: Suppose that, when the Joint High Commissioners were sitting, the British Representative had proposed that the value of the rights of transshipment, and of buying bait, and of having commercial intercourse with our people, should be taken into consideration by this tribunal; then, had this been the case, it would have been met by a well-bred shrug from the Earl of Ripon and Professor Bernard. This may possibly be so; but I can say I think it would have been very strange indeed if our Commissioners had said to the American Commissioners: Under the Treaty which we propose you shall have the right to fish in our waters on equal terms with our fishermen, and have the right to land and cure your fish, and the right also to dry your nets on the land, but the moment that you take one step farther, the moment that you buy a pound of ice, and the moment that you presume to buy a single fish for the purpose of bait in our waters, and the moment you attempt to exercise any commercial privilege whatever, and above all, the moment you undertake to transship one single cargo, that moment your vessel will be forfeited, and the cargo as well; I

think that if this had been stated, there would have been something more, perhaps, than a well-bred shrug from the American Commissioners. I think, therefore, it may fairly be contended, in view of the wording of the two Treaties, that these are privileges which it was intended that this Commission should take into consideration, when they came to adjudicate respecting the value of our fisheries; and, after all, is not the value of our fisheries to these people enhanced by the way in which they use them, and in which they generally have been using them—by coming into our harbours to purchase bait and ice? Because it takes a long time to catch the bait for themselves, and they save time, and money therefore—time and money being in such case equivalent terms—by buying their bait. And why is this not, to all intents and purposes, a privilege under this Treaty? I fail to see that it is not. Why, when it is necessary to preserve bait in ice, and, as has been shown by all the witnesses, that the Americans cannot procure bait and ice except on our shores, should this not be considered an incidental right? It appears to me that this view must be taken. The argument put forward on behalf of the United States, demanding a contrary construction, is almost suicidal. Moreover I think I can establish that this latter view is not taken by the Americans on this subject. On page 467 of Mr. Sabine's Report, the following language is used: "It is argued that if the liberty of landing on the shores of the Magdalen Islands"—your Excellency and your Honours will recollect that while the Americans have the right to fish around the Magdalen Islands, they have no right to land on these shores, though our evidence has shown that, as a rule, they have landed on these islands, both before and since the negotiation of this Treaty, and have dragged their nets on the shore, and fished for bait in this way. Mr. Sabine states:—

"It is argued that, 'if the liberty of landing on the shores of the Magdalen Islands had been intended to be conceded, such an important concession would have been the subject of express stipulation,' &c., it may not be amiss to consider the suggestion. And I reply that, if 'a description of the inland extent of the shore over which' we may use nets and seines in catching the herring is necessary, it is equally necessary to define our rights of drying and curing the cod elsewhere, and as stipulated in the Convention. Both are *shore* rights, and both are left without condition or limitation as to the quantity of beach and upland that may be appropriated by our fishermen. It was proclaimed in the House of Commons, more than two centuries ago, by Coke—that giant of the law—that 'FREE FISHING' included 'ALL ITS INCIDENTS.' The thought may be useful to the Queen's Advocate and Her Majesty's Attorney-General, when next they transmit an opinion across the Atlantic which is to affect their own reputation, and the reputation of their country. The right to take fish 'on the shores of the Magdalen Islands,' without conditions annexed to the grant, whatever these profoundly ignorant advisers of the Crown of England may say to the contrary, includes, by its very nature and necessity, all the 'incidents' of a 'free fishery,' and all the privileges in use by and common among fishermen, and all the facilities and accommodations, on the land and on the sea, which conduce to the safety of the men employed in the fishery, and to an economical and advantageous prosecution of it."

Now, it may be said that this is not the opinion of a person entitled to weight; but, at all events, it had sufficient weight to induce the Legislature of the United States to republish this Report in a volume, which contains the sessional papers of the House of Representatives of the forty-second Congress, second session. The Legislature of the United States, therefore, thought it proper and of sufficient importance to publish it; and I believe that the Report was published more than once. At all events, it is from their own State Papers that I quote it. The language employed is very forcible. It is very often the case, when our friends across the border are arguing matters that nearly or closely affect them, they couch their arguments in strong and uncomplimentary language to those who differ from them; and so, of course, when Mr. Sabine writes, "that it would be well for those profoundly ignorant Law Officers to govern themselves in future as to their opinions," &c., we can understand that language as being used, perhaps, in the American sense of the term, and certainly not in the offensive sense in which such words would be construed here or in England.

Mr. Foster.—It is used in the Pickwickian sense.

Mr. Thomson.—I was about to say so. I trust that it was employed in that sense. Here is a construction which the American nation can put forward, as the true construction of this Treaty, for the purpose of obtaining the right to land on the Magdalen Islands, and the moment the shoe pinches on the other side, they want to have the strict letter of the law and nothing else; they then do not wish to go a single step beyond that, though the moment when it becomes necessary to extend their rights, they want to obtain a liberal construction of its terms. I do not

think myself that the United States can always claim to come before any tribunal and say that they have—where it suits their purpose to do so—been very liberal in their construction of Treaties. In regard to this very Treaty itself, your Excellency and your Honours are aware, that it certainly was an extraordinary construction on the part of the United States' Government, when a duty was by them placed on the tin packages in which free fish entered into the United States. I wish to show what necessarily would be the result if the United States' contention in this matter were right; but, before doing so, it may be proper for me to notice an argument which Mr. Foster drew from the Convention of 1815, to which he called your attention, and part of which he read. He says that inasmuch as the Convention referred to previous privileges, which the United States had abandoned as against Great Britain, and as those privileges must have been granted by the Treaty of 1794, that, therefore, the war of 1812 did not abrogate those privileges, and that this was a distinct admission on the part of Great Britain that the Treaty mentioned was not abrogated, and that the privilege conferred by that Treaty had been in no way interfered with. I altogether deny the conclusion he thus draws; but it is not now necessary for the purpose of my argument to answer that statement, farther than to say that the mention of those privileges had reference to ordinary commercial relations existing between the traders of the two nations. These traders are a well-known class of persons. They are merchants and ship-owners, who send their ships to sea. These vessels have registers, clearances, manifests, &c., for the purpose of showing the nationality of their vessels; and these papers also show the voyage which the vessels have undertaken to prosecute, what they have on board, and everything about them. If they are on a trading voyage, this states their object. But fishing vessels have no such papers except registers. They come without clearances, and, if I understand the question at all, they are a separate and distinct class of vessels, and as a separate and distinct class they have always been treated by both nations. The 1st section of the Convention of 1818 had reference to ordinary traders, and to them solely. Let it be admitted, for the sake of argument, that Mr. Foster is right in his construction of the effect of the language used in the Convention of 1815 to which he refers, though this I, in fact, utterly deny; but still, admitting that the words to which he has directed attention, in fact declared that the war of 1812 had no practical effect whatever upon the Treaty of 1794; supposing that this were so, what do we find? We find that in 1818 a distinct and separate Treaty is framed referring to this very class, respecting whose rights your Excellency and your Honours are now sitting in judgment—the fishermen engaged in the prosecution of the fisheries of the United States. The Convention of 1818 was made altogether with reference to them; was it not? What does the 1st section of that Convention of 1818 say? It is this:—

"Art. I. Whereas differences have arisen respecting the liberty claimed by the United States for the inhabitants thereof, to take, dry, and cure fish on certain coasts, bays, harbours, and creeks of His 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 said Cape Ray to the Quirpon Islands, on the shores of the Magdalen Islands, and also on the coasts, bays, harbours, and creeks from Mount Joly, on the southern coast of Labrador, to and through the Straits of Belleisle, and thence northwardly indefinitely along the coast, without prejudice, however, to any of the exclusive rights of the Hudson's Bay Company. And that the American fishermen shall also have liberty, for ever, to dry and cure fish in any of the unsettled bays, harbours, and creeks of the southern part of the coast of Newfoundland hereabove described, and of the coast of Labrador; but so soon as the same or any portion thereof shall be settled, it shall not be lawful for the said fishermen to dry or cure fish at such portion so settled, without previous agreement for such purpose, with the inhabitants, proprietors, or possessors of the ground. And the United States hereby renounce for ever any liberty heretofore enjoyed or claimed by the inhabitants thereof, to take, dry, or cure fish on or within three marine miles of any of the coasts, bays, creeks, or harbours of His Britannic Majesty's dominions in America, not included within the above-mentioned limits; provided, however, that the American fishermen shall be 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."

Now, I want to say, may it please your Excellency and your Honours, I think it most extraordinary that the learned Agent of the United States, and a man of

his high standing and great ability, should take this matter up and distinctly assert that what took place in 1815 had the slightest bearing on the subsequent agreement which was made with reference to the particular class mentioned—the fishermen—between these two nations. I must confess I cannot see the slightest bearing it has on the Convention of 1818. I deny that the construction urged by the Agent of the United States is correct; and, if it were necessary to do so, I think I would be able to convince this tribunal that the contention of Mr. Foster is entirely erroneous. Still, I put it out of consideration altogether, as being in no way connected with the matter at present at issue. What have you to do with it? We stand here by the Treaty of 1818, which was a definite Treaty affecting the fishermen of the United States, and the fisheries on the shores of these provinces. By the terms of that Treaty the fishing vessels of the United States, and their fishermen, were prohibited from coming within three miles of our shores, and of all our bays, for any purpose whatever, with three exceptions—that is to say, they might resort to our harbours for the purpose of shelter in case of storms, to make repairs in case of necessity, and to procure wood and water; and if they went into these places for any other purpose whatever, their vessels were liable to forfeiture. Yet though this was the case, as my learned friend on the other side well knows, they incurred that liability time and again. Vessel after vessel of theirs was condemned, from the making of this Treaty up to the present time; and has that Treaty ever been abrogated? There is no pretence for saying that this is the case. That Treaty stands in as much force to-day as it did in the year 1819, the year after which it was passed, with one exception only—except in so far as it is interfered with by the Treaty of Washington. Now let me turn your attention to what the Treaty of Washington says on this point, because, so far as any privileges were renounced by the United States in the Treaty of 1818, they have been conferred on the United States by the Treaty of Washington. The XVIIIth Article of the Treaty of Washington declares:—

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

The only privileges which the American fishermen had in British waters are received under the Convention of 1818; and as to all other privileges, they expressly excluded themselves by their renunciation for ever. Now, in this Treaty, Great Britain says, it is expressly agreed by the High Contracting Parties, that in addition to the privileges which the Americans enjoy under the Convention of 1818, that is, in addition to the privileges which they have of fishing on the southern coast of Labrador, and on the shores of the Magdalen Islands, and around the shores of the Magdalen Islands:—

"The citizens of the United States shall have, in common with the subjects of Her Britannic Majesty, the liberty for the term of years mentioned in Article XXXIII of this Treaty, to take fish of every kind, except shell-fish, on the sea coasts and shores, and in the bays, harbours, and creeks of the Provinces of Quebec, Nova Scotia, and New Brunswick, and the Colony of Prince Edward's Island, and of the several islands thereunto adjacent, without being restricted to any distance from the shore."

Can anything be plainer than this? Whereas, before this Treaty, Great Britain says to the United States, "You could only fish around the Magdalen Islands, but not land on these Islands." By this Treaty, however, all these restrictions are taken away from you; and, in addition to that, the restrictions which were imposed preventing you from fishing within three miles of the shores of Nova Scotia, New

Brunswick, Quebec, and Prince Edward Island, are removed, and besides the right of fishing there, you also have the right to land and dry your nets on these coasts. Is not that plain? The Convention of 1818 clearly stands untouched except in so far as it is restricted by the Treaty of 1871. Now, what follows from this, if the Agent of the United States is correct in his contention, and I presume that my learned friends opposite have weighed it carefully? This follows:—These American fishermen having, then, as I have shown, no right to enter our harbours by any Commercial Treaty; they are governed by the Convention of 1818; their rights are defined by that Convention, and extended by the Agreement and Treaty of 1871. This being the case, what have they a right to do, if the contention of my learned friend on the other side is correct? They have a right, and that under this Treaty, to fish within three miles of the shore in common with the inhabitants of these Colonies, and there to take fish of every kind, shell-fish excepted, and to land for the purpose of drying their nets and curing their fish, and nothing more; that is the "bond."

That is the "bond," says Mr. Foster. That is all they have a right to do. If it is, then what follows? Then all other privileges save those of taking fish within three miles of the shore, landing on the coast for the purpose of drying nets and curing fish, are governed by the Convention of 1818. And if that is the case then when they do enter for the purpose of purchasing bait, they enter for another purpose than that of obtaining wood and water, securing shelter, &c., and they become liable to forfeiture. If they come in for the purpose of buying ice, they are in the same predicament; they have not entered for the purpose of buying wood or obtaining shelter, they have come in for the purpose of buying ice, which is wholly foreign to the provisions of the Treaty of 1818. They could not, under the Treaty of 1818, enter for that purpose, and the position assumed by the learned Agent and counsel for the United States is that that privilege is not conferred by the Treaty of Washington. If so, they haven't got it, and every time they come in for other purposes than those mentioned in the Treaty of 1818, they are liable to forfeiture. The surprise with which I, as counsel, heard that contention will, I have no doubt, be only exceeded by that of the fishermen of the United States, when they find that that is the construction placed on the Treaty by the Government of the United States, as represented by their Agent, before this Commission. If this argument applies to buying bait and ice, *à fortiori*, it applies to the privilege that they now enjoy of landing and transshipping cargoes. Under the plain reading of the Treaty, there is no doubt about it; and if it does not come within the incidental privileges, I admit that, as a lawyer, I cannot contend for one moment that the privilege of buying bait, or at all events of buying ice, whatever may be said about bait, as to which there may be a particular construction, to which I will refer presently, I admit frankly that I cannot see that the privileges of buying ice, or of transshipping cargoes, are conceded, unless they are to be considered as necessarily incidental. If it is denied that they are conceded incidentally, then the moment a vessel lands for any of those purposes, a forfeiture is worked immediately.

There is just this distinction with reference to the taking of bait. It has been shown by numerous witnesses before this tribunal, that these men come in and employ our fishermen to get bait for them, and then pay the fishermen for doing so. Now I wish to be distinctly understood upon this point. I submit, without a shadow of doubt—I don't think it will be controverted on the other side—at all events it will not be successfully controverted, that if those fishermen, having a right to come in and fish, as they undoubtedly have under the Treaty, choose to hire men to catch bait for them, they are catching that bait themselves. There is a legal maxim put in old Latin, *Qui facit per aliam facit per se*, "What a man does by an agent he does by himself." Therefore, in all these instances where it has come out in evidence that they come in and get our fishermen to catch bait for them, and pay them for doing so, in all such cases the act is that of the United States' fishermen themselves. On the other hand, if the fishermen upon the coast keep large supplies of bait, for the purpose of selling to such persons as come along, then under the construction of the Treaty contended for by the learned Agent of the United States' Government, whenever bait is purchased in that way, that is a purpose for which it is unlawful to enter our ports under the Treaty of 1818, and the act works a forfeiture of the vessel and cargo. That is a startling proposition.

In reference to bait there is another consideration I throw out. I do not know

whether it will be dissented from or not by the learned counsel on the other side, but this Treaty does give them this power, that they shall, in common with the subjects of Her Britannic Majesty, have the liberty, for the term of, &c., to take fish. May not buying fish be a *taking of fish* within the meaning of the Treaty?

It does not say to *catch fish*. The words are not "to fish," but "to take fish." It simply uses the word "take." The term is a wide one, and I am not by any means prepared to say that by a strict legal construction these people, finding the fish caught here, have not a right to take it from the fishermen; I say that is possibly a fair construction of the Treaty. In that case they do "take fish," and that is all. The contention on the other side, I suppose, will be to narrow that word "take" down to mean the actual taking of fish by the citizens of the United States from the water, by means of nets and other appliances. If that be the construction, then it follows, as a necessary consequence, that in taking bait from our fishermen they infringe the Treaty of 1818. I wish to make myself distinctly understood on that point. By the Convention of 1818, the American fishermen could not enter our harbours at all except for the three purposes of obtaining shelter, to get wood and water, and to make repairs in case of necessity. Entrance for any other purpose was made illegal. Any privileges which they had under that Convention remained. Any restrictions that they laboured under after that Convention still remained, except in so far as they have been removed by the Washington Treaty, and if the construction be true, as contended for by the learned Agent of the United States' Government, then the restriction as to landing for the purposes I have mentioned are not removed. The purchasing of bait and ice, and the transshipping of cargoes, are matters entirely outside of the Treaty, and unprovided for. Under the Treaty of 1818, vessels entering for any other purposes than the three provided for in that Treaty can be taken. As was put forward in the American Answer, any law can be passed. An inhospitable law, they will say, by which, the moment they do any of those acts, they will become liable to forfeiture.

I do not presume that the remarks of the Agent of the United States, in which he speaks of instructions possibly coming from his Government, or from the Government of Great Britain, should be taken into consideration, or that they can properly be used as arguments to be addressed to this tribunal, because, as the learned Agent very properly says, the authority of this tribunal is contained in the Treaty. If the Treaty gives you authority, you have sworn to decide this matter according to the very right of the matter, and I presume you will not be governed by any directions from either Government. Nothing of that sort can be made use of as an argument, and you will determine the matter conscientiously, I have no doubt, upon the terms of the Treaty itself. Now Her Majesty's Government does not object to your deciding, in so many words, that these things are not subjects of compensation, if that be the judgment of the Court. I have advanced very feebly the views which I think ought to govern your decision upon the point, namely, that these are incidental privileges which may fairly be constructed, in view of the way in which this Treaty is framed, and as inseparable from the right given to the Americans under the Treaty of Washington. But I confess that I shall not be at all dissatisfied should this tribunal decide otherwise. If it be the desire of the American Government that this tribunal shall keep within the very letter, and disregard what I have argued is the spirit of the Treaty, and determine just merely the value of the fisheries themselves, and of landing on the shores to dry nets,—very well,—I have no objection, and we will accept such a decision. But Her Majesty's Government wish it to be distinctly understood, that that is not the view they have held, or wish to be compelled to hold of this Treaty. If, however, pressed as you are to determine the question in this way by the Government of the United States, and in view of the declaration you have made to determine it according to the very right of the matter, you can conscientiously arrive at the conclusion for which they ask, we shall not regret it at all.

Mr. Doutre.—I would desire to add to what has been so well said by my learned friend that the interpretation which Her Majesty's Government has put upon the Washington Treaty, has received the consecration of the whole time that the Reciprocity Treaty was in operation, by the course of dealing between the two Governments with reference to that Treaty. The Reciprocity Treaty was in exactly the same terms as the Washington Treaty, and under it the Americans have been

admitted to purchase bait, transship their cargoes, and do all those things mentioned in the motion. I think that this interpretation cannot be lightly set aside to adopt the construction now sought to be put upon the Treaty by our learned friends on the other side. And to show that the several Provinces have not been indifferent to these matters, I would refer the Commission to a Petition sent to the Queen by the Legislature of Newfoundland on the 23rd April, 1853, which is to be found on page 12 of the official correspondence which has been filed on our side:—

"TO THE QUEEN'S MOST EXCELLENT MAJESTY.

"May it please Your Majesty:—

"We, Your Majesty's loyal subjects, the Commons of Newfoundland, in General Assembly convened, beg leave to approach Your Majesty with sentiments of unswerving loyalty to Your Gracious Majesty's person and throne, to tender to Your Majesty our respectful and sincere acknowledgments for the protection afforded by the Imperial Government to the fisheries of this Colony and Labrador during the last year, and to pray that Your Gracious Majesty will be pleased to continue the same during the ensuing season.

"May it please Your Majesty:—

"The illicit traffic in bait carried on between the inhabitants of the western part of this island and the French, has proved of serious injury to the fisheries generally, as the supply enables the French Bankers to commence their voyage early in spring, and thereby prevent the fish from reaching our coasts. We therefore most earnestly beseech Your Majesty graciously to be pleased to cause an efficient war-steamer to be placed in Burin during winter, so that by being early on the coast, she may avert the evil of which we so greatly complain.

"Passed the House of Assembly, April 23rd, 1853.

"(Signed) JOHN KENT, Speaker."

I think that every other Province would have made the same complaint in a different shape, but I quote this to show that the Provinces have never been indifferent to the matter of selling bait to the Americans by Canadian subjects.

This is about all that I wish to add to what has been said, except that I do not know if I have well understood Mr. Foster in reference to a class of argument which he has used. I repeat, I am not very certain that I have understood him well, that if the construction put by the American side upon this Article were not admitted, the American Government might repudiate the award made by he Commission.

Mr. Foster.—Oh, no. I said that if the award included matters not submitted to the tribunal, the principles of law would render it void. I did not say what my Government would do under any given circumstances, nor am I authorized to do so.

Mr. Doutre.—There is no authority to decide as to the legality of the award made by the Commissioners, there is no other right than might. However, if this argument has not been used, I have nothing to add to what has been said by my learned friend. If it had been, I should have found it necessary to address some observations, which are rendered needless by the fact that I have misunderstood my learned friend.

Mr. Weatherbe.—Owing to our adherence, until quite recently, to the arrangement entered into to argue this morning a preliminary question, and considering the sudden determination of counsel on behalf of Her Majesty's Government to enter upon the main question, and considering also that we are to be followed by counsel of very great ability, I trust the imperfections of what few suggestions I have to offer may be excused. For my own part, I am much in favour of written argument before this tribunal, whenever that is practicable. For example, it seems we quite misunderstood the learned Agent and counsel for the United States, Mr. Foster. This may have occurred in other respects. Were written arguments to be submitted, and, after examination, replied to in writing, all that would be avoided. The other side would probably admit their written argument would have been different from what has fallen from the lips.

Mr. Foster.—I hope it would be very much better.

Mr. Weatherbe.—And yet an advantage of oral discussion was very forcibly stated by Mr. Dana the other day—namely, the privilege of asking at the moment for explanation for obscure and ambiguous expressions; and hence just now, in reply to my friend, Mr Doutre, in regard to his interpretation—in which I must say I concurred—as to the declaration by the Agent of the United States, of what his Government would do in case of an adverse decision on the point under discussion,

an explanation has followed. The words, as we took them, would certainly form an unjustifiable mode of argument.

Treaties between the United States and Great Britain have been referred to—the old Treaties—and I have just examined the passages cited. But I understood the learned counsel to admit that the argument relative to these was too remote or of no consequence in relation to this discussion. (*Mr. Trescot.*—That is correct.) So then I may pass over my notes on that subject.

Mr. Foster, representing the United States before this tribunal, says that a formal protest against the claim of Her Majesty's Government for these incidental advantages—the purchase of bait and supplies, transshipment, and traffic—for which we are here claiming compensation under the Treaty of Washington, is to be found in the Answer of the United States. He calls it a protest. I do find it in the Answer, but I find something more. I think this highly important. Of course this Answer on behalf of a great nation is carefully prepared to express the views of the United States. We all weigh well—we have never ceased to weigh well these words—and we have within the prescribed time, many weeks ago, prepared and filed our Reply. These are the words to which the Agent and counsel of the United States refer:—

"Suffice it now to be observed, that the claim of Great Britain to be compensated for allowing United States' fishermen to buy bait, and other supplies, of British subjects finds no semblance of foundation in the Treaty, by which no right of traffic is conceded."

The Answer does not stop there. It goes further:—

"The United States are not aware that the former inhospitable Statutes have ever been repealed."

Neither does it stop here, but continues:—

"Their enforcement may be renewed at any moment."

Here are three distinct grounds taken by the United States, in their formal Answer to the Case presented by Great Britain—and the claim for the right of bait, supplies, and transshipment, &c. First: there is no right to the enjoyment of these privileges secured by the Treaty. Secondly: there are Statutes unrepealed, by which it is rendered illegal to exercise these fishing privileges. Thirdly: such Statutes may be enforced.

Therefore we understand the contention of the United States to be, not only that this claim for incidental advantages—the incidents following necessarily the right given in express terms by the Treaty to take fish—not only do the United States say there is no semblance of authority for the tribunal to consider these things in awarding compensation, but that in point of fact these acts on the part of the United States' fishermen have been, and are now, illegally exercised on our shores. In dealing with that part of the United States' Answer, which I have read, this is the language used in the Reply, printed and filed on behalf of Her Majesty's Government:—

"The advantages so explicitly set forth in the Case, of freedom to transship cargoes, outfit vessels, obtain ice, procure bait, and engage hands, &c., are not denied in the Answer. Nor is it denied that these privileges have been constantly enjoyed by American fishermen, under the operation of the Treaty of Washington. Neither is the contention on the part of Her Majesty's Government, that all these advantages are necessary to the successful pursuit of the inshore or outside fisheries, attempted to be controverted. But it is alleged, in the 3rd Section of the Answer, that there are Statutes in force, or which may be called into force, to prevent the enjoyment by American fishermen of these indispensable privileges."

Here, in the case prepared and filed and presented before this tribunal on behalf of Her Majesty, it is alleged that these incidents are absolutely essential to the successful prosecution of the fishery, and that they are enjoyed under, and by virtue of the acceptance of the Treaty of Washington. Here in the 3rd Section of the Answer presented before this Commission to become matter of record and history, it is alleged that there are Statutes now in existence, or that may be called into force, to preclude the enjoyment by the fishermen of the United States of these necessary incidental advantages. Substantially that is the only ground taken in the Answer, and I do not hesitate for a moment to say that, providing it is correct, it is a reasonable answer. If Great Britain may, after the award of this tribunal shall have been delivered—if the Government of Great Britain or Canada may afterwards call into force those Statutes, which we contend are at present suspended,

and raise the question for the decision of the Court of Vice-Admiralty here in Halifax, or elsewhere, as it has been formerly raised and settled here, and if the decision of such questions must necessarily lead to the confiscation of the vessels attempting to avail themselves of these supposed privileges, then this is certainly a matter of great concern to the United States, and a matter of great responsibility to those in whose hands her great interests are for the time committed. In this view I do not wonder that this answer is so much insisted on. In this view—if these results are imminent, there is ground for careful deliberation. If these results are inevitable, this answer, respecting the enforcement of Statutes, is a complete and full answer—and that far the cause is ended, and the Court is closed.

It is admitted, I suppose, that the fishermen of the United States sail from their own shores, enter these waters, and annually, monthly, daily, practically enjoy these advantages since the Treaty of Washington. They never contended for a right to enjoy them previously. All the witnesses unite in saying that they have been shipping crews, purchasing and cutting and shipping ice, transshipping cargoes of mackerel—that they have been in the full and absolute enjoyment of every incident necessary to the successful prosecution of the fisheries. But it is now put forward and urged, on the part of the Government and nation of these foreign fishermen, that they have enjoyed these privileges without the sanction of the Treaty, and in violation of the laws of the land, which could be at any moment enforced against them; that there was, and is, no semblance of authority to enjoy these rights under the Treaty of Washington; that they were, and are, exercised in the face of existing Statutes, and at the peril of the United States' fishermen, and the risk of loss of their vessels, property, and earnings. If you will look at the Treaty—the learned counsel says in effect—you will find its Articles do not permit the transshipment of mackerel, or the hiring of crews, or obtaining ice and bait; that we may land and dry fish, but we cannot transship; that we can take fish out of the water and land them on deck, but we must stop there; and the Treaty in no manner annuls the disabilities under which we laboured, and none of the various things necessary to carry on the business of fishing is permitted; that you have Statutes which you have enforced before, and which you can and will enforce again. This, then, is an important inquiry. I quite admit that much.

It was on consideration of the importance of this question as regarded by the United States, as I understand—this is the view of counsel representing Her Majesty's Government—that it was considered quite reasonable a discussion should be entered upon, and it was decided not to resist the argument raised by the United States, whose Agent and counsel claim the advantage to be obtained by reducing the compensation in this manner.

I understand the learned Agent and counsel, Mr. Foster, now to say, that if an award should be made including any compensation for these advantages—I presume it is meant as well the enjoyment of them in the past, as prospectively, Great Britain could not expect to receive payment for such award—that is, that they would not be paid. There is no kind of argument in this, and, for my part, I am at a loss to understand why it should be offered.

If Great Britain were obliged to admit that an award contained anything by which it appeared on its face to be *ultra vires*, the United States could not be called on for payment. But I submit to the learned Agent, whether he would or ought to declare, in the name of the great nation he represents, that if an award were made, including compensation for the privileges already enjoyed, even although under misapprehension, the United States would repudiate that. They would hardly, I humbly submit, in the face of the world, repudiate payment of such a sum as might be awarded for those privileges of the past, because the danger of confiscation had passed away. And we are safe in believing that, if the United States were assured in any way that no proceedings would ever be taken, but the privileges in question could be secured throughout the continuance of the Treaty to the fishermen of the United States, that nation would promptly pay any sum that might be awarded. Moreover, if this tribunal had the power—if authority had been delegated, and were to be found in the Treaty, to set questions of this kind at rest, and in making their award of compensation—if the Commissioners could secure these privileges, if not already secure, I think then, also, no objection would be taken to their being considered by the tribunal. But it is because it is contended that the enjoyment of these necessary incidents is insecure—because the power of the tribunal is limited—because the matter will, it is said, be left in a state of uncertainty hereafter—because questions may arise over which the Government may have little

control—because the international relations of the future are unforeseen, and cannot be anticipated, that the claim to compensation is resisted. This seems to me to be the condition of the question, and this I gather, and have observed in the Answer from the first, is the manner in which the subject has been regarded by the Agent representing the United States. And so regarding it, an anxiety to prevent compensation incommensurate with the privileges understood to be settled and secure, beyond all question, seems perfectly reasonable.

But I think there are objections to attacking the claim set up here on behalf of Her Majesty's Government in detail. A reason, stated by the learned Agent of the United States, for asking for the decision of this question now, is, that the matter should become a record of the Commission; and if the Commissioners come to the conclusion that the right to transship and obtain ice, and bait, and men, and supplies for the fishery, are necessary incidents to the right to "take fish," and arise, therefore, by necessary implication, from the very terms of the Treaty, and that they can be properly considered in making up the award, it should be known and read hereafter. And I can understand, if an award were to be paid out of the United States' Treasury, and in that sum was included an amount for these already specified rights, and if any doubts existed as to whether they were secured to the fishermen, those doubts should be set at rest upon such payment. It will, however, hardly be contended that this tribunal should be asked to give the grounds. It would be utterly impossible to give such grounds on each branch of the case. Take the argument of the counsel in relation to lighthouses. The Representative of the United States, it appears, now thinks that the evidence in regard to lighthouses was irrelevant; that is to say, if we had no lighthouses at all, our fisheries would be just as valuable as they are now, and that if we had ten times as many as we have, no compensation should be allowed, in consequence of the efficiency of that service. I don't know how it may strike others, but it seems to me just as reasonable—with the exception already mentioned, about which I cannot conceive any cause of anxiety—that a motion should be made to obtain a decision in advance, for the information of the United States, as to whether that nation was, in paying for the use of Canadian fisheries, paying in any indirect way, and to what extent, for the support of the lights to guide the United States, in common with British fishermen, through the ocean storms. It is a matter entirely for the Honourable Commissioners whether they are content to give their Award piecemeal; whether they are to state prematurely the grounds—one ground to-day, another to-morrow—upon which their Award is to be made.

It seems to me unfortunate that this question should not have been raised earlier. One thing will be admitted: If this question had been submitted at the outset, if this tribunal had undertaken to hear argument, and if the decision had been adverse to us, a very large amount of time would have been saved in the mode of submitting the testimony. We should have had this advantage, that we might have fortified our case on matters where the quantity of evidence is small. The learned counsel on the other side have listended to a large mass of testimony which they now say is irrelevant. Suppose it should be so decided, the United States is in this position—a large portion of time allotted to them will be saved. A great deal of time may be economised, which otherwise would have been occupied in meeting claims supported in our case. Having succeeded in a matter of strict law, after our time has been occupied in submitting a very large mass of evidence on questions now sought to be excluded, the United States may now concentrate their testimony upon points which are held to be before the Commission, and at the close it will be contended that their evidence on these points greatly preponderates.

Mr. Foster.—We will give you more time.

Mr. Weatherbe.—Well, we have pretty well arranged our programme, and I think it is highly undesirable that the time should be lengthened. I don't wish it to be inferred at all that it is intimated in the slightest degree that there was any such motive governing the selection of the time to make this motion.

The Answer of the United States, at pages 8 and 9, 14 and 15, 18 and 19,* claims, on the part of the United States, consideration, in estimating the amount to be awarded for Canada, of the advantages arising to Canadians on the coast from the admission of United States' fishermen into our waters. In effect, the Commission is asked in this document, first, to estimate the value of the privileges accorded to the United States by the terms of the Treaty of Washington, in giving up to them the fisheries; and then, although there is nothing whatever in the Treaty to justify

* Pages 85, 86, 88, 89, and 90 of this volume.

it, they are required to reduce that sum, by deducting therefrom the value to a certain class residing on our shores, of the right to trade with United States' fishermen, including the supply of this very bait in question. The Commissioners will find, on the pages mentioned, very clear language to show how reasonably we can claim for the privileges now sought to be excluded.

Mr. Foster.—I don't believe you remember just the view we take of that. We say: "The benefits thus far alluded to, are only indirectly, and remotely, within the scope and cognizance of this Commission. They are brought to its attention chiefly to refute the claim that it is an advantage to the United States to be able to enter the harbours of the provinces, and traffic with the inhabitants." I say it lies out of the case on both sides, and that is what our motion says.

Mr. Weatherbe.—That is an admission that incidental privileges are within the scope and cognizance of the Commission. But there is other language which has been assigned to other counsel to cite. There are ample quotations from the arguments of Canadian Statesmen, advocating remote and incidental privileges in Parliament, as arguments in favour of the adoption of the Treaty. If the Agent and learned counsel for the United States succeed in this motion, they do more than exclude from the consideration of the case, compensation for the right of procuring bait and ice by purchase, and the other incidents to a successful prosecution of the fisheries. And, as the Answer stands, evidence may be offered on other points, unless other motions follow the present for excluding matter from the consideration of the Commission. I think it can be shown, that if this matter is not within the jurisdiction of the Commission, and had not been so considered when the Answer was drawn up, a great modification of that Answer would have been made.

Mr. Foster.—It is quite capable of being very much improved, if I had more time.

Mr. Weatherbe.—I am, however, only turning the attention of the tribunal to the deliberate and solemn admissions and declarations of the Answer, which bind now and hereafter. Whatever may be the argument of the United States for the present moment, these must remain, and they point to the true intention to be gathered from the language of the Treaty of Washington, as understood by both the great Parties to that compact.

The simple question we are now discussing is this: Whether certain things are to be taken into consideration, as incidental to the mere act of taking fish out of the water? What I understand the argument of the United States to be now is, that, by the Treaty of Washington, the American fishermen have the right of taking fish out of British waters, and landing to dry their nets and cure their fish, and nothing else. The right to land to dry their nets and cure their fish they admit are subjects for compensation. But what does taking fish mean? It means taking them out of the water and landing them on the deck, and nothing more, it is contended. We contend that, by a fair and reasonable construction of the words, the United States have obtained the privilege of *carrying on the fishery*. Can it be doubted that this was the intention when the words were adopted. Are we asking for any strained construction by the tribunal? I think not.

By the Convention of 1818, the United States renounce for ever thereafter the liberty to United States' fishermen of fishing in certain British waters, or ever entering these waters, except for shelter and for wood and water. "*For no other purpose whatever*" is the sweeping language of the Treaty. I presume we are to have very little difference of opinion as to the intention of the clause containing these words. That clause of the Convention of 1818 was fully considered by the Joint High Commission who framed the Treaty of Washington. What do those Commissioners say? That language has been cited. In addition to the liberty secured by that Convention, the privilege is granted of taking fish. The Treaty of Washington permits the liberty of taking fish, and of landing to dry nets and cure fish. This tribunal is invited to decide that it is not competent for them to award anything in relation to the incidental and necessary requirements to carry on the fisheries.

Is it contended there was an oversight in framing the Treaty of Washington? Is there an absence of words necessary to secure the full enjoyment of our fisheries to United States' fishermen? Was that absence intentional? The learned counsel for the United States have not stated their views upon this point. Can it be possible that those who represented the United States in framing the Treaty of Washington intended the result which would follow the success of the present motion. Can it be possible both parties intended that result? If this is an oversight, who are to suffer? The compensation is to be reduced, we are told. But if

the United States' Treasury is to be saved, are the United States fishermen to suffer? Or is the award to be reduced for the want of privileges, and the fishermen to continue illegally to enjoy all the privileges? This matter has not been fully explained. I must admit, if there has been an oversight here, if so great an error has occurred, the tribunal is powerless to correct the error, or to grant full compensation.

But the learned Agent and counsel who support the motion did not state fully to the Commission,—did not give to the Commission a full explanation this morning. The Answer states the matter more fully than the application for the motion. The Commissioners are entitled to know, fully and distinctly, what view is taken by the United States. Nothing was said as to the Statutes to be enforced against United States' fishermen in case the motion should be successful. In that event it would be too late to deny the right to enforce the Statute. This would be unfortunate for American fishermen, as it formerly was. Is the success of the motion to open old sores, and awaken the very troubles the Treaty was made to set at rest? There is no escape, it appears to me.

I submit that our construction is the reasonable, fair, and legitimate one. The words of the Treaty are sufficient to secure all the privileges, and preclude the enforcement of Statutes. The words are sufficient to justify the awarding of full compensation. Our argument is, that the right to "take fish" carries with it the right to prepare to fish, and the words are sufficient to secure to American fishermen those rights of which they were deprived, until secured by Treaty. We submit the matter with full confidence to this Honourable Commission, regretting that any intimation should have been offered on the other side, as to the improbability of payment of any award, unless the judgment of Commissioners should be favourable. I think I am obliged to admit on our side that we have no alternative: that for us, on this question of reducing the amount of compensation, the decision, even if adverse, must prevail; and I beg to say, I trust whatever it may be, it will be accepted in the proper spirit.

Mr. Whiteway.—I was rather taken by surprise when I learned but just now that the main question in this proposition was this day to be discussed, and not the preliminary question as to whether the main question should be argued at the present time, or as part of the final argument. I have now only a few observations to make, in addition to those that have been so strongly put by the learned counsel who have preceded me. It seems to me that the position taken by the learned counsel on the opposite side to-day differs materially, and in fact is diametrically opposed to that taken by them in their Answer. In their Answer they not only allege, on the part of the United States, that they have a right to those incidental advantages which may accrue from the concession of a right to fish, but they go further, and they allege that they have a right to claim for the incidental benefits, which may flow to the subjects of Her Britannic Majesty, from traffic with American fishermen, and they allege this as a specific ground for the reduction of the amount claimed on behalf of Great Britain. Now at page 13, part IV,* of the Answer, they say:—

"It is next proposed to consider the advantages derived by British subjects from the provisions of the Treaty of Washington.

"In the first place, the admission of American fishermen into British waters is no detriment, but a positive advantage to colonial fishermen; they catch more fish, make more money, and are improved in all their material circumstances, by the presence of foreign fishermen. The large quantities of the best bait thrown over from American vessels attract myriads of fish, so that Canadians prefer to fish side by side with them; and when doing so, make a larger catch than they otherwise could. The returns of the product of the British fisheries conclusively show that the presence of foreign fishermen cannot possibly have done them any injury.

"Secondly. *The incidental benefits, arising from traffic with American fishermen, are of vital importance to the inhabitants of the British Maritime Provinces.*"

The incidental benefits arising from traffic, therefore, are, according to the contention of our learned friends, to be taken into consideration, and to have weight with the Commissioners in reducing those damages which they may award to the British Government. Now, all that has been contended for on the part of Great Britain up to the present time, is, that the value of the incidental advantages, which necessarily arise from the concession of the right to take fish within the three mile limit, and to land for the purpose of curing, should be taken into consideration by the Commission.

* Page 88 of this volume.

On page 9* of the Answer, they say :—

"It is further important to bear in mind, that the fishery claims of the Treaty of Washington have already been in formal operation during four years,—one-third of the whole period of their continuance, while practically both fishing and commercial intercourse have been carried on *in conformity with the Treaty* ever since it was signed, May 8th, 1871."

Here they say that practically, both fishing and commercial intercourse has been carried on in conformity with the Treaty, ever since 1871. Now then, if you turn to the same Answer, page 13,† they say :—

"The United States call upon the British Agent to produce, and upon the Commissioners to require at his hands, tangible evidence of the *actual practical value of the privilege of fishing by Americans in British territorial waters, as it has existed under the Treaty for four years past, as it exists to-day, and as, judging of the future by the past, it may reasonably be expected to continue during the ensuing eight years embraced in the Treaty.*"

We have met their views, and given evidence of the actual practical value of the privilege of fishing, and its incidents of commercial intercourse, as actually carried on in conformity with the Treaty.

Now, your Excellency and your Honours, it appears to me very unfortunate, as regards our present position, that this Commission did not sit immediately after the Treaty was entered into. If it had sat,—if the construction put upon the Treaty was to the effect that the Commission had no jurisdiction to take into consideration the incidental advantages of which evidence has been given, then, as has been put by my learned friend, Mr. Thomson, no traffic would have taken place from American fishing vessels coming into our harbours for the purpose of buying bait, for they would have been liable to be confiscated forthwith. But this Treaty having existed four years, the fishermen of the United States and of Great Britain have solved practically the question of the construction of the Treaty themselves. The fishermen of the United States have found it more to their convenience, and speedy baiting, to employ British fishermen to take bait for them, and in some instances to buy it from them, believing that the right of traffic was conceded by this Treaty, and thence the traffic has arisen. No such traffic would have arisen had this question been determined at the outset, in accordance with the views contended for by the counsel for the United States, but because that traffic has arisen, and the question has been solved by the people themselves, therefore they now say we are precluded from recovering any compensation for it. It has been shown here by clear, indisputable evidence, that the bank fisheries off the coasts of the Dominion and Newfoundland could not be carried on to advantage by American fishermen, without obtaining the bait upon our coast, which they have done. It is admitted that this is a subject for consideration, and that this is a question they have to pay for; but now, forsooth, because this Commission has not sat, and four years have elapsed, and the fishermen of the two countries have practically solved the question for themselves, we are to be precluded from obtaining compensation for the advantages that would otherwise have to be paid for.

Again, in the Answer of the United States, at page 18,‡ it is stated : "The benefits alluded to (that is, the incidental advantages) are only indirectly and remotely within the scope and cognizance of this Commission." Here my learned friends show that they were clearly of the opinion, at the time they penned this Answer, that these were matters that were within the scope of the Commission, and within their jurisdiction. And without objection on their part, we have throughout the whole conduct of our case, adduced evidence to support the position we now contend for.

Mr. Trescot.—What I have to say I shall say very briefly, for my purpose is rather to express my assent to what has been said, than to add anything to what I consider the very complete argument of my colleague Mr. Foster.

If I understand the British counsel correctly, they admit that the construction for which we contend is a fair construction. They seem to think that a broader and more liberal interpretation would be more in conformity with what they consider to be the spirit of this discussion, but all of them appear to admit, that if we choose to stand on that language, we have the right to do it, and they do not object that it should be enforced. They seem to think, however, that certain consequences would follow, of which they have apprehensions for us. That is our matter. The consequences that flow from the interpretation will be confined to us, and are matters we must look to. At present the only question is, whether we have the right to say to your Honours, that you are limited in your award to a certain and specific series of items. I think, honestly, we have drifted very far from the common-sense view of

* Page 86 of this volume. † Page 88. ‡ Page 90.

this case. As to the technical argument, if we are to go into it, it might be insisted: first, that, under the Treaty of 1818, if a fisherman went into a Colonial port, and bought a load of coal for his cabin stove, he violated the Treaty, because it only gave him the right to go in and buy wood; or when a fisherman bought ice, he was only buying water in another shape, and therefore that when he had the right to buy water, he had the right to buy ice. I do not, however, suppose that this is the kind of arguments your Honours propose to consider. It appears to me that if we look at the history of this negotiation, we see with perfect distinctness what the Commission is intended to do. When the High Commission met, and the question of the fisheries came up, what was the condition of the facts? We were annoyed and worried to death by our fishermen not being allowed to go within three miles of the Canadian shore, and by their being watched by cutters. The idea of not being allowed to buy bait, fish, and ice, which we had done ever since the fisheries existed, never crossed our minds. We knew what had been the established custom for over half a century, from the earliest existence of the fisheries. We read your advertisements offering all these things for sale, as an inducement to come into your ports. We had the declaration of Her Majesty's Colonial Secretary, that whatever might be the technical right, he would not consent to Colonial legislation, which deprived us and you of this natural and profitable exchange, and we knew that in the extreme application of your laws, you had not attempted to confiscate or punish United States' fishermen for such purchases. It never occurred to us that this was a question in discussion. What we wanted to do was to raise the question as to the inshore fisheries. That was the only question we were considering, and so far from raising any question about it, what is the instruction of the British Government to their negotiators? It was as follows:—

"The two chief questions are: As to whether the expression, 'three marine miles of any of the coasts, bays, creeks, or harbours of Her Britannic Majesty's dominions' should be taken to mean a limit of three miles from the coast line, or a limit of three miles from a line drawn from headland to headland; and whether the proviso that 'the American fishermen shall be admitted to enter such bays or harbours for the purpose of shelter, and of repairing damages therein, of purchasing wood, and of obtaining water, and for no other purpose whatever,' is intended to exclude American vessels from coming inshore to traffic, transship fish, purchase stores, hire seamen, &c.

"Her Majesty's Government would be glad to learn that you were able to arrive at a conclusive understanding with the Commissioners of the United States upon the disputed interpretation of the Convention of 1818; but they fear that you will find it expedient that a settlement should be arrived at by some other means, in which case they will be prepared for the whole question of the relations between the United States and the British possessions in North America, as regards the fisheries, being referred, for consideration and inquiry, to an International Commission, on which two Commissioners to be hereafter appointed, in consultation with the Government of the Dominion, should be the British Representatives."

Now, what was that but an instruction not to trouble themselves with the very questions we are arguing here to-day, but to go and settle the question on some basis which would not involve any such discussion? And what did we do? We said, "The question is between two inshore fisheries. We think our inshore fishery is worth something; you think your inshore fishery is worth something. We give you leave to fish in ours, and we will admit fish and fish-oil free of duty, and make the matter pretty much on equality. If that is not sufficient, take three honest-minded gentlemen, and convince them that your fisheries are worth a great deal more than ours, and we will pay the difference;" and so we will, without any hesitation, if such shall be the award upon a full hearing of all that you have to say, and all that we have to say. That is the whole question we have to decide. Take the fishery question as it stands. If you will demonstrate and prove that when we go into the Gulf of St. Lawrence to fish, the privilege is worth a great deal more to us to be allowed to follow a school of mackerel inshore and catch them, than is the privilege accorded to you to come into our inshore fisheries; if, after comparing our fisheries with yours, this tribunal entertains the honest opinion that an amount should be paid by the United States, the award will be paid, and no more words said about it. What is the use of importing into this subject difficulties and contentions of words, which do not mean anything after all? The question is whether the Canadian inshore fisheries are worth more to us than our inshore fisheries are to the Canadians, with the free import of fresh fish; and if, after the examination of witnesses, this tribunal holds that our inshore fisheries are worth a great deal more than the inshore fisheries of the Dominion, then we will not pay anything. But the question submitted to this tribunal is not one that requires a great deal of discussion about Treaties, or a very close examination of words. If we are to go into that

examination, one of the first things to determine is, what sort of a Treaty are we dealing with? Because, if it is a Commercial Treaty, an exchange of commercial rights, it is one of the principles of diplomatic interpretation that cannot be contradicted, that runs through every modern Reciprocity Treaty, that commercial equivalents are absolute equivalents, and do not admit of money valuation by an additional money compensation. For instance, suppose England should make a Treaty with France, and England should say, "We will admit your wines free of duty, if you will admit certain classes of manufactures free of duty." The Treaty then goes into operation. Suppose, for some reason or other, there were no French light wines drunk in England for ten years, and the French took a large quantity of English manufactured goods; at the end of ten years it might turn out that England had made several millions of dollars by that Treaty, while France had made nothing. But you cannot make any calculation as to compensation; the whole point is, that it is reciprocity—the right to exchange. Just so is it, in regard to the question of fisheries and their values. Suppose, from the right to import fish into the United States, the Canadians make 500,000 dollars a year, and from our right to import fish into the Dominion, we do not make 500 dollars, what has that to do with this question? The reciprocity, the right of exchange, is the principle. And this is why it is that all Reciprocity Treaties are temporary Treaties; because the object of such Treaties is, regarding the general principle of free trade, as beneficial to all people, to open the results of the industries of nations to each other.

The men who made the Treaty may have miscalculated the industries affected by it. It may occur that, on account of a want of adaptation on the part of the people, or ignorance of the markets, the Reciprocity Treaty does not turn out advantageous, and therefore such a Treaty is only made for a short term of years. But if it is a Reciprocity Treaty giving extended commercial facilities, you have to put every one as an equivalent against another. If you put the Washington Treaty on that footing, then our right to use your inshore fisheries is balanced by your right to use our inshore fisheries, and the advantages are equal. That is the only way in which you can deal with the question, if you view the Treaty as one of Reciprocity. But if you consider the Treaty as an exchange, to a certain extent, of properties, then I understand that you can apply another principle. For example, if I were to exchange with some one a farm in Prince Edward Island for a house in Halifax, and agreed to submit to a Board of Arbitration the question of the difference in value, that Board could meet and ascertain the market value of the land and house respectively, and decide the question. But according to the theory of the British counsel, whenever we got before the Board of Arbitration, Mr. Thomson would say; "Now, this house is valuable as a house, and it is also valuable as a base of operations, for if you did not have the house, and there was bad weather, you would have to stay out in it; consequently that point has to be taken into consideration." The reply would be, "When I bought the house I bought it for these things." So when we come to calculate the value of the fisheries, we expect that all these incidental advantages go along with the calculation.

Mr. Thomson.—That is what we are contending.

Mr. Trescot.—I beg your pardon, that is just what you do not do. You just make an elaborate calculation of the value of your fisheries, as fisheries, then you add every conceivable incidental, or consequential, possible, advantage, whether of the fisheries, or our enterprise in the use of them, and add that estimate to the value. You contend that we shall pay for the house, and then pay you additionally for every use to which it is possible to put the house.

Mr. Thomson.—Do you admit that the value of the fisheries is enhanced by those advantages?

Mr. Trescot.—I do not. I do not believe that your alleged advantages are advantages at all. We can supply their places from our own resources, as well and as cheaply. Now, with regard to the Treaty itself, there are only two points which I propose to submit to the Commission. I contend, in the first place, that if the interpretation for which the British counsel contend is true, viz., that by the Treaty of 1818 we were excluded from certain rights, and by the Treaty of 1871 we were admitted to them, then we must find out from what we were excluded by the Treaty of 1818, and to what we were admitted by the Treaty of 1871. I contend that the language of the Treaty of 1818 is explicit. (Quotes from Convention.)

Now, I hold that that limitation, that prohibitive permission to go into the

harbours was confined entirely to fishermen engaged in the inshore fishery. That Treaty had no reference to any other fishery whatever. It was a Treaty confined to inshore fishermen and inshore fisheries, and we agreed that we should be allowed to fish inshore at certain places, and if we would renounce the fishery within three miles at certain places, we should enter the ports within those three-mile fisheries which we agreed to renounce, for the purpose of getting wood, water, &c. The limitation and permission go together, and are confined simply to those engaged in the three-mile fishery. I contend that to-day, under that Treaty, the Bankers are not referred to, and they have the right to enter any port of Newfoundland, and buy bait and ice and transship their cargoes, without reference to that Treaty. I insist that it is a Treaty referring to a special class of people, that those people are not included who are excluded from the three-mile limit, and if they are not so included, they have the right to go to any port and purchase the articles they require. In other words, while the British Government might say that none of the inshore fishermen should enter the harbours, except for wood and water, yet the Bankers from Newfoundland had a perfect right to go into port for any reason whatever, unless some commercial regulation between the United States and Great Britain forbade them. With regard to the construction that is to be placed upon the Articles of the Treaty of 1871, Mr. Thomson seems very much surprised at the construction we have put upon it. Here is the arrangement:—(Quotes from Convention of 1818 and Treaty of 1871.)

Does that take away the prohibition? Surely if it had been intended to remove that prohibition it would have been stated. In addition to your right to fish on certain coasts, and enter certain harbours only for wood and water, that Treaty says you shall have the right "To take fish of every kind, except shell-fish, on the sea coasts and shores and in the bays, harbours, and creeks of the Provinces of Quebec, Nova Scotia, and New Brunswick, and the Colony of Prince Edward Island, and of the several islands thereto adjacent, without being restricted to any distance from the shore, with permission to land upon the said coasts and shores and islands, and also upon the Magdalen Islands, for the purpose of drying their nets and curing their fish." "Drying their nets and curing their fish." That is all—that is the whole additional Treaty privilege, and I can see no power of construction in this Commission, by which it can add to Treaty stipulation the foreign words "and buy ice, bait, supplies, and transship." And yet the British counsel admit that, without these words, our interpretation is indisputable. We had a certain right and certain limitations of that right by the Treaty of 1818, and the Treaty of 1871 says, in addition we give you the further right to take, dry, and cure fish, and nothing else. The reason is very obvious. It is very evident that when the Treaty was drawn, for every advantage outside of that clause we were to be called on, according to the theory of the British counsel, to pay compensation. We never had been called on to pay for the privilege of buying bait and ice, and we had received no notice from the Colonial Government of any intention to make such claim, which was contrary to the whole policy of Great Britain, and would not be sustained. Why should we have to pay for that privilege? We did not insert it in the Treaty, because we did not intend to pay for it; that is the reason it is not there.

I leave any further reply to the learned counsel who will follow me.

I am anxious as to your decision. I have not desired to conceal, and I have not concealed the fact, that the people and Government of the United States regard this claim of 15,000,000 dollars as too extravagant for serious consideration. I know at the same time that they sincerely wish for a final settlement of this irritating controversy. And therefore I earnestly hope that you will be able to reach a decision which will limit, within reasonable proportions, a claim which, as it stands, it is simply idle to discuss.

You start from a point we can never reach. A day or two ago, during the session, I happened to go into the Commission Consulting Room, and found on the table a copy of "Isaak Walton's Complete Angler," a very fit book for the literary recreation of such an occasion. On the page which was turned down, I found a reference to some South Sea Islanders, I believe, who had such a gigantic inshore fishery that "they made lumber of the fish bones." I am afraid that the British counsel have been consulting this book as an authority.

Mr. Dana.—May it please your Excellency and your Honours, the question now before the tribunal is, whether you have jurisdiction to ascertain and declare compensation because of American fishermen buying bait, ice, and supplies, and

transshipping cargoes within British territory. Your jurisdiction, as has been well said, finds its charter in the Treaty of Washington. Without re-reading the words, which have been read, *usque ad nauseam*, I think I give truly the substance and meaning of them, when I say, that there having been mutual cessions relating to fisheries, and one side claiming that it has ceded more than it has received in value, it is agreed that your Honours shall determine strictly this, whether Great Britain has ceded more valuable rights to the United States, than the United States has ceded to Great Britain. Your Honours are not to determine, or to inquire, what rights Great Britain has permitted the United States to exercise independently of the Treaty, however nearly they may be connected with the fisheries, and however important they may be to fishermen. It must be something which Great Britain has ceded by the Treaty of 1871, or you have nothing to do with it; whatever was done, at however great a loss to Great Britain, and however great a benefit to the United States, you have but to compare the two matters which have been ceded by each side in the Treaty of 1871, and find whether one is more valuable than another, and, if so, how much more valuable. Therefore we are brought to this question: Does the Treaty of 1871 give to the United States the right to buy bait, ice, provisions, supplies for vessels, and to transship cargoes within British dominions? If the Treaty of Washington does give that to us, then it is an element for you to consider in making up your pecuniary calculation. If the Treaty of Washington does not give that to us, then I congratulate this high tribunal that it may put these matters entirely out of mind, and save many days of examination and cross-examination, and some perplexity of mind; because your Excellency and your Honours will remember, that if you are to fix a value upon them, that is the value to the United States of the right to buy bait, ice, and provisions, and to transship cargoes, that will not be all you will have to do. You will have also to ascertain the value to the Provinces of the corresponding right which they would have in the United States; and you will have still further difficulty, I think, to ascertain what benefit this American commerce is to British subjects, and deduct that. The task before you would be a very undesirable one. Having ascertained the pecuniary value of these rights to the United States, your Honours will have to ascertain the pecuniary value that British subjects derive from this common trade and barter, because we ought not to pay for the privilege of putting money into the hands of British subjects. We ought not to pay for the privilege of enfranchising a whole class of fishermen, who have been held in practical serfdom by the merchants. It is an exceedingly difficult subject of computation, and one which, I think, you are persuaded already, was never intended by the Governments of the United States and Great Britain to be submitted to your Honours for decision. I say, then, the Treaty of Washington has not given us these rights. To what does the Treaty of Washington relate? Without the necessity of reading it to you, I can say that the language is in substance: Whereas, you have certain advantages given to you relating to the inshore fisheries, under the Treaty of 1818, in regard to catching fish, drying your nets, and curing your fish on certain shores, we will extend territorially these same privileges. And I have the honour to contend that the Treaty of Washington is simply *a territorial extension of certain specific rights;* the right to catch fish, dry nets, dry fish, and cure fish. The subject matter of that part of the Treaty of Washington is the catching fish inshore, within the three-mile limit. Before the Treaty of Washington, this right of catching fish within three miles of shore, and of landing to dry and cure fish, and dry nets, was confined to certain regions. In other places we could not fish or land within the three-mile limit. The Treaty of Washington extends territorially these rights over all British America, and there the Treaty of Washington ends, so far as the fisheries are concerned. There is not one word in it of the creation of new rights. It is a territorial extension of long known specified rights.

It does not say that, whereas by the Treaty of 1818, you renounced the right to fish within the three-mile limit, provided however that you can go in to buy wood and get water, we add to those rights the right to buy ice, bait, and other supplies. If there had been the least intention by either party to extend the rights to new subjects, it would certainly have been stated in the Treaty. If, when the Representatives of Great Britain and the United States had come together, the Joint High Commission had understood that we should not enter British American ports, except those we were allowed to enter under the Treaty of 1818, for any purpose except for shelter, and to buy wood and water, and the British nation had proposed to add to these subjects, so as to include the right to buy bait and ice, and to trans-

ship cargoes, why, inevitably they would have said so; inevitably the new rights would have been specifically included in the matters on which your Honours were to base your calculations. England might have said to the United States (I deny the position, but England might have taken the position) that American fishermen have no right to enter our waters except under the Treaty of 1818, and then not to buy anything but wood and water, and now we are opening to them the great privilege of buying bait, ice, and supplies, and transshipping cargoes, which will add immensely to the value of their fisheries. The argument would have been made, which has been made here, in the form of questions put to expert witnesses: "Is not all that essential to American fisheries?" But, on the contrary, the Treaty says nothing about it. We hear of it for the first time when the counsel of the British Government are getting up their case for damages. We immediately protest against it, as something not included in the jurisdiction of this Court, and our Agent, Mr. Foster, on page 32 of the Answer, distinctly states:—

"That the various incidental and reciprocal advantages of the Treaty, such as the privileges of traffic, purchasing bait and other supplies, are not the subject of compensation, because the Treaty of Washington confers no such rights on the inhabitants of the United States, who now enjoy them merely by sufferance, and who can at any time be deprived of them by the enforcement of existing laws, or the re-enactment of former oppressive statutes. Moreover, the Treaty does not provide for any possible compensation for such privileges; and they are far more important and valuable to the subjects of Her Majesty, than to the inhabitants of the United States."

The passages which the British counsel have referred to, as an argument that the Agent of the United States had admitted that those privileges came by Treaty, all refer to something quite different. A passage on page 9* of the Answer of the United States has been quoted:—

"* * While, practically, both fishing and commercial intercourse have been carried on, in conformity with the Treaty, ever since it was signed, May 8, 1871."

That "commercial intercourse" means the free importation on each side of the articles of commerce, the only articles of commerce the Treaty refers to—fish and fish-oil. On page 14, section 2,† of the Answer, it is stated:—

"The incidental benefits arising from traffic with American fishermen are of vital importance to the inhabitants of the British Maritime Provinces."

These are benefits which the British people get from us, and they are said to be only incidental, and are only introduced as a set-off, if Great Britain claimed to have the right to receive compensation for the privilege of trading in bait, &c., with her people.

May it please your Honours, it is clear to our minds that the Treaty of Washington does not give us those advantages. That subject has been elaborated by the Agent of the United States, and by my learned friend (Mr. Trescot). In the first place, it has been said, in answer to that contention, or rather it has been suggested, for it was not said with earnestness, as if the counsel for the Crown thought it was going to stand as an argument, that those were Treaty gifts to the United States, and though they could not be found in any Treaty, yet they were necessarily implied in the Treaty of Washington. Take the Treaties of 1783, 1818, 1854, and 1871, and they are nowhere referred to, according to any ordinary interpretation of language. The only argument I can perceive is this: You have enjoyed those rights. They do not belong to you by nature or by usage, and must therefore be Treaty gifts; though we cannot find the language, yet they must have been conferred by the Treaty of 1871, and the Treaty of 1854. May it please this learned tribunal, we exercised all those rights and privileges before any Treaty was made, except the old Treaty which was abolished by the war of 1812. Almost the very last witness we had on the stand, told your Honours that before the Reciprocity Treaty was made, we were buying bait in Newfoundland, and several witnesses from time to time have stated, that it is a very ancient practice for us to buy bait and supplies, and to trade with the people along the shore, not in merchandize as merchants, but to buy supplies of bait, and pay the sellers in money or in trade, as might be most convenient. Now, that is one of those natural trades that grow up in all countries; it is older than any Treaty; it is older than civilized States or statutes. Fisheries have but one history. As soon as there are places peopled with inhabitants, fishermen go there. The whale fishermen of the United States go to the various islands of the Pacific which are inhabited, and get supplies. To be

* Page 86 of this volume. † Page 88.

sure, the whale fishery does not need bait, but the fishermen get supplies for their own support, and to enable them to carry on the fishery; and they continue to do so until those islands come to be inhabited by more civilized people. So it is with the Greenland fisheries. Then come restrictions, more or less, sometimes by Treaty, and sometimes by local statutes, which the foreign Governments feel themselves obliged to respect; if they do not, it becomes a matter of diplomatic correspondence, and might be a cause of war.

The history of this matter is, that the custom for fishermen to obtain supplies and bait from countries at various stages of civilization is most ancient, most natural, most necessary, most humane, and one for which no compensation has ever been asked by any civilized nation, because it is supposed to be for mutual benefit. It is for the benefit of the fishermen to get his supplies, but the Islanders would not sell them unless they thought it was also beneficial to themselves. So statutes do not create the right, but only regulate it. So do Treaties. They regulate, and sometimes limit the rights, but they seldom, if ever, enlarge them. In looking at this subject, your Honours will find such has been the history of the fisheries on the north-east coast of America. The fishermen began, long before these islands were well settled, even before they had recognized Governments upon them, to exercise all the privileges and rights which belong to fishermen in all parts of the world where they are not limited by Statutes or Treaties. It was a case altogether *sui generis*. Fishing is an *innocent passage* along the coast. It is an *innocent use*, and an *innocent use and transit* are always allowed. The French claimed, and the British claimed, the Newfoundland fisheries, and at last a Treaty settled their claims. It did not give rights, but adjusted them. And so it was with us. While we were part of Great Britain, we had all the privileges of British subjects; but the British in Newfoundland had very few claims which were not contested, and some were entirely in the hands of the French. When we were severed from the Crown, the question arose whether there was any reason why we should not continue to fish where we had always fished. We did not seek to make any claim in regard to property in the islands; we did not ask for any privilege not a fishing privilege. The question arose whether we had not still the right to fish as an innocent pursuit, even though within the limits of three miles; and the three-mile limit, and what it meant, was not then settled. We must not, however, discuss this subject as if there had always been an exact law, from the time of Moses down, relating to the three-mile limit, and what the powers were. All this has grown up within very recent times, and, indeed, there are very few persons now who know what is meant by it. It was long contended that the right of all States over the three miles was for fiscal purposes and purposes of defence only, and as the subject has been very fully argued in a recent case in England, nothing can probably be added to the reasons given on each side. The matter continued in that position. We fished without reference, and thought we had the right to do it. We knew it did no harm. The fishermen are, by the law of nations, a peculiar class, having special privileges. Their status is different, in time of war, from that of a merchantman or man-of-war. Having this question of the three-mile limit to deal with, one which was long disputed between the United States and Great Britain, and one which was always looked upon as disputed, which had had a slow and steady growth for many years, and about which no one can dogmatize, they have endeavoured to arrange it as best they could. Your Honours will find that in the very first Treaty, that of 1783, it is stated:—

"It is agreed that the people of the United States shall *continue to enjoy* unmolested the right to take fish of every kind on the Grand Bank, and on all the other banks of Newfoundland; also in the Gulf of St. Lawrence, and at all other places in the sea where the inhabitants of both countries used at any time heretofore to fish."

That was looked upon as dealing with existing rights, the exact limitations of which must rest solely in agreement. It was not a gift, as the French gave Dunkirk to England, or as Mexico gave California to the United States. It was like an adjustment of disputed territory. The only question settled in the first Treaty, that of 1783, was that we should fish as before; nothing was said about the three-mile line. When we come to the Treaty of 1818 we find it stated:—

"Whereas differences have arisen, &c."

By that Treaty it is agreed, that on certain parts of the coast we shall have the right to take fish; that on certain parts we shall have the right to dry and

cure fish; and that at other parts we shall not have such rights. Then came the Treaty of 1854, which said nothing about any of those rights of which I am speaking, but merely dealt with the question of our right to fish within three miles, where we could exercise it, and where not; and our right to cure and dry fish, and to dry nets. In Article XVIII of the Treaty of 1871, the question is taken up again in the same way:—

"It is agreed by the High Contracting Parties that in addition to the liberty secured to United States' fishermen by the Convention between the United States and Great Britain, signed at London on 20th October, 1818, for taking, curing, and drying fish on certain coasts of the British North American Colonies therein named, the inhabitants of the United States shall have, in common with the subjects of Her Britannic Majesty, the liberty, for the term of years mentioned in Article XXXIII of this Treaty, to take fish of every kind, except shell-fish, on the sea-coasts and shores, and in the bays, harbours, and creeks of the Provinces of Quebec, Nova Scotia, and New Brunswick, and the Colony of Prince Edward Island and the several islands thereunto adjacent, without being restricted to any distance from the shore, with permission to land upon the said coasts, and shores, and islands, and also upon the Magdalen Islands, for the purpose of drying their nets and curing their fish."

Then it is stated that, whereas it is claimed that Great Britain thereby has given the United States more valuable fisheries than they had before, there is something to be paid. Now if the Treaty did not give us the right to do so, how came we to be buying bait? Why, we have always done it. From the time there was a man there with bait to sell, there was an American to buy it from him. We have never asked for the right to buy bait. You cannot find a diplomatic letter anywhere in which we have complained that we were prohibited from buying bait. After the Treaty of 1854 had expired, it is true the Canadians, who felt sore about the matter, undertook to say we should not buy any bait; that if we did we would be punished therefor. They were immediately stopped by Great Britain, who, without saying in terms that the Americans had a right to buy bait by the Treaty of 1818, or irrespective of all Treaties, declared it to be against the policy of the nation to prohibit it; and they stopped this petty persecution of American fishermen. I care not what line of reasoning induced the British Government to take that course with their Canadian subjects. I do not care whether they considered that the Treaty of 1818 gave it to us (I do not see how they could) or whether, as is more probable, they, being large-minded men, who had studied the subject, considered it something which, not being prohibited, belonged to us, and they did not intend to prohibit it.

Now, who are the men who buy the fish for bait? They are not the men who fish within the three-mile limitation. We do not buy bait here to catch mackerel. The bait we buy is for the Banks, and deep sea cod-fishery. There is no pretence from any evidence that our mackerel fishermen come here to buy bait; it is only the Bank cod-fishermen who do so. I respectfully submit to this learned tribunal, that it can have nothing to do with how the fishermen on the Banks see fit to employ themselves. The Treaties of 1818, 1854, and 1871, related solely to fishing within the three miles. The Treaty of 1783 *recognizes* the right of American fishermen to fish on the Banks—on the high seas—a right which had always belonged to American fishermen, never ceded to them by any Treaty, but which they hold by the right of common humanity. These men come into Canadian ports to buy bait What has this tribunal to do with them?

Have not American fishermen, fishing on the high seas, the right to run into British ports, by comity, by the universal law of nations, if they are not specially excluded on some ground which the United States admits to be proper and right? Have they not the right to come in and buy bait and other necessaries? Great Britain possesses the power to put any regulation on them it pleases, to require them to enter at the Custom-house, to be searched to see whether they are merchants in disguise, and to levy duties upon them; but in the absence of a prohibition, there is no right to prevent those fishermen buying bait or supplies.

I next come to the question of shelter, repairs, purchasing ice and other articles, and transshipping cargoes. I do not propose to admit that we have not these rights, or that we are exercising them simply because we are not punished for doing so, or that because the Treaties of 1818 or 1871 have not given them to us, we do not possess them, and that it is within the power of the Provinces to exclude us from them altogether. That depends upon considerations, which are not necessary for us to take in view. If your Honours should decide that you have no right to recognize, among the elements of compensation, those rights of which I speak, then, if the Colonies should pass a law which should punish every American fisherman

from the Grand Banks, or inshore fisheries, who should buy bait or ice, or refit, is guilty of an offence, it would then be a question for Her Majesty's Governor-General to determine whether that was not an Imperial question, and if so, to refer it to Her Majesty in Council to determine. I have no fear that any such statute would be passed, because the number of persons interested in that traffic with American fishermen is very great, and they are voters; they have even in Newfoundland broken their chains, and become a sober and saving people, since they came to have cash of their own, from their trading with Americans.

I doubt whether the Canadian Government will be encouraged, however strong may be the wave of politics, to meet the people of the various constituencies, and insist on this American traffic being entirely cut off. If they do it, I doubt whether Great Britain would sanction it, and if Great Britain did allow it, then it becomes at once a question between the two Governments. Is that a course fair and right, in accordance with the comity of nations, in accordance with practices which are earlier than when the first disciples threw their nets into the Sea of Galilee—is not such a course an interference with a right practised from earliest times, and without good reason for the prohibition? You may put regulations on us so that our fishermen shall not be smugglers in disguise, and so that merchants shall not come in the disguise of fishermen; but to prohibit American fishermen from purchasing bait and supplies, not in case of necessity merely, but as part of the plan of their trade, and transshipping cargoes, would be a violation of the spirit which has governed the commercial relations between the two Empires.

I would therefore present a summary of the matter thus: The only matter of dispute between Great Britain and the United States in the Treaty of 1783, related to the inshore fisheries, I mean the right to catch fish more or less near the British coast, and in addition to that to cure and dry fish. The Treaty of 1783 acknowledged the general right.

The Treaty of 1818 gave us certain places, which were named, where we could exercise those fishing rights, and stated certain places where we could not exercise them; but it did not undertake to deal with the commercial side of the fisheries question. The Treaty of 1854 was the same—it gave a general right to take fish within these dominions, and to land and dry them in certain places. The only question of late has been whether Great Britain has the right, without any Treaty, to exclude us from three miles of the coast. That was Mr. Adams' famous argument with Earl Bathurst. We said in the Treaty of 1818 that, as a right, we no longer claimed it. That is the meaning of the Treaty—that having claimed it as a right inherent in us, either because we did not lose it at the time of the Revolution, or from the nature of fisheries, or on some other ground, we no longer claimed it as a right which cannot be taken away from us but at the point of the bayonet. But while we say we will not go within the three miles to fish without permission, it must not be held that vessels cannot go there for shelter and repairs, and for wood and water, but may be put under such regulations as will prevent us from doing anything further. It is entirely a matter for Great Britain to determine what regulations we should be placed under, in those respects, and she has seen fit to make none. The Statute 59 George III, passed to carry out the Treaty of 1818, prohibited fishing, or preparing to fish, in certain boundaries. A decision has been rendered in one Province, that buying bait was "preparing" to fish. In another Province a decision was rendered directly the other way.

That, however, is a local matter altogether. The decision rendered in New Brunswick was, that the prohibition of "preparing to fish" must apply only to those who intended to fish within the prohibited degree; that the buying of bait, whether it was a step in preparing to fish or not, was not an offence unless the fishing itself would be an offence. If an American bought bait here to go off to Greenland, or to the Mediterranean to fish, it could not be considered an offence. Great Britain cannot make a Statute which would alter our rights under this Treaty, nor revive an old statute to do so. The learned Judge was careful to say that he did not mean to apply his decision one step beyond the point of taking bait for the purpose of fishing within prescribed limits.

Sir Alexander Galt.—I desire to ask the learned counsel (Mr. Dana), if I understood him to say, that no seizure or confiscation of American fishing vessels took place before 1854. I think there were confiscations, and I should like to know whether those confiscations were confined to vessels catching fish, and that alone, within the three-mile limit.

Mr. Dana.—So far as I am concerned, I assume that there has been no condemnation for "buying bait."

Sir Alexander Galt.—I do not refer specially to the purchase of bait, but to anything except catching fish.

Mr. Thomson.—There have been several convictions for catching bait.

Mr. Foster.—I never had my attention called to any conviction, or attempted conviction, except for fishing inside. The case of the "Nickerson," before Sir Wm. Young, at Halifax, in 1870, and still later the decision in New Brunswick in the case of the "White Fawn." The first was the only case I have heard of in which there was a conviction for "preparing to fish."

Sir Alexander Galt.—I do not specially refer to "preparing to fish," because there are other offences created by the Statute.

Mr. Foster.—I have here a list of vessels seized up to 14th December, 1870, and the following are entered as their offences:—

"'Actively fishing, the men on board in the act of hauling in their lines.' 'At anchor preparing fish, and a quantity of fresh caught herring in the hold; taken on the spot, having been previously warned off.' 'Smuggling.' 'Fishing seven days in Gaspé Harbour, and preparing to fish at time of seizure.' 'At anchor, lines set, on which were six halibut.' 'Throwing out bait and crew casting their fishing lines.' 'Smuggling.' 'Having fished in the Cove, and actually found with mackerel wet and dripping, and hooks baited with fresh bait; also fresh fish blood and mackerel offals on deck.' 'Smuggling.' 'Having fished at three islands, Grand Manan.' 'Preparing to fish at Head Harbour, Campo Bello.'"

The last was the case in regard to preparing to fish, and where the learned Judge discharged the vessel, in opposition to the decision of Sir William Young in the case of the "Nickerson."

Mr. Thomson.—In the case of the "White Fawn," decided at St. John, the decison, as I understand it, is not in conflict with that of Sir William Young. Sir William Young condemned the "Nickerson" because it was fishing, or preparing to fish, within the prescribed limits. In the St. John case, the libel was framed expressly for buying bait within the harbour, with the intention of fishing. It was shown that the fisherman had purchased bait, but evidence that he went in there with the intention of fishing was wanting.

Mr. Thomson.—The question is, whether there has ever been a conviction of an American vessel for taking bait. I call your attention to the fact that the "Java," "Independence," "Magnolia," and "Hart," were convicted in 1839 of being within the prescribed limits, and cleaning fish on deck. In 1840 the "Papineau," "Alms," and "Mary," were seized and sold for purchasing bait on shore.

Mr. Trescot.—The judgment went by default, there was no defence made.

Thursday, September 6.

Argument resumed.

Mr. Dana.—Mr. Foster will state the results of inquiries made respecting the condemnation of American vessels.

Mr. Foster.—The substance of the facts, as we understand them, will be found in a despatch from Judge Jackson to Hon. Bancroft Davis, dated March 11, 1871, which is as follows:—

"Sir, *United States' Consulate at Halifax, Nova Scotia, March* 11, 1871.

"I have the honour to inform you that, after examination and inquiry, I have not been able to find a single adjudicated case in this Province which can be cited as legal authority, arising under the Treaty of 1818, which declares the right, either under the Treaty, or the Statutes enacted for its enforcement, to confiscate American fishing vessels for purchasing supplies in colonial ports.

"The vessels referred to in a pamphlet (page 12) published at Ottawa, under the direction of the Canadian Minister of Marine and Fisheries, entitled 'A Review of President Grant's Message,' as having been seized for a violation of the Fishery Laws, namely, the schooners 'Java,' 'Independence,' 'Magnolia,' and 'Hart,' in 1839, and schooners, 'Papineau' and 'Mary' in 1840, were condemned by the Vice-Admiralty Court in *default of the appearance* of defendants upon exparte *affidavits.*

"From the small sums for which the vessels sold, it is not improbable that they were bought in for the benefit of the owners.

"Although it is stated in the affidavits on the files of the Court, that the masters of some of the vesseis had purchased bait, yet it is specially noticeable that the charge made against the schooners 'Java,' 'Independence,' 'Magnolia,' and 'Hart,' by the seizing officer, Captain J. W. E. Darby, as the ground of such seizure, was in the following language:—'The deponent saith that he believes the *sole object*

of the masters of the said vessels was to procure fish, and that they were at the time of their seizure preparing to fish.'

"In the case of the schooners 'Papineau' and 'Mary,' seized in June 1840 for a violation of the Fishery Laws, the same seizing officer set forth in his affidavit, as the grounds of the seizure of these vessels, that 'the deponent verily believed that the said vessels were frequenting the coast of this Province *for the purpose of fishing there,* and for *no other purpose whatever.*'

"The seizure and condemnation of these several vessels—four in 1839, and two in 1840—cited in the pamphlet referred to, in support of the unusual and extreme measures of last summer, in relation to American fishing vessels, afford, as will be seen from the facts here stated—no legal justification for such measures, and cannot be regarded, in any respect, authoritative adjudications upon the points in controversy between the United States and Great Britain respecting the fisheries.

"I have, &c.

(Signed) "M. M. JACKSON,

"*United States' Consul.*

"Hon. J. C. Bancroft Davis,

"Assistant Secretary of State, Washington, United States."

Referring to the paper which was put in by the British counsel, on page 12 of document No. 31, there is a Memorandum of all the vessels seized and condemned by the Vice-Admiralty Court of Prince Edward Island, and it is stated at the end of each case: "I cannot find from any papers in this case, at present in the registry of this Court, that this vessel was ever interfered with by Government officers for transshipping fish, or purchasing supplies." As to the New Brunswick cases, of which there is a statement at the top of page 10, document 21, I am not able to ascertain, because we have not access to the papers. There were not many cases in New Brunswick; seven between 1822 and 1852. There is also at the foot of page 6, document No. 15, a record of the cases condemned at Halifax. Mr. J. S. D. Thompson has made a Memorandum of each of those cases, and there is no case where a vessel was forfeited for buying bait or other supplies, or for transshipping cargo. The statement of 59 George III is the same in substance with the Colonial Statute. By that Statute vessels are libelled and forfeited in the Admiralty Court, for no other offence than that of being found fishing, or having fish on board, or preparing to fish. The fourth Article imposes a penalty of 200*l.*, recoverable by action at common law, on a fisherman refusing to depart from the territorial waters when warned by the party authorized to do so. Among the Halifax cases it will appear that some are marked as restored, and two others, at least, were restored upon payment of the expenses, namely, the "Shetland" and "Eliza." The "Washington" was paid for; and in no instance, as I am informed, was there a condemnation for anything except fishing or preparing to fish; and acts indicative of preparing to fish, are always shown to be some acts of immediate preparation, like having bait ready on board. Then we come in 1871 to Sir Wiliam Young's decision, where he forfeited a vessel for buying bait, holding that buying bait was a preparation to fish. That was the case of the "Nickerson." The vessel was seized in 1871, and forfeited the following year. About the same time a similar case was tried in New Brunswick by Judge Hazen, who held the reverse of Sir William Young's decision. Judge Hazen held that the purchase of bait, unless it was proved to have been purchased to use in illegal fishing, was not a preparation to fish illegally, and that a vessel that came into Halifax or St. John to buy bait to fish on the Banks of Newfoundland, was not violating any Treaty. It was always felt by the United States that the distinguished Judge, Sir William Young, had overlooked the fact, that in the case before him the vessel that bought the bait did not buy it to fish for mackerel in territorial waters, but on the coast of Newfoundland. There is that one authority for holding that it was contrary to law to come in here for cod, and buy bait for outside fishing, and, so far as I am aware, there are only these two cases on the question, and opinions are equally balanced.

Mr. Thomson.—In the case of the "White Fawn," tried by Judge Hazen, the vessel was libelled for taking bait in our waters, with the intention of fishing there. She was not charged with the offence against the Treaty, of purchasing bait within three miles of the shore, but she was distinctly charged with obtaining bait with the view of fishing there, and Judge Hazen held—and, I apprehend, properly held, for he is an able lawyer and sound judge—that the evidence did not support the allegation. The evidence probably showed that the intention was to take the vessel and fish on the Banks of Newfoundland, where it had no doubt a right to fish, and therefore the case failed, because while the offence was complete, the allegation did not support it.

Mr. Foster asked for further explanations.

Mr. Thomson.—What I say is this: that while this was a distinct offence under

the Treaty, and while the Statute expressly covered that offence, and while a vessel could be libelled and condemned for buying bait on our shores, yet the framer of the libel had been pleased to frame it, not simply for the offence of buying bait, which he might have done, and had the vessel condemned, but for buying bait with the intention to fish in these waters, and he failed to prove the latter allegation.

Mr. Foster.—Our answer to that contention would be that there is no Statute. There is a Statute to cover the cases of vessels fishing and preparing to fish.

"II. And be it further enacted, That from and after the passing of this Act it shall not be lawful for any person or persons, not being a natural-born subject of His Majesty, in any foreign ship, vessel, or boat, nor for any person in 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, to fish for, or to take, dry, or cure any fish of any kind whatever, within three marine miles of any coasts, bays, creeks, or harbours whatever, in any part of His Majesty's dominions in America, not included within the limits specified and described in the Ist Article of said Convention, and hereinbefore recited; and that if any such foreign ship, vessel, or boat, or any persons on board thereof, shall be found fishing or to have been fishing, or preparing to fish within such distance of such coasts, bays, creeks, or harbours within such parts of His Majesty's dominions in America out of the said limits as aforesaid, all such ships, vessels, and boats, together with their cargoes, and all guns, ammunition, tackle, apparel, furniture, and stores, shall be forfeited."

To come within the Statute the fishermen must either be fishing, or preparing to fish, within three miles of the coast.

Mr. Thomson.—It is a question of construction. It is preparing to fish or fishing within these waters. The preparing to fish is a complete offence in itself, and it is by no means necessary to fish in these waters.

Mr. Foster.—The expression is "within that distance." You think the "preparing to fish" is preparing to fish within the limits, or anywhere.

Sir Alexander Galt.—The reason I made the inquiry was with regard to the argument of the learned counsel (Mr. Dana), who was holding, as I understood him, that no interference had been made upon these fishing grounds with American fishermen. It was because I was under the impression that the official correspondence would show that vessels had been seized and condemned, that I made the inquiry.

Mr. Dana.—After the long time given me yesterday, I feel I ought to do no more than give a summary of the points upon which I suppose this question will be determined. In the first place, then, this tribunal, in computing compensation, can only take into consideration the value of what is accorded to the United States by the Treaty of 1871, and by the 18th Section of that Treaty. Then the tribunal shall take into consideration the value of what is accorded to Great Britain by the 19th and 21st Sections, debiting the United States with the value of what she gains under the 18th Section, and crediting the United States with what she accords under the 19th and 21st Sections. The Court will perceive how very close and fine this arrangement was made.

This tribunal is not to ascertain what the United States possessed by Treaty or otherwise in 1870, and charge us for what we have gained in addition thereto, by whatever means, or to draw general inferences from the whole Treaty, what we may have got and Great Britain may have given; but your Honours are to assess the value of specific liberties and rights accorded by the 18th Section, and charge them to the United States; and assess the pecuniary value of certain specific rights and privileges accorded in the 19th and 21st Sections, and credit us with them.

Moreover, it must be something accorded to us in addition to what we had under the Treaty of 1818. Under that Treaty, the United States had the right to fish, and to land and dry nets on certain portions of the coast of Newfoundland; on the shores of the Magdalen Islands, on the coasts, bays, harbours, and creeks in certain parts of Labrador, and to land and cure fish in any of the bays, &c., in Newfoundland and Labrador. The Treaty of 1871 simply gives a territorial extension to those rights. It adds no new rights, either in terms or by implication. No doubt this tribunal will be exceedingly careful not to assess compensation for any right or privilege which is not clearly so given, and which, after compensation has been assessed, may be matter of dispute between the two countries.

If there has been a want of clearness as to what has been conceded to Great Britain, or conceded to us, neither side can expect to obtain compensation for matters left in doubt. No Treaty ever made between the United States and Great Britain on the subject of the fisheries has noticed the purchasing of anything by the fishermen, except it be the Treaty of 1818, which says American fishermen shall have the right to *purchase* wood and *procure* water. I supppose the reason why the

clause was inserted in that form, was to show it was not intended that we should have the right to cut wood. If your Honours will examine the Treaties, from that of 1783 to that of 1871, you will find they never had for their scope or purpose any provisions regarding trading or purchasing, but related solely to the right to fish, and to use the shores for the purpose of drying and curing. In framing the Treaty of 1871, care was taken to name the rights. It gave the right to fish. What kind of fish? Not shell-fish, nor salmon, nor river fish. Care is taken also to describe for what purpose American fishermen may land. It is to dry nets, cure and dry fish. There is no reference to purchasing anything, except in the Treaty of 1818, in regard to purchasing wood, and that subject has been intentionally left out of all Treaties, or it would be more accurate to say that to include such matters in a Treaty was never considered as apposite. The Treaty of 1871, as I have said, grants a territorial extension of specified, long-existing rights, and the only question in dispute between the United States and Great Britain has always been as to the territorial extent of the right of fishing.

The question arose, can we fish on the Grand Banks? England said "No," but she gave up that contention in 1783. Then England said that American fishermen could not fish within three miles of its coasts from a line drawn from headland to headland. Dispute arose again as to the correctness of that territorial designation, but the subject matter was the drawing of fish from the sea. At last it became settled that we should not fish within the three miles, unless with the consent of Great Britain, expressed through a Treaty or otherwise. Then occurred the question as to what constitutes three miles—three miles from what? Always the dispute was as to the territorial extent of a specified right, the right to fish, and all the Treaties were made for that purpose. Incidentally there was always brought in the question of places, not being private property, where the fishermen could land for the purpose of drying nets and curing and drying fish. These were the subject matters of every Treaty, the occasion of every dispute, and these were all that were settled by the Treaty of Washington. Great Britain gave to the United States an extended territoriality, up to the very Banks, up to high-water mark everywhere; and the United States gave the same extended territoriality to Great Britain, to fish in the United States northward of 39th parallel. Then there were certain extensions of territory for the curing and drying of fish. By Article XXI the United States gives to Great Britain, and she accords to us, the right of free trade, reciprocity, in fish and fish-oil. That is purely a commercial clause. It might have been made a Treaty by itself. It has no connection with fishing, or the curing and drying of fish. When your Honours come to estimate the pecuniary valuation of the concessions on each side, we contend that the pecuniary value of that concession made by the United States to Great Britain, which is purely fiscal, is very great.

It is conceded by the British counsel, I believe, that those rights of which I speak were not given in the terms of the Treaty of Washington, and cannot be found there. The only argument on the side of the Crown—and I think I state it fairly and with its full force—is this: "You have those rights now; you did not have them before the Treaty, therefore you must have got them by the Treaty. You did not have them until 1854, and you possessed them from 1854 to 1866 under the Reciprocity Treaty. You did not have them during the interval. They were revived in 1871, and you have had them since. Their history shows they must have come by Treaty." Instead of the word "have," I would substitute the word "exercise," and say we exercised those rights. We exercised them long before that period. Evidence has been adduced before the Commission which has shown that those rights were exercised by the United States entirely irrespective of Treaties.

Before the Treaty of 1854, when we had nothing but the Treaty of 1818 to stand upon, which as a Treaty certainly did not give us any of those rights, we exercised them. We exercised them also irrespective of, and never by virtue of the Treaty of 1854. We exercised them in the interval between 1866 and 1871, as we are exercising them now. The Court will not be able to find any connection betwen the Treaties and the exercise of those rights. They have never been exercised the more or the less by reason of any Treaties. It is not incumbent upon us to show why we are in the exercise of those rights. It is rather a speculative inquiry on the part of the British counsel as to where we got them, or whether we have them at all. Suppose I were to concede that we had no right to buy bait or ice or supplies, or transship cargoes anywhere on these coasts, certainly that ends the argument, because we cannot be called upon to pay for something which we have not got. If the proper construction of the Treaty of 1818 is, that fishermen

have no right, as fishermen, and by the general law, irrespective of the consent of the Crown, to buy bait, ice, and supplies, and transship cargoes in British dominions, then I concede that as regards American fishermen fishing within the three-mile limit, we have not those rights. Why are we, then, in the exercise of them? In that case, by the concession of the Crown. There is, however, no Statute against fishermen buying bait, obtaining supplies, bartering or transshipping fish, if they comply with the fiscal regulations of the Government regarding all trade and commerce. If a fisherman has violated no Statute or rule respecting trade, commerce, and navigation in this realm, there is no Statute which can condemn him, because he is a fisherman, for having bought bait and supplies, and transshipped cargoes. So long as there is no Statute prohibiting it, our fishermen have gone on exercising that privilege, not believing they were excluded from it by the Treaty of 1818, whether they were correct or not. It is in that view only that the facts regarding seizures are of any importance; but yet we may make our answer at once and say, whether we have the right to do those things or not, we do not pretend that it was given to us by the Treaty of 1871. Your Honours will not be able to find it included under Article XVIII of that Treaty. But it is ever satisfactory to be able to account for all the surrounding circumstances of any question. It seems there was a Statute passed in 1819, 59 George III, generally against foreign vessels which shall be found fishing, or be found having fished, or be found preparing to fish, within the prescribed limits. The Statute reaches before and after the act. It is not necessary that fishermen should be taken in the act of fishing. That would be a Statute very difficult to interpret, and very easy to evade, which required that fishermen should be taken in the act of fishing. So the Statute says, if a foreign fisherman is found having fished, or in the act of fishing, or preparing for the act of fishing, within the prescribed waters, he is to be treated as an offender. We see no objection to that Statute. The preparing to fish is a step in the process of fishing.

But the true construction of that Statute is of very little importance. Yet certainly it must be meant that the act prepared for must have been illegal, for it cannot be supposed for one moment that Great Britain intended to say that no foreign vessels, French or American, should come into the provinces, and buy bait for the purpose of fishing off the Grand Banks or the coast of Greenland. If this province got a reputation for having some bait which certain kinds of fish off Greenland swallow with eagerness, and a Danish vessel should come here and buy it in the market, complying with all the regulations of the market, and fiscal laws, and then set sail for Greenland, surely that vessel could not be seized and condemned.

I have put the argument of the counsel for the Crown as strong as I could put it; they say you exercise that right now, and you did not exercise it before. Our answer is, simply, that we have always exercised it, and that we have done it irrespective of the Treaty of 1854, or of the Treaty of 1878. We have never been interfered with in exercising it. There is no case of condemnation of a vessel for exercising that right, and if there had been a good many, it would have made no difference to your Honours, because the judgments would have been simply the provincial interpretation of the Treaty, given *ex parte*, and it is certain that no act of Great Britain has ever sanctioned the position that the United States had not this right, irrespective of Treaties. Then, as has been suggested by my colleagues, and I follow the suggestion merely, the whole correspondence between the Governor-General and the Head of the Colonial Office, and between the United States' Government and the British Government, shows that Great Britain never intended that American fishermen should be excluded from the use of those liberties or rights, whatever be our claim to them, or whether we had them as of right or not. These privileges are those which fishermen have always exercised, and it has only been as population has increased, and fiscal laws have become important, and the inhabitants have become more apprehensive in regard to vessels hovering about the coast, that nations have enacted laws restricting persons in the exercise of those rights. The learned counsel, in support of his argument, cited Phillimore, I, page 224; Kent's "Commentaries," vol. i, pages 32 to 36; and Wheaton's "International Law" (Dana's edition), sections 167, 169, and 170.

I have read these passages, not that they distinctly assert, or indeed that they take up the very question I am presenting before this tribunal, but they show the general principles upon which the great writers on international law, the Governments themselves, and the people, have acted with regard to fishermen and their rights, especially of supplying their wants from time to time in

the ports and harbours of all countries. These rights have been recognized as incidental to the nature of man, and the nature of the earth he occupies. However boastful we may be of ourselves, we are such feeble creatures that we cannot subsist many hours without food, shelter, and clothing, and fishermen and sailors must get these where they can. Laws respecting pure commerce, that is the right to go with a cargo to sell, and turn it into the great body of the property of the country, rest on other grounds; but the right to exercise the industry by which men live, as fishermen do by fishing, should be extended as far as possible, and originally had no limit. It passed within the category of those imperfect rights, such as innocent transit, and innocent use of waters. These rights have been exercised for the reasons there assigned, which are deeper as well as older than all Treaties, Conventions, and Statutes.

As the Treaties stand, fishing is an innocent use of all the waters of the Dominion. Great Britain has never prohibited the exercise of those rights. She may find it expedient to do so, or the policy of the Dominion, or perhaps some excited political feeling or hostility against the United States for some wrong, real or supposed, may lead it to do so; but it has never been done, and that is the reason why we have always been in the exercise of those rights. When the Provincial Government undertook to exclude us from those privileges, they were taken to account at once, and their action was stopped by the British Government.

We are now brought to the last question, and that is, did we renounce those rights, the right to purchase bait, ice, supplies, and to transship, by clauses in the Treaty of 1818? For the purpose of this argument, I am perfectly indifferent which way your Honours shall construe these clauses. The Government of the United States does not interpret them as a renunciation of these rights. I do not believe, I cannot believe, that the Treaty had any such reference. But it is certain that nothing therein refers to the purchasing of cargoes of frozen herring, which has been often referred to before the Commission. That is a purely mercantile enterprize. A Boston vessel comes to this coast with a manifest, and equipped in every respect as a trader, though a fisherman at all other times, and after satisfying the Custom-house authorities, she purchases a cargo of frozen herring, and proceeds with them to the Boston market. That is a mercantile enterprize; it is not anything that is renounced by fishermen, as such, in the exercise of their rights to fish. Suppose a merchant at Newfoundland should take a fishing-vessel not employed at that time, and load her with frozen herring, and send her to Boston, where, after she had been entered at the Custom-house, and satisfied all the fiscal regulations, her cargo would be sold. Would any one pretend that her right to do that was derived from the Treaty giving a right to fish within three miles of the American coast, and land and dry their nets? Certainly not. Therefore we may cut off at once all reference to that. If your Honours shall say that, by the Treaty of 1818, the United States did not renounce those rights, and did not notice them one way or another, that is sufficient for us. If your Honours shall decide that, so far as fishing within three miles is concerned, the United States renounced the right to purchase anything except wood, then we submit that the right of purchasing anything else has not been granted to us by the Treaty of 1871, and therefore we cannot be called upon to make any compensation.

We are satisfied that the United States are permitted by the British Government to do those acts, whether it be from comity, from regard to the necessities of fishermen, from policy, or from some other reason, I know not, and so long as we are not disturbed, we are content. If we are disturbed, the question will then arise, not before this tribunal, but between the two nations, whether we are properly disturbed by Great Britain; and if we should come to the conclusion on both sides, that there being a dispute on that subject which should be properly settled, then it is hoped that the Governments will find no difficulty in settling it; but this tribunal will discharge its entire duty when it declares that, under Article XVIII of the Washington Treaty, no such rights or privileges are conceded to the United States.

Mr. Thomson.—I do not propose to answer Mr. Dana's argument at present, but I will call the attention of the Commission to the fact that it was an original argument, and not a reply. In view of the fact that there are a number of witnesses waiting to be examined, and the short time the Commission has to sit before it takes an adjournment, I do not propose now to offer any observations in reply to the learned counsel, but no doubt before the case is through, previous to that time, I will take occasion to answer the arguments.

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Mr. Dana said the announcement of the learned counsel seemed as if he assumed the right to make an indefinite adjournment of the hearing, and at some future day to reply to the arguments.

Mr. Thomson said he did not desire to interfere with an immediate decision, and his remarks were made simply that Mr. Dana's argument might not be considered as having been passed on the part of the counsel for the Crown *sub silentio.*

Mr. Foster asked for an early decision on the motion.

The Commission retired to deliberate, and on their return, the President read the following Decision :

"The Commission having considered the motion submitted by the Agent of the United States at the Conference held on the 1st instant, decide:

"That it is not within the competence of this tribunal to award compensation for commercial intercourse between the two countries, nor for the purchasing bait, ice, supplies, &c., &c., nor for the permission to transship cargoes in British waters."

Sir Alexander T. Galt.—Mr. President, as this Commission has been unanimous on this question, I desire, with the permission of my colleagues, but without committing them to the same line of argument which has convinced myself, to state the grounds upon which I feel it my duty to acquiesce in the decision. I listened with very great pleasure to the extremely able arguments made on both sides, and I find that the effect of the motion, and of the argument which has been given upon it, is to limit the power of this tribunal to certain specified points. This definition is undoubtedly important in its consequences. It eliminates from the consideration of the Commission an important part of the case submitted on behalf of Her Majesty's Government; and this is undoubtedly the case, so far as this part forms a direct claim for compensation; but at the same time, it has the further important effect that it defines and limits the rights conceded to the citizens of the United States under the Treaty of Washington. Now, I have not been insensible to the importance of the considerations that have been addressed to us by the counsel for the Crown, in reference to the inconvenience that may arise from the decision at which this tribunal has arrived. I can foresee that, under certain circumstances, those inconveniences may become exceedingly great, but I cannot resist the position taken by the counsel of the United States, in stating that if such inconveniences arise, they are matters which properly fall within the control and judgment of the two Governments, and not within that of this Commission. On the other hand I cannot fail to see, that while this is admitted, a remote and contingent inconvenience, a very important difficulty, and one of a very serious character, would arise, if, from any cause, this Commission were to exceed the powers which are given to the Commissioners under the Treaty of Washington.

The difficulty would at once arise, that any award whatever which it made, be it good or bad, be it favourable to one party or the other, would have been vitiated by our having acted *ultra vires.* I do not find, either, that there would be any ready escape from such a position. The Treaty affords no machinery by which this question in regard to the fisheries can be adjudicated upon, if this Commission should from any unfortunate cause be allowed to lapse; therefore, with regard to the two inconveniences in question, the one which strikes at the root of the whole Treaty is that which ought to weigh with me, if I were placed in such a position as to be obliged to weigh such inconveniences; but, as I shall state before I conclude, there are other and stronger considerations present to my mind. I have, in common with my colleagues, entered into a solemn obligation to decide judicially upon all questions coming before this tribunal; and I feel it incumbent upon me, therefore, to give every possible weight, every due weight to whatever may be said on either side, and I certainly have hitherto endeavoured to do so, and I have done so in this case. I shall endeavour to pursue the same course, acting under the same considerations in the future. At the same time, I confess to a great feeling of disappointment that such an important part of the question connected with the settlement of the fisheries dispute should apparently be removed, or partly removed, from the possible consideration and adjudication of this tribunal, and I am bound to say that my conviction of the intention of the parties to the Treaty of Washington is, that this was not their purpose at the time.

I have listened with very great attention to the arguments presented on behalf of the United States, but I do not think that they have correctly stated the position of the two parties at the time when the Treaty of Washington was entered into.

The history of this case begins, as has been stated by counsel, as far back as 1783, but by common consent the Convention of 1818 is the Treaty by which the fishery rights of the two countries have subsisted. Under the Convention of 1818 certain things were forbidden to the United States' fishermen, and the United States renounced the right to do anything except what they were permitted to do by the words of that Treaty. They renounced for ever any liberty of taking, drying, or curing fish, &c., "provided that the American fishermen shall be permitted to enter the said 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." By the Imperial Act 59 Geo. III, cap. 38, and by several Colonial Statutes, restrictions and definitions were imposed, or were established with regard to offences arising from infringements of those privileges conferred upon American citizens, though it has not been shown that the seizures which took place prior to 1854, were for trading or for obtaining supplies, or for any other benefit referred to in the motion; still it is undoubted that, arising out of this legislation, great irritation arose between the two countries, and this resulted in the adoption of what is known as the Reciprocity Treaty in 1854. That the Reciprocity Treaty was understood to have removed all those restrictions is, unquestionably shown to be the case to my mind, by the action taken by Great Britain and the Colonies, when the Treaty came into force.

Immediately afterward, all Statutes which had operated against the American fishermen were suspended, and the greatest possible freedom of intercourse existed during the continuation of that Treaty. At the termination of the Reciprocity Treaty, and in support of the view that it was supposed to have given those privileges, we find the whole of these enactments revived, and we also find that subsequently more stringent Statutes were passed by the Dominion of Canada in this relation. Now, it is important in the history of this case to consider what effect was produced by those Statutes; and we find in a most important public document, that is, the annual message of President Grant to Congress in 1870, that this legislation on the part of the Colonies was made the subject of the gravest possible complaint. The President states that:—

"The course pursued by the Canadian authorities towards the fishermen of the United States during the last season has not been marked by a friendly feeling. By the Ist Article of the Convention of 1818, between Great Britain and the United States, it was agreed that the inhabitants of the United States should have, for ever, in common with British subjects, the right of taking fish in certain waters therein defined. In the waters not included in the limits named in the Convention, within three miles of parts of the British coast, it has been the custom for twenty years to give to intruding fishermen of the United States a reasonable warning of their violation of the technical rights of Great Britain. The Imperial Government is understood to have delegated the whole, or a share of its jurisdiction or control of these inshore fishery grounds, to the Colonial Authority known as the Dominion of Canada, and this semi-independent, but irresponsible agent has exercised its delegated powers in an unfriendly way—vessels have been seized without notice or warning, in violation of the custom previously prevailing, and have been taken into the Colonial ports, their voyages broken up, and the vessels condemned. There is reason to believe that this unfriendly and vexatious treatment was designed to bear harshly upon the hardy fishermen of the United States, with a view to political effect upon the Government."

That is not all: the President went further, and made a second complaint in this language:—

"The Statutes of the Dominion of Canada assume a still broader and more untenable jurisdiction over the vessels of the United States; they authorize officers or persons to bring vessels hovering within three marine miles of any of the coasts, bays, creeks, or harbours of Canada into port, to search the cargo, to examine the master on oath touching the cargo and voyage, and to inflict upon him a heavy pecuniary penalty if true answers are not given, and if such a vessel is found preparing to fish within three marine miles of any of such coasts, bays, creeks, or harbours, without a licence, or after the expiration of the period named in the last licence granted to it, they provide that the vessel with her tackle, &c., shall be forfeited. It is not known that any condemnations have been made under this Statute. Should the authorities of Canada attempt to enforce it, it will become my duty to take such steps as may be necessary to protect the rights of the citizens of the United States."

The President further goes on to say:—

"It has been claimed by Her Majesty's officials, that the fishing vessels of the United States have no right to enter the open ports of the British possessions in North America, except for the purpose of shelter and repairing damages, of purchasing wood, and obtaining water, that they have no right to enter at the British Custom-houses, or to trade there, except for the purchase of wood or water, and that they must depart within twenty-four hours after notice to leave. It is not known that any seizure of a fishing vessel carrying the flag of the United States has been made under this claim."

These were complaints which were made in the annual message of President Grant in 1870; and he concludes by suggesting to Congress the course that should be taken in reference to this matter, in the following words:—

"Anticipating that an attempt may possibly be made by the Canadian authorities in the coming season to repeat their unneighbourly acts towards our fishermen, I recommend you to confer upon the Executive the power to suspend by proclamation the operation of the laws authorizing the transit of goods, wares, and merchandize in bond, across the territory of the United States to Canada; and further, should such an extreme measure become necessary, to suspend the operation of any laws whereby the vessels of the Dominion of Canada are permitted to enter the waters of the United States."

It is, therefore, plainly evident that disagreements were in existence at that time with regard to the fisheries, and that the fear that they would produce serious complications between the two countries was present in the minds of the President and Government of the United States. Well, the history of the case goes on to show, that these complaints made by President Grant were the foundation of the negotiations which led to the adoption of the Washington Treaty; and it is important to observe, on examining that Treaty, that the means whereby President Grant proposed to Congress to ensure the repeal of these so-called unfriendly acts on the part of Canada, by repealing the Bonded System, and by putting on other restrictions, which President Grant proposed to apply to that particular purpose, are, by the Clauses of the Washington Treaty, dealt with for the term of that Treaty in another way, and for other considerations; therefore, to my mind, it leaves me in this position, in endeavouring to interpret the intentions of the parties to the Washington Treaty—that it must necessarily have been supposed that, as in the case of the Reciprocity Treaty, so in the case of the Washington Treaty, the rights of traffic and of obtaining bait and supplies were conferred, being incidental to the fishing privilege. It could scarcely be otherwise, because, in the case of the Reciprocity Treaty, commercial advantages were the compensation which the United States offered to Great Britain for the concession of the privilege of fishing in her waters, while by the Washington Treaty, compensation in money, exclusively of the free admission of fish, is to be made the measure of the difference in value; therefore I quite believe that the intention of the parties to the Treaty was to direct this tribunal to consider all the points relating to the fisheries which have been set forth in the British case. But I am now met by the most authoritative statement as to what were the intentions of the parties to the Treaty. There can be no stronger or better evidence of what the United States proposed to acquire under the Washington Treaty, than the authoritative statement which has been made by their Agent before us here, and by their counsel. We are now distinctly told that it was not the intention of the United States, in any way, by that Treaty, to provide for the continuation of these incidental privileges, and that the United States are prepared to take the whole responsibility, and to run all the risk of the re-enactment of the vexatious Statutes to which reference has been made.

I cannot resist the argument that has been put before me, in reference to the true, rigid, and strict interpretation of the clauses of the Treaty of Washington. I therefore cannot escape, by any known rule concerning the interpretation of Treaties, from the conclusion that the contention offered by the Agent of the United States must be acquiesced in.

There is no escape from it. The responsibility is accepted by, and must rest upon, those who appeal to the strict words of the Treaty as their justification. I therefore, while I regret that this tribunal does not find itself in a position to give full consideration to all the points that may be brought up on behalf of the Crown, as proof of the advantages which the United States derive from their admission to fish in British waters, still feel myself, under the obligation which I have incurred, required to assent to the decision which has been communicated to the Agents of the two Governments by the President of this tribunal.

CLOSING ARGUMENT OF HON. DWIGHT FOSTER, ON BEHALF OF THE UNITED STATES.

Gentlemen of the Commission :—

IT becomes my duty to open the discussion of this voluminous mass of evidence, which has occupied your attention through so many weeks. It is a satisfaction to know that many topics, as to which numerous witnesses testified, and over which much time has been consumed, have been eliminated from the investigation, so that they need not occupy the time of counsel in argument, as they are sure not to give any trouble to the Commissioners in arriving at their verdict. The decision of the Commission, made on the 6th September, by which it was held not to be competent for this tribunal to award compensation for commercial intercourse between the two countries, or for purchasing bait, ice, supplies, &c., or for permission to transship cargoes in British waters, is based upon the principle—the obvious principle, perhaps I may properly say—that no award can be made by this tribunal against the United States, except for rights which they acquire under the Treaty; so that, for the period of twelve years, they belong to our citizens, and cannot be taken from them. For advantages conferred by the Treaty, as vested rights, you are empowered to make an award, and for nothing else.

The question before you is whether the privileges accorded the citizens of the United States by the Treaty of Washington are of greater value than those accorded to the subjects of Her Britannic Majesty, and, if so, how much is the difference, in money? The concessions made by each Government to the other in the Treaty, were freely and voluntarily made. If it should turn out (as I do not suppose it will), that in any respect the making of those concessions has been injurious to the subjects of Her Majesty, you are not on that account to render an award of damages against the United States. The two Governments decided that they would grant certain privileges to the citizens of one, and the subjects of the other. Whether those privileges may be detrimental to the party by whom they have been conceded, is no concern of ours. That was disposed of when the Treaty was made. Our case before this tribunal is a case, not of damages, but of an adjustment of equivalents between concessions freely made on the one side and on the other. It follows from this consideration, gentlemen, that all that part of the testimony which has been devoted to showing that possibly, under certain circumstances, American fishermen, either in the exercise of their Treaty rights, or in trespassing beyond their rights, may have done injury to the fishing grounds, or to the people of the Provinces, is wholly aside from the subject-matter submitted for your decision. The question whether throwing over "gurry" hurts fishing grounds—the question whether vessels "lee-bow" boats—and all matters of that sort, which at an early period of the investigation loomed up occasionally, as if they might have some importance, may be dismissed from our minds; for, whether the claims made in that respect are well founded are not, no authority has been vested in this tribunal to make an award based upon any such grounds. That which you have been empowered to decide, is the question to what extent the citizens of the United States are gainers by having, for the term of twelve years, liberty to take fish on the shores and coasts of Her Majesty's dominions, without being restricted to any distance from the land. It is the right of inshore fishing. In other words, the removal of a restriction by which our fishermen were forbidden to come within three miles of the shore for fishing purposes, and that is all. No rights to do anything upon the land are conferred upon the citizens of the United States under this Treaty, with the single exception of the right to dry nets and cure fish on the shores of the Magdalen Islands, if we did not possess that before. No right to land for the purpose of seining from the shore; no right to the "strand fishery," as it has been called; no right to do anything except, water-borne on our vessels, to go within the limits which had been previously forbidden.

When I commenced the investigation of this question, I supposed that it was probable that an important question of international law would turn out to be involved in it, relative, of course, to the so-called headland question, which has been the subject of so much discussion between the two Governments for a long series of years; but the evidence that has been introduced renders this question not of the slightest importance, and inasmuch as it is a question which you are not empowered, except incidentally, to decide; a question eminently proper to be passed upon

between the Governments directly, I presume you will rejoice with me in finding that it is not practically before us, and that we need not trouble ourselves concerning it. If it had appeared in this case that there was fishing carried on to any appreciable extent within the large bays, more than six miles wide at the headlands, and at a distance of more than three miles from the contour of the shores of those bays, the United States would have contended that their citizens, in common with all the rest of mankind, were entitled to fish in such great bodies of water, as long as they kept themselves more than three miles from the shore. In short, they would have contended, as it has been contended in the Brief filed in this case, that where the bays are more than six miles in width, from headland to headland, they are to be treated in this respect, for fishing purposes, as parts of the open sea; but the evidence, as I said before, has eliminated all that matter from the inquiry. The only bodies of water as to which any such question can arise, are, in the first place, the Bay of Fundy. Now, the right of American fishermen to enter and fish in that bay, was decided by arbitration in the case of the schooner "Washington," and Her Majesty's Government have uniformly acquiesced in that decision. So, as to that body of water, the rights of the citizens of the United States must be regarded as *res adjudicata*. In addition, however, it turns out, that within the body of the Bay of Fundy there has not been any fishing more than three miles from the shore, for a period of many years. One of the British witnesses said that it was forty years since the mackerel fishery ceased in the Bay of Fundy. At all events there is no evidence in this case, of fishing of any description in the body of the Bay of Fundy, more than three miles from the shore, and this fact, in addition to the decision in the "Washington" case, disposes of that.

The next body of water is the Bay of Miramichi; as to which it will turn out, by an inspection of the map on which the Commissioners appointed under the Reciprocity Treaty marked out the lines reserved from free fishing, on the ground that they were mouths of rivers, that the mouth of the River Miramichi comes almost down to the headlands of the bay. You will remember that the report of the Commission on the Reciprocity Treaty is referred to in the Treaty of Washington, and that the same places excluded by their decision remain excluded now. What is left? The narrow space below the point marked out as the mouth of the River Miramichi, and within the headlands of the bay, is so small that there can be no fishing there of any consequence, and no evidence of any fishing there at all has been introduced. So far as the Bay of Miramichi goes, therefore, I cannot see that the headland question need trouble you at all.

Then comes the Bay of Chaleurs, and in the Bay of Chaleurs, whatever fishing has been found to exist, seems to have been within three miles of the shores of the bay, in the body of the Bay of Chaleurs. I am not aware of any evidence of fishing; and it is very curious that this Bay of Chaleurs, about which there has been so much controversy heretofore, can be so summarily dismissed from the present investigation. I suppose that a great deal of factitious importance has been given to the Bay of Chaleurs, from the custom among fishermen, and almost universal a generation ago, of which we have heard so much, to speak of the whole of the Gulf of St. Lawrence by that term. Over and over again, and particularly among the older witnesses, we have noticed that when they spoke of going to the Gulf of St. Lawrence, they spoke of it by the term "Bay of Chaleurs," but in the Bay of Chaleurs proper, in the body of the bay, I cannot find any evidence of any fishing at all. I think, therefore, that the Bay of Chaleurs may be dismissed from our consideration.

There are two or three other bodies of water, as to which a possible theoretical question may be raised, but their names have not been introduced into the testimony on this occasion, from first to last. The headland question, therefore, gentlemen, I believe may be dismissed as, for the purposes of this inquiry, wholly unimportant; and although I am not authorized to speak for my friend, the British Agent, and say that he concurs with me, yet I shall be very much surprised if I find any different views from those that I have expressed taken on the other side. If, in argument, other views should be brought forward, or if it should seem to your Honours, in considering the subject, that the question has an importance which it has not in my view, then I can only refer you to the Brief that has been filed, and insist upon the principles which the United States have heretofore maintained on that subject. For the present, I congratulate you, as I do myself, that no grave and vexed question of international law need trouble you in coming to a conclusion.

I think it is necessary to go somewhat, yet briefly, into the historical aspects of the fishery question, in order to see whether that which has been the subject of diplomatic controversy, and of public feeling in the past, is really the same thing which we have under discussion to-day. The question has been asked, and asked with some earnestness, by my friends on the other side, "If the inshore fisheries have the little importance which you say they have, why do your fishermen go to the Gulf of St. Lawrence at all?" And again it has been asked, "If the inshore fisheries are of such insignificant consequence, why is it that the fishermen and people of the United States have always manifested such a feverish anxiety on the subject?" Those questions deserve an answer, and unless an answer can be made, you undoubtedly will feel that there must be some unseen importance in this question, or there would not have been all the trouble with reference to it heretofore. Why do the fishermen of the United States come to the Gulf of St. Lawrence at all? Why should they not come here? What men on the face of the earth have a better right to plough with their keels the waters of the Gulf of St. Lawrence than the descendants of the fishermen of New England, to whose energy and bravery, a century and a quarter ago, it is chiefly owing that there is any Nova Scotia to-day under the British flag? I am not going to dwell upon the history of the subject. It is well known that it was New England that saved to the Crown of England these maritime provinces; that to New England fishermen is due the fact that the flag of Great Britain flies on the citadel, and not the flag of France, to-day.

Early in the diplomatic history of this case, we find that the Treaty of Paris, in 1763, excluded French fishermen three leagues from the coast belonging to Great Britain in the Gulf of St. Lawrence, and fifteen leagues from the Island of Cape Breton. We find that the Treaty with Spain, in the same year, contained a relinquishment of all Spanish fishing rights in the neighbourhood of Newfoundland. The Crown of Spain expressly desisted from all pretensions to the right of fishing in the neighbourhood of Newfoundland. Those are the two Treaties of 1763—the Treaty of Paris with France, and the Treaty with Spain. Obviously, at that time, Great Britain claimed for herself exclusive sovereignty over the whole Gulf of St. Lawrence, and over a large part of the adjacent seas. By the Treaty of Versailles, in 1783, substantially the same provisions of exclusion were made with reference to the French fishermen. Now, in that broad claim of jurisdiction over the adjacent seas, in the right asserted and maintained to have British subjects fish there exclusively, the fishermen of New England, as British subjects, shared. Undoubtedly, the pretensions that were yielded to by those Treaties, have long since disappeared. Nobody believes now that Great Britain has any exclusive jurisdiction over the Gulf of St. Lawrence, or the Banks of Newfoundland, but at the time when the United States asserted their independence, and when the Treaty was formed between the United States and Great Britain, such were the claims of England, and those claims had been acquiesced in by France and by Spain. That explains the reason why it was that the elder Adams said he would rather cut off his right hand than give up the fisheries, at the time the Treaty was formed, in 1783; and that explains the reason why, when his son, John Quincy Adams, was one of the Commissioners who negotiated the Treaty of Ghent, at the end of the war of 1812, he insisted so strenuously that nothing should be done to give away the rights of the citizens of the United States in these ocean fisheries. Those are the fisheries which existed in that day, and those alone. The mackerel fishery was unknown. It was the cod fishery and the whale fishery that called forth the eulogy of Burke, over a hundred years ago. It was the cod fishery and whale fishery for which the first and second Adams so strenuously contended; and, inasmuch as it was found impossible, in the Treaty at the end of the war of 1812, to come to any adjustment of the fishery question, all mention of it was omitted in the Treaty; the Treaty was made leaving each party to assert his claims at some future time. And so it stood, Great Britain having given notice that she did not intend to renew the rights and privileges conceded to the United States in the Treaty of 1783, and the United States giving notice that they regarded the privileges of the Treaty of 1783 as of a permanent character, and not terminated by the war of 1812; but no conclusion was arrived at between the parties. What followed? The best account of the controversy to be found, is in a book called "The Fisheries and the Mississippi," which contains John Quincy Adams' letters on the subject of the Treaty of Ghent, and the Convention of 1818. Mr. Adams, in that book, says that the year after peace was declared, British cruizers warned all American fishing vessels not to

approach within sixty miles from the coast of Newfoundland, and that it was in consequence of this that the negotiations were begun which led to the Convention of 1818; and the Convention of 1818, in the opinion of Mr. Adams, conceded to the United States all that they desired. He believed, and asserted, that Great Britain had claimed, and intended to claim, exclusive jurisdiction over the Gulf of St. Lawrence, and over the Banks of Newfoundfand, and he considered, and stated that the Treaty of 1818, in setting at rest for ever those pretensions, obtained for the United States substantially what they desired. A passage is quoted in the "Reply of Her Majesty's Government to the United States' Answer," from this book, in which Mr. Adams says: "The Newfoundland, Nova Scotia, Gulf of St. Lawrence, and Labrador fisheries, are in nature, and in consideration both of their value and of the right to share in them, *one* fishery. To be cut off from the enjoyment of that right would be, to the people of Massachusetts, similar in kind, and comparable in degree, with an interdict to the people of Georgia and Louisiana to cultivate cotton or sugar. To be cut off, even from that portion of it which was within the exclusive British jurisdiction, in the *strictest sense*, within the Gulf of St. Lawrence and on the coast of Labrador, would have been like an interdict upon the people of Georgia or Louisiana to cultivate cotton or sugar in three-fourths of those respective States." But he goes on to speak of the warning off of American vessels sixty miles from Newfoundland, and then says: "It was this incident which led to the negotiations which terminated in the Convention of the 20th October, 1818. In that instrument the United States *renounced for ever* that part of the fishing liberties which they had enjoyed or claimed in certain parts of the exclusive jurisdiction of the British Provinces, and within *three marine miles* of the shores. *This privilege, without being of much use to our fishermen*, had been found very inconvenient to the British; and in return, we have acquired an enlarged liberty, both of fishing and drying fish, within other parts of the British jurisdiction, for ever."

Fishing for mackerel in ten fathoms of water, off the bight of Prince Edward Island, was not the thing then taken into consideration. There was no mackerel fishery till many years after. This controversy was caused by a claim on the one hand, and a resistance on the other, with reference to the ocean fisheries, to the cod-fishery, the whale-fishery, the deep-sea fishery, three leagues, fifteen leagues, sixty miles from the shore; and after the Convention of 1818 had been formed, if it had been construed as the British Government construe it to-day, there would have been no more controversy on the subject. The controversy that arose after the Convention of 1818, sprang from the unwarrantable and extravagant pretensions, not so much of Her Majesty's Home Government, as of the Colonial authorities. In order to understand the importance that has been attributed to this subject, it is indispensably necessary that you should know what was claimed to be the interpretation of the Convention of 1818, down to a very recent day. The Provincial authorities claimed, in the first place, to exclude United States' vessels from navigating the Gut of Canso. Nobody makes that claim now. In the second place, they claimed the right to exclude them from fishing anywhere in the Bay of Fundy. That claim was insisted upon until, on arbitration, it was decided against Her Majesty's Government. Not only was the headland doctrine asserted as to the great bays, but under its guise, the Provincial authorities claimed the right to draw a straight line from East Point to North Cape of Prince Edward Island, and make the exclusion three miles from that point. I have had marked on the map annexed to the British case, two or three of the principal lines of exclusion as they were then insisted upon, that you may know what it was that our people regarded as important. The claim to treat East Point and North Cape as headlands, and to exclude us a distance of three miles from a line drawn between them, is a notion that has not departed from the popular mind to the present day.

The affidavits from Prince Edward Island were drawn upon the theory that that is the rule, and in two or three of them I have found it expressly stated, "that all the mackerel were caught within the three mile line; that is to say, within a line three miles from a straight line drawn from East Point to North Cape." Now, those affidavits are all in answer to one set of questions; they are all upon one model, and it is quite obvious that they were all of them coloured by that view of the three mile limit, as two of them expressly say that they were. At all events, that was the claim that was made down to a very recent period. The claim also was made to exclude United States' fishermen from Northumberland Strait. In the case of the "Argus," seized by British cruizers, the ground of seizure was, that a line was to be drawn from North Cape to the northern line of Cow Bay in Cape

Breton. It is marked there in red on the map. The evidence of that claim, which was the basis of the seizure of the "Argus," is to be found in the correspondence between Mr. Everett and Lord Aberdeen on the subject. (See Mr. Everett's letter to Lord Aberdeen, quoted from in the United States' Brief, on page 21.) They likewise claimed to draw a line from Margaree to Cape St. George. You will find that down there. Those claims were not merely made on the quarter-deck, but they were made, some of them, in diplomatic correspondence, some of them in resolutions of the Nova Scotia Legislature. They were made, and they were insisted upon; and understanding this, I think you will be prepared to understand why it was that exclusion from such limits was regarded as important to our fishermen. You will remember that one of our oldest witnesses, Ezra Turner, testified that the Captain of the cruizer "told me what his orders were from Halifax, and he showed me his marks on the chart. I well recollect three marks. One was from Margaree to Cape St. George, and then a straight line from East Point to Cape St. George, and then another straight line from East Point to North Cape. The Captain said, 'If you come within three miles of these lines, fishing, or attempting to fish, I will consider you a prize.'" And a Committee of the Nova Scotia Legislature, as late as 1851, in their report, say: "The American citizens, under the Treaty, have no right, for the purposes of the fishery, to enter any part of the Bay of St. George, lying between the headlands formed by Cape George, on the one side, and Port Hood Island on the other."

Such were the claims made, and how were those claims enforced? They were enforced by the repeated seizure of our vessels, their detention until the fishing season was over, and then their release. It appears by the returns that have been made, in how many instances our fishing vessels were released without a trial, after they had been detained until their voyages were ruined, and as our skippers said in their testimony, it made no difference whether the seizure was lawful or unlawful, the voyage was spoilt, and the value of the vessel almost entirely destroyed. There were repeated instances of which you have testimony, of cruizers levying black mail upon skippers, taking a portion of their fish by way of tribute from them, and letting them go on their way.

Mr. Thomson.—Instead of seizing the whole?

Mr. Foster.—Yes, instead of seizing the whole. No doubt the poor and ignorant skippers were thankful to escape from the lion's jaws with so little loss as that. Let me give an instance. There is a letter from Mr. Forsyth, the United States' Secretary of State, to Mr. Fox, the British Minister at Washington, dated the 24th July, 1859, in which Mr. Forsyth requests the good offices of Her Majesty's Minister at Washington with the authorities at Halifax, to secure to a fisherman too poor to contend in the Admiralty Court, the restoration of ten barrels of herrings, taken from him by the officer who had seized his vessel, and withheld the herring after the vessel itself was released.

Well, what were the laws enacted to enforce these pretenzions? A Nova Scotia Statute of 1836, after providing for the forfeiture of any vessel found fishing, or preparing to fish, or to have been fishing, within three miles of the coasts, bays, creeks, or harbours, and providing that if the master, or person in command, should not truly answer the questions put to him in examination by the boarding officer, he should forfeit the sum of 100*l.*, goes on to provide that if any goods shipped on the vessel were seized for any cause of forfeiture under this Act, and any dispute arises whether they have been lawfully seized, the burden of proof to show the illegality of the seizure shall be on the owner or claimant of the goods, ship, or vessel, and not on the officer or person who shall seize and stop the same. The burden of proof to show that the seizure was unlawful, was on the man whose schooner had been brought to by the guns of the cutter. He was to be taken into a foreign port, and there required affirmatively to make out that his vessel and its contents were not liable to forfeiture. If he attempted any defence, he was not permitted to do so, until he had given sufficient security in the sum of 60*l.* for the costs. He must commence no suit until he had given one calendar month's notice in writing of his intention to do so, in order that the seizing officer might make amends if he chose; and he must bring his suit within three months after the cause of action accrued, and if he failed in the suit, treble costs were to be awarded against him; while, if he succeeded in the suit, and the presiding Judge certified that there was probable cause for the seizure, he was to be entitled to no costs, and the officer making the seizure was not to be liable to any action. That Act, only very slightly modified, but with most of its offensive provisions stil

retained, was found on the Statutes of Nova Scotia as late as the year 1868, and I am not aware that it has been repealed to-day. The construction put upon it in this Province was, that a man who came into a British harbour to buy bait with which to catch fish in the deep sea, was guilty of "preparing to fish," and that it was an offence under the Act to prepare within British territorial waters to carry on a deep-sea fishery.

Such, gentlemen, was the condition of things which led the fishermen of the United States to attribute so much importance to the three-mile restriction. We know to-day that all this has passed away. We know that such pretensions are as unlikely ever to be repeated, as they are sure never again to be submitted to. And why do I refer to them? Not, certainly, to revive any roots of bitterness; not, certainly, to complain of anything so long gone by, but because it is absolutely indispensable for you to understand the posture of this question historically, in order that you may be aware how different the question we are trying to-day, is from the question which has had such importance heretofore.

If the three-mile limit off the bend of Prince Edward Island, and down by Margaree, where our fishermen sometimes fish a week or two in the autumn (and those are the two points to which almost all the evidence of inshore fishing in this case relates), if the three-mile limit had been marked out by a line of buoys in those places, and our people could have fished where they had a right to, under the Law of Nations, and the terms of the Convention of 1818, nobody would have heard any complaint. Certainly it is most unjust, after a question has had such a history as this—after the two nations have been brought to the very verge of war with each other, in consequence of disputes based upon such claims as I have referred to—certainly, now that those claims are abandoned, it is most unjust to say to us, "Because you complained of these things, therefore you must have thought the right to catch mackerel in ten or fifteen fathoms of water, within three miles of the bight of the island, was of great national importance." We are not prepared to enter fairly into a discussion of the present question, until it is perceived how different it is from the one to which I have been alluding. Of course, our fishermem were alarmed and excited, and indignant, when the things were done to which I have referred. Of course it was true, that if such claims were to be maintained, they must abandon fishing in the Gulf of St. Lawrence altogether, and not only did they feel that there was an attempt unjustly and unlawfully to drive them out of a valuable fishery, which had belonged to them and their forefathers ever since vessels came here at all, but there was also, with reference to it, a sense of wrong and outrage, and the fishermen of New England, like the rest of the people of New England, although long-suffering and slow to wrath, have ever been found to be a race "who know their rights, and knowing, dare maintain." But when these chains are abandoned, as they have been now, there remains simply the question, what is the value of fishing within three miles of the shore of the British territories? And this brings me to some of the immediate questions which we have to discuss.

In the first place, I suppose I may as well take up the case of Newfoundland. The case of Newfoundland, as I understand it, is almost entirely eliminated from this controversy, by the decision which was made on the 6th September. The claim, as presented in Her Majesty's Case, is not one of compensation for fishing within the territorial waters of Newfoundland, but it is one of enjoying the privileges of commercial intercourse with the people of that island. Of territorial fishing in Newfoundland waters, there is hardly any evidence to be found since the first day of July, 1873, when the fishery clauses of the Treaty of Washington took effect, with one exception, to which I will allude hereafter. There is certainly no cod-fishing done by our people in the territorial waters of Newfoundland; none has been proved, and there is no probability that there ever will be, during the period of the Treaty, or afterwards. The American cod-fishery is everywhere deep-sea fishing. There is a little evidence of two localities in which a few halibut are said to have been taken in Newfoundland waters—one near Hermitage Bay, and one near Fortune Bay. But the same evidence that shows that it once existed, shows that it had been exhausted and abandoned, before the Treaty of Washington was made. Judge Bennet testified on that point, and said that—

"The halibut fishing on the Newfoundland coast is a very limited one, so far as I am aware. It is limited to the waters between Brunet Island in Fortune Bay, and Pass Island in Hermitage Bay. It is conducted close inshore, and was a very prolific fishery for a number of years. Our local fishermen pursued it with hook and line. I think, about eight years ago, the Americans visited that place for the purpose of fishing, and they fished it very thoroughly. They fished early in the season in the month of

April, when halibut was in great demand in New York market. They carried them there fresh in ice, and I know they have pursued that fishery from that time to within the last few years. I believe they have about exhausted it now."

Another witness testified, that some years ago the halibut fishery was pursued in that vicinity, but he went on to say:—

"American fishermen do not now fish for halibut about Pass Island as they formerly did, because I believe that that fishery has been exhausted by the Americans. I know of no United States' fishing vessels fishing within three miles of the shore, except at and about Pass Island, as already stated."—*Affidavit of Philip Hubert, p.* 54, *British Affidavits.*

John Evans, page 52, British Affidavits, says:—

"The halibut fishery followed by the United States' fishing vessels about Pass Island has been abandoned during late years. I have not heard of American fishing vessels trying to catch fish on the Newfoundland inshore fishery."

There has been a little evidence that occasionally, when our vessels go into harbours to purchase bait at night, some of the men will jig a few squid, when they are waiting to obtain bait.

All the evidence shows that they go there, not to fish for bait, but to buy it. It shows also that when they are there for that purpose, the crews of the vessels are so much occupied in taking on board and stowing away the fish bought for bait, that they have no time to engage much in fishing; but one or two witnesses have spoken of a little jigging for squid by one or two men when unoccupied at night. As to the rest, all the fishing in the territorial waters of Newfoundland is done by the inhabitants themselves.

The frozen herring trade, which was the ground of compensation chiefly relied upon in the Newfoundland case, has been completely proved to be a commercial transaction. The concurrent testimony of the witnesses on both sides is, that American fishermen go there with money, they do not go there provided with the appliances for fishing, but with money and with goods. They go there to purchase and to trade, and when they leave Gloucester, they take out a permit to touch and trade, that they may have the privileges of trading vessels. Perhaps it may be said that the arrangement under which this bait is taken, is substantially a fishing for it. I have heard that suggestion hinted at in the course of our discussions, but plainly, it seems to me, it cannot be sound. We pay for herring by the barrel, for squid and capelin by the hundred, and the inhabitants of the island will go out to sea as far as to the French Islands, there to meet American schooners, and to induce them to come to their particular localities, that they may be the ones to catch the bait for them. It is true that the British Case expresses the apprehension that the frozen herring trade may be lost to the inhabitants of Newfoundland, in consequence of the provisions of the Treaty. It is said that "it is not at all probable that, possessing the right to take the herring and capelin for themselves on all parts of the Newfoundland coast, the United States' fishermen will continue to purchase bait as heretofore, and they will thus prevent the local fishermen, especially those of Fortune Bay, from engaging in a very lucrative employment, which formerly occupied them during a portion of the winter season, for the supply of the United States' market." One of the British witnesses, Joseph Tierney, whose testimony is on page 371, in speaking of this matter of getting bait, says, in reply to the question, "How do you get that bait?" "Buy it from persons that go and catch it and sell it for so much a barrel. The American fishermen are not allowed to catch their own bait at all. Of course they may jig their own squid around the vessel." And in reply to my question, "What would be done if they tried to catch bait?" The answer is, "They are pretty rough customers. I don't know what they would do." So it appears that American fishermen not only do not catch bait, but are not allowed to catch it. They buy the bait, and that, to my mind, is the end of the question. So far as the herring trade goes, we could not, if we were disposed to, carry it on successfully under the provisions of the Treaty, for this herring trade is substantially a seining from the shore—a strand fishing, as it is called—and we have no right anywhere conferred by this Treaty to go ashore and seine herring, any more than we have to establish fish-traps. I remember Brother Thomson and Professor Baird were at issue on the question whether we had a right to do this. Brother Thomson was clearly right, and Professor Baird was mistaken. We have not acquired any right under the Treaty to go ashore for any purpose

anywhere on the British territories, except to dry nets and cure fish. I do not think that I ought to spend more time over the case of Newfoundland than this, except to call your attention to the circumstance, that in return for these few squid jigged at night, the islanders obtain an annual remission of duties averaging upwards of 50,000 dollars a year.

We have been kindly furnished, in connection with the British affidavits, upon page 128, Appendix A, with a statement showing the duties remitted upon exports from Newfoundland to the United States, since the Treaty of Washington; and their annual average is made out to be 50,940 dol. 45 c. I submit to the Commission whether we do not pay, upon any view of political economy, a thousand-fold for all the squid that our people jig after dark.

Let it not, however, for a moment be supposed that because I took up the case of Newfoundland for convenience sake, as it is presented separately, that I regard it as a distinct part of the case. The United States has made no Treaty with the Island of Newfoundland, which has not yet hoisted the flag of the "Lone Star." When she does, perhaps we shall be happy to enter into Treaty relations with her; but we know at present only Her Majesty's Government. We are dealing with the whole aggregate of concessions, from the one side to the other, and Newfoundland comes in with the rest.

Leaving, then, the Island of Newfoundland, I come to the question of the value to the citizens of the United States of the concessions as to inshore fisheries in the territorial waters of the Dominion of Canada (that is, within three miles of the shore), for the five annual seasons past, and for seven years to come. In the first place, there is the right conceded to our fishermen to land in order to cure fish and dry nets—to land on unoccupied places, where they do not interfere with private property, nor with British fishermen exercising the same rights. In one of the oldest Law Reports, Popham's, an ancient sage of the law, Mr. Justice Doddridge, remarks: "Fishermen, by the law of nations, may dry their nets on the land of any man." Without asserting that as a correct rule of law, I think I may safely assert that it has been the practice permitted under the comity of nations from the beginning of human history, and that no nation or people, no kingdom or country, has ever excluded fishermen from landing on barren and unoccupied shores and rocks to dry their nets and cure their fish. If it was proved that the fishermen of the United States did use privileges of this kind, under the provisions of the Treaty of Washington, to a greater extent than before, I hardly think that you would be able to find a current coin of the realm sufficiently small in which to estimate compensation for such a concession. But, in point of fact, the thing is not done; there is no evidence that it is done. On the contrary, the evidence is that this practice belonged to the primitive usages of a bygone generation. Seventy, sixty, perhaps fifty, years ago, when a little fishing vessel left Massachusetts Bay, it would sail to Newoundland, and after catching a few fish, the skipper would moor his craft near the shore, land in a boat and dry the fish on the rocks; and when he had collected a fare of fish, and filled his vessel, he would either return back home, or, quite as frequently, would sail on a commercial voyage to some foreign country, where he would dispose of the fish and take in a return cargo. But nothing of that sort has happened within the memory of any living man. It is something wholly disused: of no value whatever. And it must not be said that under this concession we acquire any right to fish from the shore, to haul nets from the shore, or to fish from rocks. Obviously we do not. I agree entirely with the view of my Brother Thomson, as manifested in his conversation with Professor Baird on that subject.

We come, then, to the inshore fishing. What is that? In the first place, there has been some attempt to show inshore halibut fishing in the neighbourhood of Cape Sable. It is very slight. It is contradicted by all our witnesses. No American fisherman can be found who has ever known of any halibut fishing within three miles of the shore in that vicinity; and our fishermen all say that it is impossible that there should be halibut caught, in any considerable quantities, in any place where the waters are so shallow. There is also some evidence that up in the Gulf of St. Lawrence there was once a small local halibut fishery; but the same evidence that speaks of its existence there, speaks of its discontinuance years ago. The last instance of a vessel going there to fish for halibut that has been made known to us, is the one that Mr. Sylvanus Smith testifies about, where a vessel of his strayed up into the Gulf, was captured, and was released, prior to the Treaty of Washington. As to the inshore halibut fishery, there has been no name of a vessel, except in one single instance, when a witness did give the name of the "Sarah C. Pyle," as a

vessel that had fished for halibut in the vicinity of Cape Sable. We have an affidavit from the captain of that schooner, Benjamin Swim, saying that he did not take any fish within many miles of Cape Sable. He says he has been engaged in cod-fishing since April of this year, and "has landed 150,000 pounds of halibut, and caught them all, both codfish and halibut, on Western Banks. The nearest to the the shore that I have caught fish of any kind this year is, at least, forty miles." (Affidavit No. 242.)

So much for the inshore halibut fishery. I will, however, before leaving it, refer to the statement of one British witness, Thomas R. Pattilo, who testified that occasionally halibut may be caught inshore, as a boy may catch a codfish off the rocks; but, pursued as a business, halibut are caught in the sea, in deep water. "How deep do you say?" "The fishery is most successfully prosecuted in about 90 fathoms of water, and, later in the season, in as much as 150 fathoms."

So much for the inshore halibut fishery; and that brings me to the inshore codfishery, as to which I am reminded of a chapter in an old history of Ireland, that was entitled, "On Snakes in Ireland," and the whole chapter was, "There are no snakes in Ireland." So there is no inshore codfishery pursued as a business by United States' vessels anywhere. It is like halibut fishing, exclusively a deep-sea fishing. They caught a whale the other day in the harbour of Charlottetown, but I do not suppose our friends expect you to assess in this award against the United States any particular sum for the inshore whale fishery. There is no codfishery or halibut fishery inshore, pursued by our vessels, any more than there is inshore whale fishery. We know, and our witnesses know, where our vessels go. If they go near the British shores at all, they go to buy bait, and leave their money in payment for the bait. Will it be said that the codfishery is indirectly to be paid for, because fresh bait must be used, and the codfishery cannot profitably be pursued without fresh bait; and because we are hereafter to be deprived of the right to buy bait by laws expected to be passed, and then shall have to stop and catch it, so that by-and-bye, when some new statutes have been enacted, and we have been cut off from commercial privileges, we may be forced to catch bait for codfishing in British territorial waters? I think it will be time enough to meet that question when it arises. Any attempt to cut us off from the commercial privileges that are allowed in times of peace, by the comity of civilized nations, to all at peace with them, would of course be adjusted between the two Governments, in the spirit that becomes two Imperial and Christian Powers. I do not think that, looking forward to some unknown time, when some unknown law will be passed, we need anticipate that we are to be cut off from the privilege of buying bait, and therefore you should award compensation against us for the bait which we may at that time find occasion ourselves to catch. But if it is worth while to spend a single moment upon that, how thoroughly it has been disposed of by the evidence, which shows that this practice of going from the fishing grounds on the Banks into harbours to purchase bait is one attended with great loss of time, and with other incidental disadvantages, so that the owners of the vessels much prefer to have their fishermen stay on the Banks, and use salt bait, and whatever else they can get there. St. Pierre and Miquelon are free ports, commercial intercourse is permitted there; bait can be bought there; and as the British witnesses have told us, the traffic for bait between Newfoundland and the French Islands is so great, and such a full supply of bait is brought to the French Islands, more than there is a demand for, that it is sometimes thrown overboard in quantities that almost fill up the harbour. That was the statement of one of the witnesses. I do not think, therefore, that I need spend more time, either upon the codfishery, or the question of buying bait or procuring bait for codfishing.

What shall I say of the United States' herring fishery, alleged to exist at Grand Manan and its vicinity? Three British witnesses testify to an annual catch of 1,000,000 or 1,500,000 dollars' worth by United States' fishermen in that vicinity, all caught inshore. But these witnesses do not name a single vessel, or captain, or give the name of any place from which such vessels come, except to speak in general terms of the Gloucester fleet. These witnesses are McLean, McLeod, and McLaughlin. The fish alleged to be taken are chiefly herring. I shall not stop to read their evidence, or comment upon it in detail. They are contradicted by several witnesses, and by several depositions filed in the case, which you will find in the supplemental depositions lately printed; all of whom state what we believe to be clearly true, that the herring trade by United States' vessels in the vicinity of Grand Manan, is purely a commercial transaction; that our fishermen cannot afford the time to catch

herring; that their crews are too large, and their vessels too expensive to engage in catching so poor a fish as herring; that it is better for them to buy and pay for them, and that so they uniformly do. The members of the Gloucester firms who own and send out these vessels, tell you that they go without nets, without the appliances to catch herring at all, but with large sums of money, they bring back the herring, and they leave the money behind them.

This question seems to me to be disposed of by the Report of the Commissioner on the New Brunswick fisheries for 1876.

Mr. Venning, the Inspector of Fisheries for New Brunswick, quotes in his Report on Charlotte County (pp. 266 and 267), from Overseer Cunningham of the Inner Bay. Some attempt was made to show that Overseer Cunningham, although the official appointed for the purpose, did not know much about it; but it will be observed that his statements, as well as those of Overseer Best (whose evidence is next quoted), are affirmed by Mr. Venning, the Inspector of Fisheries for New Brunswick, and inserted in his Report, under his sanction; and I think, that with the Minister of Marine and Fisheries, himself from New Bunswick, at the head of the Department, erroneous statements on a subject relating to the fisheries of his own province were not likely to creep into official documents, and remain there unobjected to. I think we must assume that these official statements are truer and more reliable than the accounts that come from witnesses: "The winter herring fishery," Overseer Cunningham says, "I am sorry to say, shows a decrease from the yield of last year. This, I believe, is owing to the large quantity of nets, in fact miles of them, being set by United States' fishermen, all the way from Grand Manan to Lepreau, and far out in the bay, by the Wolves, sunk from 20 to 25 fathoms, which kept the fish from coming into this bay. In this view I am borne out by all the fishermen with whom I have conversed on the subject. Our fishermen who own vessels have now to go a distance of six or eight miles off shore before they can catch any. The poorer class of fishermen, who have nothing but small boats, made but a poor catch. However, during the winter months, there were caught, and sold in a frozen state to United States' vessels, 1,900 barrels, at from 4 dollars to 5 dollars per barrel. The price, being somewhat better than last year, helped to make up the deficiency in their catch."

Then he goes on to speak of the injurious effect of throwing over "gurry," which, he says, is practised by provincial fishermen as well as American, and says that, "as they are fishing far offshore a week at a time, this destructive practice can be followed with impunity and without detection." And Overseer Best speaks of the falling-off in line fishing, but says that the yield of herring has exceeded that of the previous year, disagreeing with his friend, Overseer Cunningham. He attributes the deficiency in line fishing to the use of trawls. He goes on to say, "The catch was made chiefly in deep water this year, as far out as five to seven miles off the coast, and no line fish have been taken within two miles, except haddock." "The winter fishing," he says, "was principally done in deep water, as rough weather prevailed most of the time, the fishermen found it very difficult to take care of their nets, a great many of which were lost. A large number of American vessels now frequent our coast to engage in this fishery, and pay but little attention to our laws, which prohibit Sunday fishing and throwing over "gurry." This I am powerless to prevent over a stretch of twenty miles of coast, on which from sixty to one hundred vessels are engaged. A suitable vessel is necessary for this work, and she should cruize around among the fishing grounds, and see that the laws are respected by those who are participating in the benefits of our fisheries."

Of course it is difficult to prove a negative; but ought not the British Agent to be required, upon a subject of such magnitude as this, to produce some more satisfactory evidence? If a large fleet of American vessels are year by year catching herring within three miles of land, among an equal body of British fishermen, within a limited space near Grand Manan, and if they are taking from 1,000,000 to 1,500,000 dollars' worth a year, is it not possible for our friends, the Minister of Marine and Fisheries and the learned counsel, both from New Brunswick, to furnish the names of just one or two vessels, or one or two captains among the great number that are so engaged? 1,000,000 to 1,500,000 dollars' worth is the estimate that they put upon the fishery. How many herring do you suppose it takes to come to 1,000,000 or 1,500,000 dollars? It takes more than all the herring that are imported into the United States, by the statistics. Just in that little vicinity, they say that a greater amount of such fish are taken than are imported into the United States. Now, if an operation of that enormous magnitude is going on, it does seem

to me that somebody would know something more definite about it than has appeared in this evidence. Certainly, there has been earnest zeal, and the most indefatigable industry in the preparation of the British Case. Nobody doubts that. There has been every facility to procure evidence; and are we not entitled to require at the hands of Her Majesty's Government something that is more definite and tangible than has appeared on this subject? I have made all the inquiry in my power, and I cannot find out what the vessels are, who their captains are, from what ports they come, or to what markets they return. We know very well what the Gloucester herring fleet is. It is a fleet that goes to buy herring; that buys it at Grand Manan; that buys it at the Magdalen Islands; that buys it in Newfoundland; but of any fleet that fishes for herring in the territorial waters of New Brunswick, after the utmost inquiry we can make, we remain totally ignorant.

There is another view of this subject, which ought, it seems to me, to be decisive. Everybody admits that herring is one of the cheapest and poorest of fish, and that the former duty of 1 dollar a barrel, and 5 c. a box on smoked herring, would be absolutely prohibitory in the markets of the United States. Now, how much must these New Brunswick fishermen gain if they have as large a fishery as we have, and we have a fishery of 1,500,000 dollars in that vicinity? That is their statement; the British fishery is about equal to the American; the American is very near to 1,500,000 dollars a year in that vicinity; the British caught fish go to the United States' markets almost exclusively—I think one witness did say two-thirds; everybody else has spoken as if the herring market was in the United States almost altogether. How many barrels of herring does it take to come to 1,000,000 dollars? We will let the other 500,000 dollars be supposed to consist of smoked herring in boxes. How many barrels of herring does it take? Why, it takes 300,000 or 400,000. The herring sell for from 2 to 4 dollars a barrel. It takes 250,000, 300,000, or 400,000 barrels of herring—and a duty of 1 dollar is remitted upon each barrel,—a duty which would exclude them from our market, if it were reimposed. Is not that a sufficient compensation? If you believe that our people catch herring there to any considerable extent, is not that market, from which these people derive, according to their own showing, so large sums of money, an equivalent? Remember, they say we catch 1,000,000 to 1,500,000 dollars' worth; they say they catch as many; they say it nearly all goes to our market; the duty saved is 1 dollar a barrel; and according to their own figures, they must be reaping a golden harvest. Happy fishermen of New Brunswick! By the statistics, they earn four or five times as much as the fishermen of Prince Edward Island, and the witnesses say that they earn really two or three times as much as the statistics show! They are receiving from 1,000,000 to 1,500,000 dollars for fish sold chiefly in the markets of the United States, and the saving in duty is several hundred thousand dollars. It is true that we cannot find imported into the United States any such quantity of herring; still, that is the account that they give of it.

This brings me, gentlemen, to the question of the inshore mackerel fishery—that portion of the case which seems to me, upon the evidence, to be the principal part, I might almost say the only part, requiring to be discussed. Your jurisdiction is to ascertain the value of those fisheries for a period of twelve years, from July 1, 1873, to July 1, 1885. Of those twelve years, five have already elapsed; one fishing year has passed since the session of this Commission began. Inasmuch as the twelve years will terminate before the beginning of the fishing year in the Gulf of St. Lawrence for 1885, it is precisely correct to say, that five years have elapsed and seven remain. It is of no consequence how valuable these fisheries have been at periods antecedent to the Treaty, nor how valuable or valueless you may think they are likely to become after the Treaty shall have expired. The twelve years' space of time limits your jurisdiction, and five-twelfths of that time is to be judged of, by the testimony, as to the past. The results of the five years are before you. As to the seven remaining years, the burden of proof is upon Her Majesty's Government to show what benefit the citizens of the United States may reasonably be expected to derive during that time from these fisheries. It will be for you to estimate the future by the past, as well as you may be able.

This is a purely business question. Although it arises between two great Governments, it is to be decided upon the same principles of evidence as if it were a claim between two men, as if it was a question how much each skipper that enters the Gulf of St. Lawrence to fish for mackerel ought to pay out of his own pocket. We are engaged in what the London "Times" has truly called a "grea'

international lawsuit," and we are to be governed by the same rules of evidence that apply in all Judicial Tribunals—not, of course, by the technicalities of any particular system of law, but by those great general principles which prevail wherever, among civilized men, justice is administered. He who makes a claim is to prove his claim and the amount of it. This is not a question to be decided upon diplomatic considerations; it is a question of proof. Money is to be paid for value received, and he who claims the money is to show that the value has been received, or will be. If there are extravagant expectations on the one side, that is no reason for awarding a sum of money. If there is a belief on the other side that the results of the Treaty are injurious to a great industry, which nearly all civilized nations have thought it worth while to foster by bounties, that is no argument against rendering compensation. Whatever benefit the citizens of the United States are proved to derive from the inshore mackerel fisheries, within three miles of the shore of the Gulf of St. Lawrence, for that you are to make an award, having regard to the offset, of which it will be my duty to speak at a later period. The inquiry divides itself into these two heads: First, *What has been the value from July* 1, 1873, *down to the present time?* and, second, *What is it going to be hereafter?* I invite your attention to the proof that is before you as to the value of the mackerel fishery since the Treaty went into effect. And here I must deal with the question: What proportion of the mackerel is caught in territorial waters, viz., within three miles of the shore? A great mass of testimony has been adduced on both sides, and it might seem to be in irreconcilable conflict. But let us not be dismayed at this appearance. There are certain land-marks which cannot be changed, by a careful attention to which I think we may expect to arrive at a tolerably certain conclusion. In the first place, it has been proved, has it not? by a great body of evidence, that there is, and always has been, in the Gulf of St. Lawrence, a very extensive mackerel fishery clearly beyond British jurisdiction, as to which no new rights are derived by the citizens of the United States from the Treaty of Washington. It is true that the map filed in the British Case, and the original statement of that Case, make no distinction between the inshore and the deep-sea mackerel fisheries. To look at this map, and to read the British Case, you would think that the old claims of exclusive jurisdiction throughout the Gulf were still kept up, and that all the mackerel caught in the Gulf of St. Lawrence were, as one of the witnesses expressed himself, "British subjects." But we know perfectcy well, that a United States' vessel, passing through the Gut of Canso to catch mackerel in the Gulf, will find numerous places where, for many years, the fishing has been the best, where the fish are the largest, and where the catches are the greatest, wholly away from the shore. The map attached to the British Case tells this story, for all through the Gulf of St. Lawrence, the gentlemen who formed that map have put down the places where mackerel are caught; and if the map itself does not indicate that seven-eighths of the mackerel fishing grounds must be clearly far away from the shore, I am very much mistaken. At the Magdalen Islands, where we have always had the right to fish as near as we pleased to the shore, the largest and the best mackerel are taken. At Bird Rocks, near the Magdalen Islands, where there is deep water close to the rocks, and where the mackerel are undoubtedly taken close inshore (within two or three miles of the Bird Rocks you will find the water to be twenty fathoms deep), all around the Magdalen Islands, the mackerel fishing is stated by the experts who prepared this map to be good the season through. Then we have the Bank Bradley, the Bank Miscou, the Orphan Bank, the Fisherman's Bank, and we have the fishing ground of Pigeon Hill; all these grounds are far away from the shore, where there cannot be the least doubt that our fishermen have always had the right to fish, aside from any provisions of the present Treaty. The most experienced and successful fishermen who have testified before you, say that those have been places to which they have resorted, and that there they were most successful.

Look at the testimony of Andrew Leighton, whom we heard of from the other side early, as one of the most successful fishermen that ever was in the gulf. He speaks of the largest season's fishing any man ever had in the bay—1,515 barrels—and says: "I got the mackerel the first trip at Orphans and the Magdalens; the second trip, at the Magdalens; the third trip, at Fisherman's Bank; and I ran down to Margaree and got 215 barrels there, and went home." All the mackerel at Margaree, he says, were caught within two miles of the shore—within the admitted limits. Recall the evidence of Sylvanus Smith and Joseph Rowe, experienced and successful fishermen, who tell you that they cared little for the privilege of fishing

within three miles of the land; that they did not believe that vessel-fishing could be prosecuted successfully there, because it required deeper water than is usually found within the distance of three miles, to raise a body of mackerel sufficient for the fishermen on a vessel to take the fish profitably; that boat-fishing is a wholly distinct thing from vessel-fishing; that boats may anchor within three miles of the land, and pick up a load in the course of a day at one spot, where mackerel would be too few, and too small, for a vessel with fifteen men to fish to any advantage. Almost all the evidence in this case of fishing within three miles of the shore relates to the bend of Prince Edward Island, and to the vicinity of Margaree. As to the bend of the island, it appears, in the first place, that many of our fishermen regard it as a dangerous place, and shun it on that account, not daring to come as near the shore as within three miles, because, in case of a gale blowing on shore, their vessels would be likely to be wrecked. It appears also that even a large part of the boat-fishing there is carried on more than three miles from the shore. Undoubtedly many of the fishermen have testified to the contrary; many of the boat fishermen from the island have testified that nearly all their fish were caught within three miles; still it does appear by evidence that nobody can controvert that a great part of the boat-fishing is more than three miles out. One of the witnesses from the island, James McDonald, says in his deposition, that from the middle of September to the 1st November not one barrel in 5,000 is caught outside the limits, and he gives as a reason that the water will not permit fishing any distance from the shore because it is too rough. But it is perfectly obvious that a man who so testifies, either is speaking of fishing in the very smallest kind of boats, little dories that are not fit to go off three miles from the shore, and therefore knows nothing of vessel or large boat fishing; or else he is under the same delusion that appears in the testimony of two other witnesses to which I referred in another connection—McNeill, who on page 42 of the British Affidavits describes the three-mile limit thus: "A line drawn between two points taken three miles off the North Cape and East Point of this island;" and John A. McLeod, on page 228, who defines the three-mile limit as "a line drawn from points three miles off the headlands." When a witness comes here and testifies that after September not one barrel of mackerel in 5,000 is taken outside of the three-mile limit, because it is too rough to go so far out, he is either speaking of a little cockleshell of a boat that is never fit to go out more than one or two miles, or else he retains the old notion that the headland-line is to be measured from the two points, and that three miles outside that line (which would be something like twenty-five or thirty miles out from the deepest part of the bend of the island), is the territorial limit.

Mr. Thomson.—If you will read the other portion of his deposition you will see that your statement is not quite fair.

Mr. Foster.—"That the fish are nearly all caught close to the shore, the best fishing-ground being about one and one-half miles from the shore. In October the boats sometimes go off more than three miles from land. Fully two-thirds of the mackerel are caught within three miles from the shore, and all are caught within what is known as the three-mile limit, that is, within a line drawn between two points taken three miles off the North Cape and East Point of this island." (McNeill, p. 42.) We will have this evidence accurately, because I think it sheds considerable light on the subject: "that nine-tenths of our mackerel are caught within one and one-half miles from the shore, and I may say the whole of them are caught within three miles of the shore." (McLeod, p. 228.) Somewhere the expression "not one barrel in 5,000" occurs. It is in one of those affidavits—perhaps in the first one. I have read the passage so as to do no injustice to the statement of the witness.

Mr. Hall testified that for a month before the day of his testimony, that is to say, after about the first week in September, no mackerel were caught within five or six miles of the shore, and he applied that statement to the specimen mackerel which were brought here for our inspection and our taste; and Mr. Myrick, from Rustico, told the same story. Moreover, all their witnesses, in speaking of the prosperity of the fishing business of the island, which has been dwelt upon and dilated upon so much, speak of the fact that not only are the boats becoming more numerous, but they build them larger every year—longer, deeper, and bigger boats. Why? To go farther from the shore. So said Mr. Churchill. I call that a pretty decisive test of the question, What proportion of the mackerel is caught within three miles of the shore? What does Professor Hind say on that subject? In the Report that has been furnished us he says (p. 90): "Mackerel-catching is a special industry, and requires sea-going vessels. The boat equipment, so common throughout

British American waters, is wholly unsuited to the pursuit of the mackerel which has been so largely carried on by United States' fishermen. Immense schools of mackerel are frequently left unmolested in the gulf and on the coast of Newfoundland, in consequence of the fishermen being unprovided with suitable vessels and fishing gear. It is, however, a reserve for the future, which at no distant day will be utilized." Then he goes on to remark that the use of the telegraph is likely to become of great value in connection with these fisheries.

Now, is there any explanation of these statements, except that the bulk of the mackerel are caught more than three miles off, in the body of the gulf? If it is a "special industry" to which boats are wholly unsuited, can it possibly be true that a great proportion of the fish is caught within three miles of the shore? How can you account for these statements of their scientific witness in his elaborate Report, except by the fact that he knows that the mackerel fishery is, so large a part of it, a fishery more than three miles off the coast that it can profitably be pursued only in vessels?

There are two other things that lie beyond the range of controversy to which I wish to call your attention. In the first place, there is a statement made by the United States' Consul at Prince Edward Island, J. H. Sherman, back in 1864, in a communication to the Secretary of State at Washington, long before any question of compensation had arisen; a confidential communication to his own Government by a man who had every opportunity to observe, and no motive to mislead. He was writing with reference to the value of the inshore fisheries, and the statement so perfectly corresponds with what I believe to be the real truth that I desire to read it: "The Reciprocity Treaty seems to have been an unalloyed boon to the Colony. The principal benefit that was expected to accrue to the United States by its operation was from the removal of the restrictions upon our vessels engaged in the fisheries, to a distance of three marine miles from the shore; but whatever advantage might have been anticipated from that cause has failed to be realized.

"The number of vessels engaged in the fisheries on the shores of this Colony has greatly diminished since the adoption of that Treaty, so that it is now less than one-half the former number. The restriction to three marine miles from the shore (which we imposed upon ourselves under a former Treaty) has, I am assured, but few, if any disadvantages, as the best fish are caught outside that distance, and the vessels are filled in less time, from the fact that the men are liable to no loss of time from idling on the shore."

Next take Appendix E of the British Case. Look at the Report of the Executive Council of Prince Edward Island, made to the Ottawa Government in 1874, with reference to the preparation of this very case. They are undertaking to show how large a claim can be made in behalf of the inshore fisheries of the island, and what do they say? Page 3, paragraph 8:—"From the 1st July to the 1st October is the mackerel season around our coasts, during which time the United States' fishing fleet pursues its work, and it has been shown" (I do not know where it has been shown) "that in 1872 over 1,000 sail of United States' schooners, from 40 to 100 tons, were engaged in the mackerel fishery alone." More than the whole number of the United States' vessels licensed to pursue the mackerel and cod fisheries in that year; so that those statistics were large, and the gentlemen who prepared this statement were not indisposed to do full justice to their claims. They did not mean to understate the use made of the fisheries of the island, nor the importance of them to the United States' fishermen. "This fact, together with our experience in the collection of 'Light-money,' now abolished, as well as from actual observation, a fair average of United States' vessels fishing around our coasts during the season referred to may be safely stated at 300 sail; and as a season's work is usually about 600 barrels per vessel, *we may fairly put down one-third of the catch as taken inside of the three-mile limit.*"

Such was the extent of the claim of the Prince Edward Island Government with reference to the proportion of the inshore and offshore catch of mackerel, when they began to prepare this case. After this, they may pile affidavits as high as they please, they can never do away with the effect of that statement. Those gentlemen know the truth. The rest of this paragraph goes on to estimate that 5 dollars a barrel is the net cost of the fish, but I will not go into that.

Mr. Thomson.—You will not adopt that whole paragraph?

Mr. Foster.—Hardly. I adopt the statement, that in the judgment of the Executive Council of the island, the strongest claim that they could make as to the proportion of mackerel taken within three miles of the shore was one-third.

But we have more evidence about this inshore fishery, for I am now trying to call your attention to those matters that lie outside the range of controversy, where you cannot say that the witnesses, under the pressure of excited feeling, are making extravagant statements. Let us see what the statement was in the debates upon the adoption of the Treaty. Dr. Tupper, of Halifax, in giving an account of the state of the fisheries, says: "The Member for West Durham stated that if Canada had continued the policy of exclusion, the American fisheries would very soon have utterly failed, and they would have been at our mercy. This was a great mistake. Last summer he went down in a steamer from Dalhousie to Pictou, and fell in with a fleet of thirty American fishing-vessels, which had averaged 300 barrels of mackerel in three weeks, and had never been within ten miles of the shore." I am inclined to concede, for the purposes of the argument, that of the mackerel caught by boats off the bend of Prince Edward Island, about one-third are taken within three miles of the shore. I believe it to be a very liberal estimate, and I have no idea that any such proportion was ever taken by a single United States' vessel-fishing in that vicinity. I have already alluded to the fact that the boat-fishing and the vessel-fishing are wholly different things, and to the necessity of a vessel being able to raise a great body of mackerel. Do you remember the testimony of Captain Hulbert, pilot of the "Speedwell," certainly one of the most intelligent and candid witnesses that has appeared here? He stated that you could not catch the mackerel in any quantities on board vessels off the bend of the island, because the water was not deep enough within three miles. Take the chart used by Professor Hind in connection with his testimony, and see within three miles of the shore how deep the water is. Ten to fifteen fathoms is the depth as far out as three miles. You will hardly find twenty fathoms of water anywhere within the three-mile zone. Captain Hulbert gave, with great truth, the reason for his opinion, that there was not depth of water enough there to raise a body of mackerel necessary for profitable vessel-fishing. My brother Davies felt the force of that, and cross-examined him about the Magdalen Islands. I have been looking at the chart of the Magdalen Islands, and I have also considered the testimony as to the fishing in that vicinity. A great deal of the fishing at the Magdalen Islands is done more than three miles from the shore. The place where the best mackerel are taken, Bird Rocks, will be found to have twenty fathoms of water within the three-mile limit. And when you come to that locality where I honestly believe a larger proportion of mackerel are caught within three miles than anywhere else, that is off Margaree in the autumn, you will find by the chart that the water there is deep, and that twenty fathoms is marked for quite a distance in a great many localities within three miles of the land. I have always understood the Byron Islands and the Bird Rocks to be a part of the Magdalen Islands, and they have always been so testified to by the witnesses. When they have spoken of the Magdalen Islands, they have included fishing in those two localities as within the Magdalen Islands Fisheries. In speaking of localities they name the Bird Rock, but they speak of it as part of the Magdalen Islands. That particular question of geography may deserve more attention hereafter. I cannot now pause to consider it.

Right here, let me read from an early report on this subject of fishing inshore. Captain Fair, of Her Majesty's ship "Champion," in 1839, says that he passed through a fleet of 600 or 700 American vessels in various positions, some within the headlands of the bays, and some along the shores, but none within the three-mile interdiction. While cruizing in the vicinity of Prince Edward Island he states that there was not "a single case which called for our interference, or where it was necessary to recommend caution; on the contrary, the Americans say that a privilege has been granted them, and that they will not abuse it."—(Sabine's "Report on the Fisheries," page 410.)

There is something peculiar about this Prince Edward Island fishery, and its relative proportion to the Nova Scotia fishery. As I said before, I am inclined to believe that the greatest proportion of mackerel caught anywhere inshore is caught off Margaree late in the autumn. The United States' vessels, on their homeward voyage, make harbour at Port Hood, and lie there one or two weeks; while there they do fish within three miles of Margaree Island, not between Margaree Island and the mainland, but within three miles of the island shores, and just there is found water deep enough for vessel-fishing. Look at the chart, which fully explains to my mind the inshore fishing at this point. Margaree is a part of Nova Scotia, and Professor Hind says there is an immense boat-catch all along the outer coast of Nova Scotia, and estimates that of the Dominion mackerel catch, Quebec

furnishes 7 per cent. (he does not say where it comes from); Nova Scotia, 80 per cent.; New Brunswick, 3 per cent.; and Prince Edward Island, 10 per cent. Considering the fact that the preponderance of the testimony in regard to the mackerel fishery comes from Prince Edward Island, is it not strange that it does not furnish more than 10 per cent. of the entire catch? That is, not more than 12,000 or 16,000 barrels of mackerel a-year. But this accords with the Report of J. C. Taché, Deputy Minister of Agriculture, pages 43 and 44, which is the most intelligible report, or statistical memoranda, of the Canadian Fisheries that I have found. It bears date 1876, and in narrow compass, is more intelligible to me, at least, than the separate statements which I am obliged to draw from the large volumes. Mr. Taché says that "the figures of the Fisheries Report are a very great deal short of the real quantities caught every year as regards cod and herring, although coming quite close to the catch of mackerel. The reason is that it is specially from large commercial houses, which are principally exporters of fish, that the information is gathered by the Fisheries officers; then it comes that mackerel, being principally obtained for exportation, and held in bond by large dealers, is found almost adequately represented in these returns."

When I called Professor Hind's attention to these statements, and remarked to him that we had not heard much said about the places where mackerel were caught in Nova Scotia, he replied it was because there was an immense boat-catch on the coast. If there has been any evidence of United States' vessels fishing for mackerel within three miles of the shores, or more than three miles from the shore of the outer coast of Nova Scotia, it has escaped my attention. There is no considerable evidence, I do not know but I might say, no appreciable evidence, of United States' vessels fishing for mackerel off the coast of Nova Scotia (I am not now speaking of Margaree, but the coast of Nova Scotia). As to Cape Breton, very little evidence has been given except in reference to the waters in the neighbourhood of Port Hood.

You will observe that this estimate of the Prince Edward Island fisheries, 10 per cent., must be nearly correct. It is larger than the returns of exportation, a little larger than Mr. Hall's estimate, and I think if I say that from 12,000 to 15,000 barrels of mackerel are annually exported from Prince Edward Island, I shall do full justice to the average quantity of fish caught there. Now, it does seem to me that there has been no evidence that can tend to lead you to suppose that the quantity taken by United States' vessels in that neighbourhood since the Treaty of Washington, five years ago, compares at all in magnitude with the quantity taken by the island vessels themselves.

There are some other topics connected with the mackerel catch to which I want to call your attention. Remember, gentlemen, always, that we hold this investigation down to the period of the Treaty; and that you have no right to make any award against the United States for anything anterior to the 1st day of July, 1873, or subsequent to twelve years later than that.

Now, I wish to present some figures relative to the years that have elapsed since the fishery clauses of the Treaty of Washington took effect. I will begin with 1873. That year, the Massachusetts inspection of mackerel was 185,748 bbls.; the Maine inspection was 22,193 bbls.; the New Hampshire inspection was 2,398 bbls. (I am quoting now from Appendix O.) The total amount of the Massachusetts, Maine, and New Hampshire inspection for the year 1873, is 210,339 bbls. That is the entire amount caught by United States' vessels and boats around our shores, coasts, and in the Gulf of St. Lawrence. Whatever comes from our vessels appears in the inspection. During that year we are favoured with the returns from Port Mulgrave; and, allowing for a little natural spirit of exaggeration, which some might attribute to the patriotic feelings of the collector, and others to the disposition of American fishermen to tell as good stories of their catch as they can, we find the Port Mulgrave returns to be pretty accurate. They are a few per cent. in excess of the statistics of the catches, with which I have compared them to some extent; but still are tolerably accurate and fair returns for that year. They give 254 vessels, with an average catch of 348 sea barrels, and 313 packed barrels, aggregating 88,012 sea barrels. Taking off 10 per cent. for loss by packing, which accords with the current of the testimony—the Port Mulgrave inspector estimates the loss by packing to be 7½ per cent., and he estimates 15 bbls. off, but the current of the testimony makes it 10 per cent.—the aggregate was 79,211 packed barrels. Of the 254 vessels, 131 came from Gloucester. Of these 254 vessels, 25 were lost that year, a loss of 10 per cent. of all the United States' vessels that were in the gulf. One-

tenth part of all the vessels that came to the gulf that year were lost. That is the largest catch that our vessels have made since the Treaty. Of that 79,211 bbls., which were caught by United States' vessels in the Gulf of St. Lawrence, in the year 1873, what proportion are you prepared to assume was caught inshore? Is not a third a liberal estimate? Taking the Magdalen Islands, taking Bank Bradley, taking Orphan Bank, taking Miscou Bank, taking the Pigeon Hill grounds, taking the fishing off the bend of the island, that place where Captain Rowe said he always found the best and largest fish, inside of New London head, twelve or fifteen miles out, —taking all these well known localities into consideration, I ask whether there can be any doubt that it is a very liberal estimate indeed to say one-third was caught inshore? I do not think that all the mackerel taken by United States' vessels inshore, in all parts of the Gulf of St. Lawrence, averages an eighth or a tenth of the total catch, but I will assume for the moment one-third, the proportion which the Executive Council of Prince Edward Island thought a fair average for the shores of their island. That would make 26,404 bbls. caught in British territorial waters in that year, the first year of the Treaty. What were these mackerel worth? Mr. Hall tells you that he buys them, landed on shore, for 3 dol. 75 c. a barrel. After they have been caught, after the time of the fishermen has been put into the business, he buys them for 3 dol. 75 c. a barrel. If they are worth 3 dol. 75 c. a barrel when they are caught, what proportion of that sum is it fair to call the right to fish for them worth? You may set your own figures on that. Call it one-half, one-third, or one-quarter. I should think it was somewhat extraordinary if the right to fish in a narrow zone three miles wide was worth any large portion of the value of the fish after they were caught and landed. But you may estimate that as you please. I will tell you how you will come out if you charge us with having caught a third of our fish inshore that year, and with the full value that Mr. Hall pays for them after they are caught. It is 99,015 dollars.

That was the first year of the Treaty, and there were imported into the United States from the British Provinces 90,889 bbls., on which the duty of 2 dollars a barrel would amount to 181,778 dollars. The value of the fish that our people caught is 99,000 dollars, and the British fishermen gain in remission of duties nearly 182,000 dollars.

Look at it in another way. Does anybody doubt that, barrel for barrel, the right to import mackerel free of duty is worth more than the right to fish for them? Is not the right to carry into the United States' market, after they are caught, a barrel of mackerel, worth as much as the right to fish for a barrel of mackerel off the bight of the island? Estimating it so, 90,889 bbls. came in duty free, and there were caught in the gulf by American vessels, 79,211 bbls. That is the first year of the Treaty, and by far the best year.

The next year, 1874, the Massachusetts inspection was 258,380 bbls. Since 1873 there has been no return from Maine. There is no general inspector, and the Secretary of State informs us that the local inspectors do not make any returns. I suppose that if you call the Maine catch 22,000 bbls, the same as the year before, you will do full justice to it, for the Maine mackerel fishery, according to the testimony, has obviously declined for years. The inspection in New Hampshire was 5,519 bbls. There was imported into the United States that year from the Provinces, 89,693 bbls., on which there was saved a duty of 179,386 dollars. That year the Port Mulgrave returns show 164 vessels to have been in the Gulf of St. Lawrence, of which 98 came from Gloucester. 63,078½ sea barrels, or 56,770 packed barrels were taken. The Gloucester vessels caught 48,813 bbls. Take these 56,770 packed barrels as the aggregate catch in the year 1874 in the Gulf of St. Lawrence, by United States' vessels, and set them off against the 89,693 barrels imported into the United States, and where do you come out? Pursuing the same estimate, that one-third may have been caught inshore—an estimate which I insist is largely in excess of the fact—there would be 18,923 bbls. caught inshore, which would be worth 70,961 dollars, at Mr. Hall's prices; and you have 70,961 dollars as the value, after they are caught and landed, of the mackerel we took out of British territorial waters, to set against a saving of 179,386 dollars on American duties. That is the second year.

Now, come to 1875. That year the catch was small. The Massachusetts inspection was only 130,064; the New Hampshire inspection, 3,415 bbls. The provincial importation into the United States is 77,538 bbls. That fell off somewhat, but far less than the Massachusetts inspection, in proportion. The duty saved is 155,076 dollars. Fifty-eight Gloucester vessels are found in the bay, as

we ascertain from the Centennial book, and Mr. Hind, speaking of the mackerel fishery in 1875, and quoting his statistics from some reliable source, says, "The number of Gloucester vessels finding employment in the mackerel fishery in 1875 was 180. Of these 93 made southern trips, 117 fished off shore, and 58 visited the Bay of St. Lawrence; 618 fares were received, 133 from the south, 425 from off-shore, and 60 from the bay." (Hind's Report, pp. 88, 89.) Fifty-eight vessels from Gloucester made 60 trips.

Now, where are the Port Mulgrave returns for 1875? They were made, for we have extracted that fact. We have called for them. I am sure we have called often and loud enough for the Port Mulgrave returns of 1875 and 1876. Where are they? They are not produced, although the collector's affidavit is here, as well as the returns for 1877, which we obtained, and of which I shall speak hereafter. The inference from the keeping back of these returns is irresistible. Our friends on the other side knew that the concealment of these returns was conclusive evidence that they were much worse than those of the previous year, 1874; and yet they preferred to submit to that inevitable inference rather than have the real fact appear. Rather than to have it really appear how much the fifty-eight Gloucester vessels caught in the bay that year, they prefer to submit to the inference which must necessarily be drawn, which is this—and it is corroborated by the testimony of many of their witnesses—that that year the fishing in the bay was a total failure. I can throw a little more light on the result of the fishing in the bay that year. There were fifty-eight vessels from Gloucester, which averaged a catch of 191 bbls., while 117 on the United States' coast caught an average of 409 bbls. This comes from the statistics for the Centennial; 11,078 bbls. of mackerel taken from the Gulf of St. Lawrence in 1875 is all that we know about. What more there were our friends will not tell us, because the aggregate of 11,078 bbls. caught by fifty-eight vessels, averaging 191 bbls. a vessel, is so much better result than the Port Mulgrave returns would show, that they prefer to keep the returns back. I think, gentlemen, that this argument, from the official evidence in your possession, is one that, under the circumstances, you must expect to have drawn. That year, so far as we know, only 11,078 bbls. of mackerel came out of the gulf; but double it. You will observe that more than half of the vessels have come from Gloucester every year. The previous year there were 98 out of 164. Let us double the number of vessels that came from Gloucester. Suppose that there were as many vessels came from other places, and that they did as well. The result would give you 23,156 bbls. Take the actual result of the Gloucester vessels; suppose as many more came from other places, when we know that the previous year a majority came from Gloucester (I want to be careful in this, for I think it is important), and about 23,000 bbls. of mackerel were taken out of the Gulf of St. Lawrence in the year 1875, against an importation of 77,538 bbls. into the United States from the provinces, on which a duty was saved of 155,076 dollars.

In the year 1876, by the official statement which was lost, twenty-seven trips were returned to the Custom House as being made by Gloucester vessels to the Gulf of St. Lawrence. I cannot verify that; it depends merely upon memory. We have not had the Port Mulgrave returns. I give my friends leave to put them in now, if they will do so, or give us an opportunity to examine them. I invite them to put them in now, if they think I am overstating the result. There were twenty-seven Gloucester vessels (I may be in error about this, it is mere memory) came to the gulf in 1876. The Massachusetts inspection was 225,941 bbls.; the New Hampshire inspection was 5,351 bbls.; the United States' importation was 76,538 bbls.; duty saved 153,076 dollars. To be sure they will say that 1875 and 1876 were poor years. They were poor years; no doubt about that. But average them with 1873 and 1874, and see if the result is in the least favourable; see if they are able to show any considerable benefit derived by our people from inshore fishing, or anything which compares with the saving in respect to duty that they make.

When we began this investigation, nearly every witness that was examined was asked whether the prospects for the present year were not very good—whether it was not likely to be an admirable mackerel year in the gulf, and they said "Yes." They said the gulf was full of mackerel. Somehow or other, that impression got abroad, and our vessels came down here in greater numbers than before for several years. One witness has seen fifty or seventy-five vessels there. I think seventy-six came from Gloucester. There may have been 100 there in all. You will recollect

that one witness said the traders in Canso telegraphed how fine the prospects were, with a view, probably, to increase their custom; but they did expect that the fishing in the Gulf of St. Lawrence was to be better than it had been for a long time. Let us see what has happened this year. We have a part of the Port Mulgrave returns, down to the 25th September, 1877. There is another page, or half a page, which our friends have not furnished us. I invite them to put that in now. I would like it very much. But so much as we were able to extract produced the following result:—60 vessels; 8,365½ bbls.; an average of 139½ sea-barrels, or 125 packed bbls.; and one of our affidavits says that the fish on one vessel were all bought. The "John Wesley" got 190 bbls., very much over the average, and the witness said he went to the gulf, could not catch any mackerel, and thought he would buy some of the boatmen. But 125 packed barrels is the average catch, and 8,365½ is the total number of bbls. Now, multiply that by the value of the mackerel after they are are landed, and see what is the result. It is about 31,370 dollars.

I will not stop to do that sum accurately, because it is too small; but I will call your attention to the results of the importations this year. The importations into Boston to 1st October, from Nova Scotia and New Brunswick, were 36,576 barrels; from Prince Edward Island, 14,549½ barrels; in all, 51,125½ barrels, which would amount in duty saved to 102,251 dollars, up to the 1st October. It is not strictly evidence—and if my friends object to it it may be stricken out—but here is the last report of the Boston Fish Bureau, that came yesterday, which gives later results. Up to the 2nd November there had been 77,617 barrels imported into Boston from the provinces—more than double the amount that was imported in 1876, up to the same time, so that, while there has been this great falling-off in the vessel fishery in the gulf—it is a total failure to-day—there has been double the catch by boats, and double the catch by the provincial fishermen. They have saved 155,234 dollars of duty, as against something like 30,000 dollars' worth of fish, when they are caught. It may be said that these returns will not represent the average, but we had a witness here, the skipper of the schooner "Eliza Poor," Captain William A. Dickie, who testified, on page 264 of the American evidence, that he had 118 sea barrels, or 106 packed barrels. He was one of those men who happened into Halifax on his schooner, and upon cross-examination it was drawn from him by Brother Doutre that Mr. Murray, the collector at Mulgrave, told him that he had an average, or more than an average, of the catch of the United States' fleet. He saw fifty United States' vessels in the gulf. In the absence of more complete returns, that is the best account I am able to give of the condition of the mackerel fishery in the Gulf of St. Lawrence, since the Treaty of Washington was enacted.

I might confirm this by calling your attention to the testimony of witnesses from the other fishing towns in Massachusetts, Provincetown, Wellfleet, and other places, showing how the number of their vessels has decreased, and that the business is being abandoned, so far as the Gulf of St. Lawrence goes. Whatever is left of it is concentrated in Gloucester, and there its amount is insignificant.

I have spoken incidentally of the amount of duties saved upon the provincial catch. On the subject of duties I propose to speak separately by-and-by; but I do not wish to leave this branch of the subject, without calling your attention to what strikes me as evidence so convincing that it admits of no answer. We have shown you how, under the operation of the Treaty of Washington, or from natural causes, the mackerel fishery of the United States' vessels in the Gulf of St. Lawrence has been dwindling down; that hardly any profitable voyages have been made to the gulf since the Treaty. Certainly there has been no year when the fishing of our vessels in the gulf has not been a loss to the fishermen. Let me call your attention to the fisheries of the provinces. In 1869 Mr. Venning, in making his fishery report, after speaking of the falling off in the mackerel catch, went on to say:—
"This may be accounted for chiefly by stating that a large proportion of our best mackerel catchers ship on board American vessels on shares, and take their fish to market in those vessels, and thus evade the duty; but after selling their fish, for the most part return home with the money."

The Hon. S. Campbell, of Nova Scotia, in the debate on the Reciprocity Treaty, says:—

"Under the operation of the system that had prevailed since the repeal of the Treaty of 1854, the fishermen of Nova Scotia had, to a large extent, become the fishermen of the United States. They had been forced to abandon their vessels and homes in Nova Scotia, and ship to American ports, there

to become engaged in aiding the commercial enterprises of that country. It was a melancholy feature to see thousands of young and hardy fishermen compelled to leave their native land to embark in the pursuits of a foreign country, and drain their own land of that aid and strength which their presence would have secured."

Mr. James R. McLean, one of our witnesses, was asked whether the condition of things was not largely due to want of capital, and he said:—

"It was owing to this reason:—We had to pay 2 dollars a barrel duty on the mackerel we sent to the United States, and the men would not stay in the island vessels when they saw that the Americans were allowed to come and fish side by side with the British vessels, and catch an equal share of fish; of course this was the result. The fishermen consequently went on the American vessels; our best men did so, and some of the very best fishermen and smartest captains amongst the Americans are from Prince Edward Island and Nova Scotia."

Captain Chivirie, the first and favourite witness called on the British side, says:—

"Q. What class of men are the sailors and fishermen employed among the Americans?—A. I would say that for the last fifteen years two-thirds of them have been foreigners.

"Q. What do you mean by the term 'foreigners'?—A. That they are Nova Scotians, and that they come pretty much from all parts of the world. Their fishermen are picked pretty much out of all nations.

"Q. If the Americans were excluded from our fishing privileges, what do you think these men would do?—A. They would return to their native homes and carry on fishing there.

"Q. Have many of them come back?—A. Oh yes. We have a number of island men who have returned. A large number have done so. A great many come home for the winter, and go back to the States in the spring; but during the past two years many of this class have come down to remain. This year I do not know more than a dozen out of three hundred in my neighbourhood who have gone back. They get boats and fish along the coast, because they find there is more money to be secured by this plan of operations The fisheries being better, the general impression is that they are all making towards home to fish on their own coast."

James F. White says in his affidavit, put in on the British side:—

"The number of boats fishing here has trebled in the last three years. The reason of this increase is that other business is depressed, and fishermen from the United States, Newfoundland, New Brunswick, and Nova Scotia are coming here to settle, attracted by the good fishing, so that we are now able to get crews to man our boats, which formerly we were unable to do. Another reason is that the year 1875 was a very good year, and owing to the successful prosecution of the fishing that year, people's attention was turned to the business, and they were incited to go into it."

And another of their men, Meddie Gallant, says in his affidavit:—

"In the last five years, the number of boats engaged in fishing in the above distances has at least doubled. At this run alone there has been a very great increase. Eight years ago there were only eight boats belonging to this run, now there are forty-five. The boats are twice as good in material, fishing outfit, in sailing, in equipment, in rigging, and in every way, as they were five years ago. There is a great deal more money invested in fishing now than there was. Nearly every one is now going into the business about here. The boats, large and small together, take crews of about three men each. That is, besides the men employed at the stages about the fish, who are a considerable number."

So, then, while the mackerel fishing of our vessels in the gulf has been diminishing, theirs has been largely increasing. What! all this and money too? Is it not enough that two, three, or four times as much fish is taken by them as before the Treaty? Is it not enough that they are prosperous, that those who have left them are returning home, and everybody is going into the business? Can they claim that they are losers by the Treaty of Washington? Is it not plain that they have, in consequence of its provisions, entered upon a career of unprecedented prosperity?

At this point, Mr. Foster suspended his argument, and the Commission adjourned until Tuesday, at noon.

Tuesday, November 6, 1877.

The Commission met, according to adjournment, and Mr. Foster resumed his argument.

Gentlemen of the Commission:—

At the adjournment yesterday, I had been giving some description of the quantity of the mackerel fishing, since the Treaty of Washington, by American vessels

in the Gulf of St. Lawrence, and in the vicinity of British waters. For the years 1873 and 1874, I am content to rest upon the information derived from the Port Mulgrave statistics. With reference to the subsequent years, 1875, 1876, and 1877, there are one or two pieces of evidence to which I ought, perhaps, specifically to refer. Your attention has already been called to the fact that the Magdalen Islands and the Banks in the body of the Gulf of St. Lawrence—of which Professor Hind says there are many not put down on the chart, "and wherever you find banks," he says, "there you expect to find mackerel"—have been the principal fishing grounds of the United States' vessels for many years. The disastrous results of the great gale of 1873, in which a large number of United States' vessels were lost, and in which more than twenty Gloucester vessels went ashore on the Magdalen Islands, show where, at that time, the principal part of the mackerel fleet was fishing. In 1876, the Report of the Commissioner of Fisheries for the Dominion speaks of the number of vessels that year found at the Magdalen Islands. He says, "About one hundred foreign vessels were engaged fishing this season around the Magdalen Islands, but out of that number I do not calculate that there were more than fifty engaged in mackerel fishing, and according to the best information received, their catch was very moderate."

We have also the statement of one of the Prince Edward Island witnesses, George Mackenzie, on page 132 of the British evidence, who, after describing the gradual decrease of the American fishery by vessels, says, "There has not been for seven years a good vessel mackerel fishery, and for the last two years it has been growing worse and worse." He estimates the number of the United States' vessels seen off the island at about fifty. We have also the testimony of Dr. Fortin on the subject, who spent a number of weeks this year, during the height of the fishing season, in an expedition after affidavits, that took him all round the gulf, where he could not have failed to see whatever American vessels were fishing there. He says he "may have seen about twenty-five mackereling and sailing about," and that he heard at the Magdalen Islands there were seventy. According to the best information that I can obtain, that is not far from correct. Joseph Tierney, of Souris, says that there were twenty or thirty at Georgetown, fifteen or twenty at Souris, and he should think when he left home there were seventy-five. Ronald Macdonald, of East Point, says that he has not seen more than thirty sail this year at one time together; that last year he saw as many as a dozen and perhaps fifteen or twenty sail at a time. The number has diminished very much, he says, for the last five or six years, until this year.

Now, gentlemen, this is the record of the five years during which United States' fishermen, under the provisions of the Treaty of Washington, have derived whatever advantages they could obtain from the inshore fisheries. I have heard the suggestion made that it would have been better if this Commission had met in 1872, because there might have then been evidence introduced with reference to the whole twelve years of the Treaty of Washington, and I have even heard it said that it would have been fair to estimate the value of the privilege for the twelve years according to the appearance at that time. That is to say, that it would have been fairer to estimate by conjecture than by proof, by anticipation than by actual results. It seems to me, on the contrary, gentlemen, that the fairer way would have been, either to have the value of this privilege reckoned up at the end of each fishing year, when it could be seen what had actually been done, or to have postponed the determination of the question until the experience of the whole twelve years, as matter of evidence, could be laid before the Commission.

What shall we say of the prospects of the ensuing seven years? What reason is there to believe that the business will suddenly be revolutionized; that there will be a return to the extraordinary prosperity, the great number of fish, and the large catches that are said to have been drawn from the gulf twenty-five, twenty, fifteen years ago? We were told that the time for the revolution had come already, when we met here, but the result proves that the present season has been one of the worst for our fishermen. What chance can you see that a state of things will ensue that will make the privilege any more valuable for the seven years to come, than it has been for the five years already passsd? Have you any right to assume that it is to be better without evidence? Have you any right, when you are obliged to judge of the future by the past, to go back to a remote past, instead of taking the experience of recent years? Would it be just for you to do so? This Commission, of course, does not sit here to be generous with the money of the Government of the United States, but simply to value in money what the citizens of the United

States have under the Treaty received, and are proved to be about to receive. It is, therefore, to be a matter of proof, of just such proof as you would require if you were assessing a charge upon each fishing vessel, either as it entered the gulf, or as it returned with its mackerel.

We think that there have been, heretofore, quite good standards by which to estimate the values of the inshore fisheries. For four years a system of licences was enforced. In the year 1866, the licence fee charged was only 50 c. a ton, except at Prince Edward Island, where it seems to have been 60 c. a ton. In 1867 it was raised to a dollar a ton, and 1 dol. 20 c. at Prince Edward Island. In 1868 it was 2 dollars a ton, and 2 dol. 40 c. at Prince Edward Island. The reason for the additional price on the island I do not know, but it is not, perhaps, of much consequence. Our fishermen told you that the motive that induced them to take out these licences was two-fold. In the first place they desired to be free from danger of molestation. In the next place they did not desire, when there was an opportunity to catch fish within three miles of the shore, to be debarred from doing so; and if the licence fee had remained at the moderate price originally charged, no doubt all of our vessels would have continued to pay the licence, as they did the first year. Four hundred and fifty-four was the number of licences the first year; but when the price was raised to a dollar a ton, half the number of vessels found it expedient to keep where they had always been allowed to go; to fish remote from the shore; even to avoid doubtful localities; to keep many miles out on the Banks, rather than pay a sum which would amount, on the average, to 70 dollars a trip; and when the price was raised to 2 dollars a ton, hardly any of the vessels were willing to pay it. The reason why they would not pay it, was not that they were contumacious and defiant. They were in a region where they were liable to be treated with great severity, and where they had experienced, as they thought, very hostile and aggressive treatment. They desired peace, they desired freedom. They did not wish to be in a condition of anxiety. Neither the captains of the vessels on the sea, nor the owners of the vessels at home, had any desire to feel anxiety and apprehension. The simple reason why they did pay when it was 50 c. a ton, and ceased to pay when it became 1 dollar or 2 dollars a ton, was that the price exceeded, in their judgment, the value of the privilege. There were not mackerel enough taken within the inshore zone to make it worth their while to give so much for it. Whatever risk they were subjected to, whatever inconvenience they were subjected to from being driven off the shore, they preferred to undergo. If a licence to fish inshore was not worth a dollar a ton in 1868 and 1869, in the halcyon days of the mackerel fishery, can anybody suppose it really is worth as much as that now? But fix the price of the licence fee as high as you please. Go to this question as a question of computation, on business principles, pencil in hand; estimate how much per ton it is worth, or how much per vessel it is worth, and see to what result you are brought by the figures. Nobody thinks that for some years past there have been in the Gulf of St. Lawrence 300 vessels from the United States fishing for mackerel. The average tonnage is put by no one at over 70 tons. That is about the average of Gloucester tonnage, and the vessels that come from Gloucester are larger than those that come from other places. Three hundred vessels at 70 dollars a vessel, 21,000 dollars per annum. Put whatever valuation you please per ton, and state the account; debit the United States with that, and see what the result is when you come to consider the duties. If it is called 2 dollars a ton, the highest price ever charged, it will be about 42,000 dollars a year.

Is there any prospect whatever that the mackerel fishery for American vessels in the Gulf of St. Lawrence will ever again become prosperous? In order that it should do so, there must concur three things, of no one of which is there any present probability. In the first place, there must be much poorer fishing off the coast of the United States than usual, for as things have been there for some years past until the present year, the fishing for mackerel was so much more profitable than it had ever been in the Gulf St. Lawrence, that there was no temptation for our vessels to desert our own shores; and off the shores of the United States seining can be pursued, which never has been successfully followed in the gulf. Seining mackerel is about the only really profitable mode of taking the fish, as a business out of which money can be made to any considerable amount. The days for hook and line fishing have passed away, and seining is the method by which the fish must be taken, if money is to be made. That has never yet been done, and is not likely to be done, in the Gulf. The bottom is too rough, the water is too shallow. The expedient that we

were told, at the beginning of the hearing, had been adopted, turns out to be impracticable, for shallow seines alarm and frighten away the fish. The seines are not made shallow to accommodate themselves to the waters of the Gulf. Year by year they are made longer and deeper, that a school of fish may be more successfully enveloped by them. Then there must also be much better fishing in the Gulf than has existed for several years past. It has been going down in value every year since the Treaty went into effect. It has got down to an average, by the Port Mulgrave returns (I mean by the portion of the returns which we have) of 125 barrels a vessel this year, and according to the verbal statement of the Collector of Port Mulgrave, 108 barrels is quite up to the average. If any one takes the trouble to go through the returns we have put into the case, and analyze them, it will appear that 108 barrels is quite as large as the average this year. Some vessels have come out of the Gulf with nothing at all, and some with hardly anything at all. In the next place, in order to induce American vessels to go for mackerel to the Gulf of St. Lawrence in any considerable numbers, mackerel must have an active market, at remunerative prices. There must be a different state of things in the United States in that respect, from what has existed for many years past, for by all accounts the demand has been declining, and the consumption has been diminishing for ten years past.

Without stopping to read at length the testimony on that point, there are two or three of the British witnesses who in a short compass state the truth, and to their testimony I wish to call your attention. Mr. Harrington, of Halifax, page 420, says, in answer to the question, "There has not been as much demand for mackerel from the United States for the last five years as formerly?" "Not so great." And in reply to the question, "There must be an abundant supply at home, I suppose?" he says, "I should say so, unless the people are using other articles of food." Mr. Noble, another Halifax witness, page 420, being asked the same question, says, "I think for the past two years the demand for mackerel has not been quite so good as before." Mr. Hickson, of Bathurst, is asked this question, "Fresh fish are very rapidly taking the place of salt mackerel in the market, and the importance of salt mackerel and other cured fish is diminishing more and more every year. Is not this the case?" His answer is, "That is my experience in my district." "And owing to the extension of the railroad system, and the use of ice cars, pickled, salt, and smoked fish will steadily become of less consequence?" "Certainly." Mr. James W. Bigelow, of Wolfville, Nova Scotia, on page 223 of the British evidence, states very emphatically the practical condition of the business. He says, "The same remark aplies not only to codfishing, but to all branches of the fishery; within the past ten years, the consumers have been using fresh instead of salt fish. The salt fish business on the continent is virtually at an end." He is sorry to say that he states this from practical knowledge of this business. He then goes on to say that fish is supplied to the great markets of the United States "from Gloucester, Portland, and New York; but from Boston principally." "And the fish is sent where?" "To every point west, all over the Union; the fish is principally boxed in ice." Then he goes on to state that if the arrangements of the Treaty of Washington should become permanent, instead of being limited a term of twelve years, with the new railroad communication with this city that has been already opened, the result will be to make Halifax the great fish-business centre of the continent; that the vessels will come in here with their fresh fish, instead of going to Gloucester, or Boston, or New York; that a great business, a great city, will be built up here; and he says that, nothwithstanding the Treaty is liable to terminate in seven years, he is expecting to put his own money into the business, and establish himself in the fresh fish business here. Our own witnesses—the witnesses for the United States—have given a fuller and more detailed explanation of this change that has taken place in the markets. It requires no explanation to satisfy any persons, with the ordinary organs of taste, that one who can get fresh fish will not eat salt mackerel. Everybody knows that. *Crede experto.* Our witnesses tell you that fresh fish is sent as far as the Mississippi, and west of the Mississippi, in as great abundance as is to be found on the sea-board. It is just as easy to have fresh fish at Chicago and St. Louis, and at any of the cities lying on the railroad lines one or two hundred miles west of the Mississippi, as it is to have fresh fish in Boston or Philadelphia. It is only a question of paying the increased price of transportation. Salt fish has to be transported there also, and it costs as much to transport the salt fish as the fresh fish. The result is, that people will not and do not eat salt fish nearly as much as formerly. Then there is a great supply of lake herring—a kind of white fish—from the

northern lakes. The quantity is so great that the statistics of it are almost appalling, although they come from the most authentic sources. This lake herring, being sold at the same price as the inferior grades of mackerel—being sold often lower than the cheapest mackerel can be afforded—is taken in preference to it. People find it more agreeable.

At the South, where once there was a large mackerel demand usually, there has grown up an immense mullet business, both fresh and cured; that has taken the place of salt mackerel there. And so it has come to pass, that there is a very limited demand, in a few large hotels, for that kind of salt mackerel which is the best, the No. 1 fat mackerel—a demand that would not take up, at the usual price in the market—20 dollars a barrel—more than from 5,000 to 10,000 barrels all over the country; while, if you go down to the poorer grades of mackerel, few will buy them until they got as low as from 7 to 8 dollars a barrel, I am not going over the testimony of Proctor, Pew, Sylvanus Smith, and our other witnesses on this subject, because what they have said must be fresh in the minds of all of you. It comes to this: people will not eat the mackerel unless they can buy it at a very low price. It comes into competition, not with other kinds of fish alone, but with every description of cheap food, and its price can never be raised above the average price of other staples in the market of equivalent food-value.

If it is to be impossible to dispose of considerable quantities of these fish, until the price is brought down to about 8 dollars a barrel on the average, what inducement will there be to come, at great expense, to the Gulf of St. Lawrence, to have such results as for years past have followed from voyages here? The truth, gentlemen, is simply this: whether it is a privilege to you not to see United States' vessels here, or whether their presence here has some incidental benefit connected with it, you are going to find for years to come that they will not be here. The people in the Strait of Canso who want to sell them supplies will find them not there to buy supplies, and the unhappy fishermen who suffer so much from having them in the neighbourhood of the island, will be exempt from all such evil consequences hereafter. Once in two or three years, if there appears to be a chance of a great supply here, and if there happens to be a great failure on our own coasts, a few of our vessels will run up in midsummer to try the experiment. But as to a large fleet of United States' vessels fishing for mackerel in the Gulf of St. Lawrence, there is no immediate prospect that such will ever be the case. Forty years ago fishing for mackerel died out in the Bay of Fundy. According to the witnesses, many years ago mackerel were extremely abundant in the waters in the vicinity around Newfoundland. They have disappeared from all those places, though, strange to say, one schooner did get a trip of mackerel in a Newfoundland bay this summer, off the French coast, so that we are not obliged to pay for it in the award of this Commission; it was in waters where we had a right to fish before the Treaty of Washington. But this business, notoriously precarious, where no man can foretell the results of a voyage, or the results of a season, will pretty much pass away, so far as it is pursued by United States' vessels. They will run out on our own coast; they will catch what they can, and carry them to market fresh, and what cannot be sold fresh they will pickle. They will, when the prospects are good, make occasional voyages here, but as for coming in great numbers, there is no probability that they will ever do it again. Our friends in Nova Scotia, and upon the Island, are going to have the local fishery to themselves. I hope that it will prove profitable to them. I have no doubt it will prove reasonably profitable to them, because they, living on the coast, at home, can pursue it under greater advantages than the men of Massachusetts can. They are very welcome to all the profits they are to make out of it, and they are very welcome, if they are not ungenerous in their exactions from us, to all the advantages they derive from sending the fish that they take in their boats or vessels in Nova Scotia and Prince Edward Island to our markets. All they can make by selling them there I am sure no one will grudge them.

I come now to a branch of this case which it seems to me ought to decide it, whatever valuation, however extreme, may be put upon the quantity of mackerel caught by our vessels in the territorial waters of the Provinces. I mean the duty question; the value of the remission of duties in the markets of the United States to the people of the Dominion. We have laid the statistics before you, and we find that in 1874 there was 335,181 dollars saved upon mackerel and herring, and 20,791 dollars more saved upon fish-oil. There was, therefore, 355,972 dollars saved in 1874. In 1875 there was a saving of 375,991 dollars and some cents. In 1876, 353,212 dollars. I get these figures by adding to the results of Table No. 4, which

shows the importation of fish, the results of Table No. 10, which shows the fish-oil. The statistics are Mr. Hill's. In Table No. 5 you will find the quantities of mackerel and herring. The dutiable value of mackerel was 2 dollars a barrel, of herring 1 dollar a barrel, and of smoked herring 5 c. a box.

We are met here with the statement that the consumer pays the duties; and our friends on the other side seem to think that there is a law of political economy as inexorable as the law of gravitation, according to which, when a man has produced a particular article which he offers for sale, and a tax is imposed on that article, he is sure to get enough more out of the man to whom he sells the article to reimburse the tax. That is the theory; and we have heard it from their witnesses —*the consumer pays the duties*—as if they had been trained in it as an adage of political economy. But, gentlemen, I should not be afraid to discuss that question as applicable to mackerel and herring, and the cured fish that come from the Dominion of Canada into the United States, before any school of political economists that ever existed in the world. I do not care with what principles you start, principles of free trade, or principles of protection, it seems to me that it can be proved to demonstration that this is a case where the duties fall upon those who catch the fish in the Dominion, and not upon the people of the United States, who buy and eat them. The very Treaty under which you are acting requires you to have regard to the value of the free market, ordains that in making up your award you shall take it into account. And are you, upon any theories of political economy, to disregard what the Treaty says you shall have regard to? Why, nobody ever heard the proposition advanced, until we came here to try this case, that free access to the markets of the United States was anything but a most enormous advantage to the people of these Provinces.

Let us look at the history of the negotiations between the two Governments on the subject. As early as 1845 (some years before the negotiations with reference to the Reciprocity Treaty), when the Earl of Aberdeen announced to Mr. Everett, as a matter of great liberality, that our fishermen were no longer to be driven out of the Bay of Fundy, he went on to say, that in communicating the liberal intentions of Her Majesty's Government, he desired to call Mr. Everett's attention to the fact, that the produce of the labour of the British Colonial fishermen was at the present moment excluded by prohibitory duties, on the part of the United States, from the markets of that country; and he submitted, that the moment when the British Government made a liberal concession to the United States, might well be deemed favourable for a kindred concession on the part of the United States to the British trade, by a reduction of the duties which operated so prejudicially to the interests of British Colonial fishermen. That was the view of the Home Government, long before any Reciprocity Treaty had been agitated—thirty-two years ago. The letter of Lord Aberdeen bears date March 10, 1845.

In 1850, a communication took place between Mr. Everett, then Secretary of State, through the British Minister at Washington, in which Lord Elgin made the offer to which I referred in my Case, which I then understood to be an unequivocal offer to exchange free fish for free fishing, without regard to other trade relations. I found that, so far as that particular letter went, I was in error, and corrected the error. Subsequently, I found that Mr. Everett himself, two years later, had the same impression, for in a letter that he wrote, as Secretary of State to the President, in 1853, before the Reciprocity Treaty, he says:—

> "It has been perceived with satisfaction that the Government of Her Britannic Majesty is prepared to enter into an arrangement for the admission of the fishing vessels of the United States to a full participation in the public fisheries on the coasts and shores of the Provinces (with the exception, perhaps, at present, of Newfoundland), and in the right of drying and curing fish on shore, on condition of the admission, duty free, into the markets of the United States, of the products of the colonial fisheries; similar privileges, on the like condition, to be reciprocally enjoyed by British subjects on the coasts and shores of the United States. Such an arrangement the Secretary has reason to believe would be acceptable to the fishing interests of the United States." (32 Congress, 2 Session, Senate Ex. Doc. 34.)

The latter part of that letter contains a reference to general reciprocity, and shows the anxiety of the British authorities to have more extensive reciprocal arrangements made.

Mr. Kellogg.—What is the date of Lord Elgin's letter?

Mr. Foster.—The letter of Lord Elgin is dated June 24, 1851. The letter which I have just read from Mr. Everett to the President was in 1853. So that it seems that Mr. Everett then understood, as I did, that the offer was a specific one, and that

the Government of Great Britain was at that time disposed to exchange the right of inshore fishing for the admission of fish into the United States duty free. It is not particularly important, at a date so remote, how the fact really was. I refer to it only to show the great importance attached at that early day—an importance which has continued to be attached from that time to the present—by the Home Government as well as the Colonial Government, to free access to the markets of the United States.

Coming down to the date of the Reciprocity Treaty, we find in every direction, whatever public document we refer to, of any of the Provinces, the same story told: That during the Reciprocity Treaty they built up a great fish business, unknown to them before; that at the end of the Reciprocity Treaty, a duty of 2 dollars a barrel on mackerel, and 1 dollar a barrel on herring, excluded them from the markets of the United States, and crushed out that branch of industry. At the risk of making myself tedious, I must read you some passages on that subject.

Here is what Mr. Peter Mitchell, the former Minister of Marine and Fisheries, says in 1869, in his "Return of all licences granted to American fishermen," printed by order of Parliament, at Ottawa:—

"These excessive duties bear with peculiar hardship on our fishing industry, and particularly that of Nova Scotia and Prince Edward Island—the fishermen and dealers in those provinces being forced into competition in United States' markets under serious disadvantages, side by side with the American free catch taken out of our own waters."

Yes, "*taken out of their own waters.*" I am not afraid of the words. If the consumer pays the duties, it would not make any difference out of what waters the fish were taken, which brought on competition, would it? I am discussing now the proposition that there is a law of political economy, of universal application, and particularly applicable to the mackerel which go from the Provinces to Boston, by which whatever tax is imposed in the United States is forthwith added to the price, and has to be paid by the man who eats the mackerel in the States, and it makes no difference where the competition arises from. Mr. Mitchell's statement, therefore, is absolutely to the purpose. He continues:—

"At the same time other producers are subject to equally heavy charges on the agricultural, mineral, and other natural products of the United Provinces.

"The direct extent to which such prohibitory duties affect the fishery interests of these Provinces may be stated in a few words. During the year 1866, for example, the several Provinces have paid in gold, as custom duty on provincial caught fish exported to the United States, about 220,000 dollars."

This amount was paid by the Provinces in 1866, the year after the Reciprocity Treaty ended. Then, in a note, he says:

"More forcibly to illustrate the unequal operation of the present system, suffice it to instance the following cases:—A British vessel of 71 tons, built and equipped last season at St. John N.B., costing 4,800 dollars, expressly for the mackerel fishery in the Gulf of St. Lawrence and Bay of Chaleurs, took 600 barrels of fish, which sold in Halifax and Boston for 6,000 dollars. After paying expenses (including 9 dol. 86 c. in gold for customs) a profit of 1,200 dollars accrued to the owners. An American vessel from Newburyport, Mass., of 46 tons burthen, took a licence at Port Mulgrave, N.S., paying 46 dollars. The whole cost of vessel and voyage was 3,200 dollars, or 2,400 dollars Halifax currency. She fished 910 barrels of mackerel, which sold in Boston for 13,000 dollars, about 9,110 dollars in gold, leaving a profit of 6,710 dollars."

After speaking of the question of raising the licence fee to higher figures, Mr. Mitchell continues (page 6):—

"It is recommended that the rate be 2 dollars per ton, the mackerel fishery being that in which Americans chiefly engage, and as mackerel is the principal fish marketed in the United States by Canadians, on which the tax is 2 dollars per barrel, this rate amounts to a charge of but 20 cents per per barrel, still leaving them an advantage of 1 dol. 80 c. on each barrel, besides the drawback allowed on salt."

Did Mr. Peter Mitchell think that the 2 dollars a barrel duty was got back by the fishermen of the Provinces? During the session of the Joint High Commission at Washington, when the American Commissioners made an offer to purchase the inshore fisheries in perpetuity, which was not coupled with any offer of free admission to our markets, the British Commissioners replied "that the offer was, as they thought, wholly inadequate, and that no arrangement would be acceptable of which the admission into the United States, free of duty, of fish, the production of the British

fisheries, did not form a part." And after the Treaty of Washington had been ratified Earl Kimberly wrote to Lord Lisgar :—" It cannot be denied that it is most important to the Colonial fishermen to obtain free access to the American markets for their fish and fish-oil."

You can explain the language of these statements only upon the theory that they knew and understood that the duty was necessarily a tax upon the fish production of the Provinces. How idle to have made observations of the kind that I have been reading, except upon that plain hypothesis!

In the debates on the ratification of the Treaty, it was said by Sir John A. Macdonald that—

"The only market for the Canadian No. 1 mackerel in the world is the United States. That is our only market, and we are practically excluded from it by the present duty. The consequence of that duty is that our fishermen are at the mercy of the American fishermen. They are made the hewers of wood and drawers of water for the Americans. They are obliged to sell their fish at the Americans' own price. The American fishermen purchase their fish at a nominal value, and control the American market. The great profits of the trade are handed over to the American fishermen or the American merchants engaged in the trade, and they profit to the loss of our own industry and our own people."

And here let me call your attention to a striking fact, that from the beginning to the end of these negotiations, the people of the Maritime Provinces who own the inshore fisheries, have been the people who have been most anxious on any terms to have the duties removed in the United States' markets. It was said in this debate by some one (I do not remember the name of the speaker) that "it is harsh and cruel for the people of Ontario, for the sake of forcing a general Reciprocity Treaty, to injure the fishing interests of the Provinces, by preventing them from getting a free market in the United States."

A gentleman from Halifax—Mr. Power—who is said to have devoted his whole life to the business, and to understand all about it, tells the story in a more practical way :—

"In the spring of each year, some forty or fifty vessels resorted to the Magdalen Islands for herring, and he had known the number to be greater. These vessels carried an average of 900 barrels each. So that the quantity taken was generally in the neighbourhood of 50,000 barrels. During the existence of the Reciprocity Treaty, no United States' vessels went after these fish. All the vessels engaged in that fishery belonged to some one of the Provinces now forming this Dominion. Since the abrogation of the Treaty and the imposition of the duty of a dollar per barrel by the United States, the case had become entirely changed. Vessels still went there, but they were nearly all American. Now, under this Treaty, we would get that important branch of trade back again."

You will remember that I said yesterday, gentlemen, that herring—a fish so poor and so cheap that American vessels cannot afford to engage in the fishery, and which it is far more advantageous for them to purchase than to catch—would be, by a duty of a dollar a barrel, entirely excluded from the markets of the United States, and it seems that such was the result in the interval between the termination of the Reciprocity Treaty and the ratification of the Treaty of Washington. See how Mr. Power deals with this question of whether the consumer pays the duty.

"He had heard it said that the consumer paid the duty. Now, whilst this might be the case with some articles, it was not so with the article of our fish. In our case, in this business, our fishermen fished side by side with their American rivals, both carrying the proceeds of their catch to the same market, where our men had to contend against the free fish of the American fishermen. Let him illustrate this. An American and a provincial vessel took 500 barrels of mackerel each; both vessels were confined to the same market, where they sold at the same price. One had to pay a duty of 1,000 dollars, while the other had not to do so. Who then paid the 1,000 dollars? Most certainly not the purchaser or consumer, but the poor, hardworked fishermen of this Dominion; for this 1,000 dollars was deducted from his account of sales. Those who contend that in this case the consumer paid the duty, ought to be able to show, that if the duty were taken off in the United States, the selling price there would be reduced by the amount of the duty. There was nothing in the nature or existing circumstances of the trade to cause any person who understands to believe that this would be the case; and therefore it would be seen that at present our fishermen laboured under disadvantages which made it almost impossible for them to compete with their rivals in the United States; and tha the removal of the duty, as proposed by this Treaty, would be a great boon, and enable them to do a good business, where they now were but struggling, or doing a losing trade."

And the next speaker, after depicting in glowing terms just the condition of prosperity that the Island of Prince Edward is enjoying now, as a result sure to follow from the ratification of the Treaty, goes on to say that no man can compete with the Provincial fishermen on equal terms, because their fishing is at their own

door, and asserts that only an equal participation in the markets of the United States is necessary to give them the monopoly of the whole business.

Another speaker tells the story of the fleet of Nova Scotia fishing vessels built up under the Reciprocity Treaty, which were forced to abandon the fishing business when the Reciprocity Treaty ended and a duty was put upon fish. Somewhere I have seen it stated that vessels were left unfinished on the stocks when the Reciprocity Treaty terminated, because, being in process of construction to engage in the fishing business, their owners did not know what else to do with them.

Are we to be told that these men were all mistaken—that the consumer paid the duty all along—that no benefit was realized to the Provincial fishermen from it? Why, even the reply to the British Case concedes that when the duty existed, some portion of it was paid by the Provincial fishermen. It is to be remembered, too, gentlemen, that in considering this question of what is gained by free markets, you are not merely to take into account what in fact has been gained by the change, but the people of these Provinces have acquired, for a term of twelve years, a vested right to bring all descriptions of fish, fresh or salt, and fish-oil, into our markets. Before the expiration of that time, the existing duties might have been increased in amount; duties might have been put upon fresh fish; there was nothing to prevent this, and there was every reason to anticipate, that if a harsh and hostile course had been pursued towards American fishermen with reference to the inshore fisheries, there would have been duties more extensive and higher than ever before put upon every description of fish or fish product that could possibly go to the United States. They gained, therefore, our markets for a fixed term of years, as a matter of vested right. How much their industry has been developed by it their own witnesses tell us.

Now, gentlemen, if you could consider this as a purely practical business question between man and man, laying aside all other considerations—a question to be decided, pencil in hand, by figures—does anybody in the world doubt which is the greatest gainer by this bargain, the people of this Dominion, having the free markets of the United States, or a few Gloucester fishermen catching mackerel within three miles of the shore, in the bend of the Island, or for a week or two off Margaree? Those are the two things.

But I am not afraid, gentlemen, to discuss this question upon abstract grounds of political economy. I said there was no school of political economy according to which there was any such rule as that the consumer paid the duties. I must trouble you with a few extracts from books on that subject, wearisome as such reading is. Here is what Andrew Hamilton said, one of the disciples of Adam Smith, as long ago as 1791 :—

"If all merchants traded with the same rate of duty, they would experience the same general advantages and disadvantages; but if the rate of a tax was unequal, the inequality unavoidably operated as a discouragement to those whom the higher tax affected. If one merchant was charged two shillings for the same species and quantity of goods on which another was charged only one shilling, it was evident that he who paid the highest duty must either lose the market, or smuggle, or sell his goods at an inferior profit. In other words, the difference in the rate of the tax would fall on the merchant liable to the highest duty, and in cases of competition would always drive him out of the market." (p. 187.)

Then he goes on to say, on a subsequent page :—

"We may suppose a tax to be laid on in a department where, in the progress of wealth, profits were about to be lowered. If this tax was just equal to the reduction of the rate of profit that was about to take place, then common rivalship would induce the dealers to pay the tax, and yet sell their goods as heretofore." (p. 217.)

He says further, on page 242 :—

"Let us suppose a brewer to have 1,000 barrels of strong ale upon hand. That a tax of one shilling per barrel is laid upon the ale, and that he may raise the price just so much to his customers, because they will readily pay the tax rather than want the ale. In this case, the brewer would be directly relieved from the tax. But if, on the other hand, he found, after advancing the tax, he could not raise the price of his ale above what it was formerly, and yet was under a necessity of disposing of it, though this may drive him from the market, or unite brewers to stint the supply, so as to bring up the price on some future occasion, yet in the meantime the trader would suffer; nor would he immediately derive, by any of his ordinary transactions, an effectual relief from the loss he had thus sustained by paying the tax. When, therefore, a trader advances a tax upon a great quantity of goods, he can receive no effectual relief from such a tax, but in a rise of the price of the article adequate to the tax which he has advanced." * * * *

"It follows that all speculations whose object is to show on what fixed fund or class taxes must fall, are vain and unsatisfactory, and will be generally disproved (as they almost always have been) by experience." (p. 257.)

"A dealer who can evade such a tax will soon possess a monoply, if the tax is paid by his competitors. It will be to him a kind of bounty for carrying on his business, and this must drive his competitors either to evade the tax also, or to relinquish the employment." [p. 288.]

I am almost disposed to hand to the reporters the extracts, rather than trouble you to read them; and yet I feel it my duty to press this subject, because, if I am right in it, it is decisive.

Sir Alexander Galt.—I think you had better read them.

Mr. Foster.—Mill says, and he is the apostle of free trade, in volume II of his "Political Economy," page 113:—

"If the north bank of the Thames possessed an advantage over the south bank in the production of shoes, no shoes would be produced on the south side, the shoemakers would remove themselves and their capitals to the north bank, or would have established themselves there originally, for, being competitors in the same market with those on the north side, they could not compensate themselves for their disadvantage at the expense of the consumer; the amount of it would fall entirely on their profits, and they would not long content themselves with a smaller profit, when by simply crossing a river they could increase it."

Apply that statement to the evidence in this case, and remember how, when the Reciprocity Treaty ended, the fishermen of Nova Scotia and Prince Edward Island took refuge on board United States' vessels, for the purpose, as one of the official documents that I read from yesterday says, of evading the duty. It might be a curious question, if it were important enough to dwell upon it, whether, in assessing against the United States the value of the privilege of fishing inshore, you were or were not to take into account the fact, that half of the people who fish on shares in United States' vessels are subjects of Her Majesty, and having disposed of their half of the fish, having paid half of the fish for the privilege of using the vessel and its equipment, they sell the other half of the fish, and bring the proceeds home; and whether it is a just claim against the United States, if British subjects go in United States' vessels, to require the United States to pay money because they do so.

Mill says in another passage, in volume II, page 397:—

"We may suppose two islands, which, being alike in extent, in natural fertility and industrial advancement, have up to a certain time been equal in population and capital, and have had equal rentals, and the same price of corn. Let us imagine a tithe imposed in one of these islands, but not in the other. There will be immediately a difference in the price of corn, and therefore probably in profits."

I am almost through with this tediousness, but there is a good Scotch book on political economy by John McDonald, of Edinburgh, published in 1871—and we have always had sound political economy from Scotland—from which I must read a few lines:—

"In the third place," McDonald says, on page 351, "it may be possible to impose Customs duties which will permanently be paid, either wholly or partly, not by the consumers but by the importers or producers. Assume that we draw our stock of sugar from a country engaged in the growth of sugar, and capable of selling it with profit to us some shillings cheaper than any other country can, the former will of course sell the sugars to us at a price slightly below what would attract other competitors. Impose a duty of some shillings a cwt., without altogether destroying the peculiar advantages of the trade, while we will pay no dearer for our sugar, the importers will pay the tax at the expense of their profits. If we add to these considerations the difficulty of ascertaining the actual incidence of many such taxes, distrust of sharp contrasts between direct and indirect taxes will be inspired."

"Customs duties sometimes fall on the importer, not on the consumer. And if this were a common occurrence, it might seriously impair the doctrine that protective duties are the taxing of the home consumer for the sake of the home producer. But this incidence is confined to the following rare circumstances: If the sole market open to the importer of the staple goods of one country is the country imposing the duties; secondly, if the other market open to him was so distant, or otherwise disadvantageous, that it would be preferable to pay the tax; or, thirdly, if the only available place for procuring commodities of vital moment to the importing country, was the country imposing the duty. Wherever the profits are such as to admit of a diminution without falling below the usual rate, it may be possible for a country to tax the foreigner." (p. 393.)

I was interested some years ago in an article that I found translated from the "Revue de Deux Mondes" of the 15th October, 1869, on "Protection and Free Trade," by a gentleman of the name of Louis Alby. I do not know who he is, but on pages 40 and 41 of the pamphlet he not only states the doctrine, but he illustrates it:—

"The free-traders believe—and this is the foundation of their doctrine—that when the import duty on an article of foreign merchandize is reduced, this reduction of taxes will at once cause an equal diminution in the price of the merchandize in the market, and an equal saving to the purchaser. In theory this consequence is just, in practice it never takes place. If the reduction is considerable, a part, and that far the smallest, profits the consumer, the larger portion is divided between the foreign producer and the several intermediaries. If the reduction is small, these last entirely absorb it, and the real consumer, he who makes the article undergo its last transformation, is in nowise benefited. The real consumer of wheat is neither the miller nor the baker, but he who eats the bread. The real consumer of wool is neither the draper nor the tailor, but he who wears and uses the clothes.

"This discrepancy between the variations of Custom-house duties and the selling prices, cannot be denied, and since the Commercial Treaty the experiment has been tried. All prohibitions have been removed, and all duties reduced; but what article is there the price of which has been sensibly lowered for consumption? When economists demanded the free importation of foreign cattle, they hoped to see the price of meat lowered, and for the same reason the agriculturists resisted with all their strength."

"As soon as the duties were removed, the graziers from the northern and eastern departments hastened to the market on the other side of the frontier; but the sellers were on their guard and held firm, and, competition assisting them, prices rose instead of falling; all the advantage of the reduction of duty was for foreign raisers of cattle, and meat is dearer than ever. The same result followed in reference to the wools of Algiers, and on this point I can give the opinion of the head of one of the oldest houses in Marseilles, an enemy, moreover, to protection, like all the merchants of seaport towns:—'When the duties on Algerian wools were removed,' he said to me, '*we supposed that this would cause wool to sell cheaper in France, but the contrary happened.* There was more eagerness for purchasing in Africa; there was more competition, and the difference in the duties was employed in paying more for the wool to make sure of getting it. *It is not, then, the French manufacturer who has profited by the removal of duties, it is the Arab alone.*' Thus the interest of the consumer, about which so much noise is made, far from being the principal element in the question, only plays a secondary part, since the reduction in the tariff only profits him in a small measure."

Now we are in a condition to understand precisely the meaning of what one of our witnesses said, Mr. Pew, that the price of mackerel to the man who bought one mackerel at a time and ate it, had not changed for ten years; that it was a very small purchase; that the grocer who sold it to him would not lessen the price if mackerel went down, and would not raise the price if mackerel went up; that it kept to him uniform; so that after all the question has been a question where the greater or less profit accrued to parties who handled the mackerel.

If ever there was a case where it was impossible to transfer a duty once paid by a man who catches fish and brings it to market, so that its incidence would fall on the consumer, it is the one we are dealing with. Why so? You cannot raise the price of mackerel very much, because its consumption stops when you get above 8 or 10 dollars, at the highest, a barrel. People will not eat it in larger quantities unless they are induced to do it because it is cheapest procurable food. That is one reason why the duty cannot be put on to the price. There is another reason why it cannot be added to the price—a perfectly conclusive one, and that is, that not more than one-fourth or a less part of the supply—it has been assumed in the questions as one-fourth, is imported and subject to the duty. I do not care what fraction it is, whether one-third, one-fourth, or one-fith, not more than a small fraction of the mackerel that is in the markets of the United States at any time comes from the Provinces; and in order to get the price up to a point that will reimburse the Provincial fisherman who has paid a duty, you must raise the price of all the mackerel in the market, must you not? That is perfectly plain. If there are between 300,000 and 400,000 barrels of mackerel in the United States, and 30,000 40,000, 50,000, 60,000, 70,000, 80,000, or 100,000 of them are taxed 2 dollars a barrel, do you think it is going to be possible to raise, by the tax on the Provincial catch, the price of the whole production in the market? If that could be done, it might come out of the consumer, and then it would be a benefit to our fishermen, and an injury in the end to our consumers. But it cannot be done. The price cannot be raised; the fraction is not large enough to produce any perceptible influence upon it. So the result has always been, and they know that it was so before and must be so again, that such a duty cuts down their profits to the quick. It cuts them down so that the business must be abandoned, and take away the United States' market, as you would take it away if a higher tariff was imposed, and the fishing business of the Provinces would gradually die out of existence. It is not the case—let me repeat it, because there has been so much apparent sincerity in the belief that the tax would come out of the consumer—it is not the case of a tax put upon the whole of the commodity, or the greater part of the commodity, but it is a tax put upon the smaller part of the commodity, in the only market to which both producers are confined; and you might just as well say, if two men made watches, one here and one in Boston,

which were just exactly alike, and their watches were both to be sold in Boston, that you could put a tax of 25 or 50 per cent. on the importation of the Halifax watch into Boston and then raise the price.

The only instance in which the imposition of a tax upon a part of the production of an article results in raising the price of the whole, is where the demand is active, where the supply is inadequate, and where there is no equivalent that can be introduced in the place of the taxed article. It might just as well be said that a wood lot ten miles from town is worth as much as a wood lot five miles from town. Wood will sell for a certain price; and the man who is the farthest off, and who has the greatest expense in hauling the wood to market, is the man who gets the least profit.

It was estimated in the debates on the Treaty of Washington, that the tax on mackerel at that time amounted to 50 per cent. It was truly stated to be a prohibitory duty. You will remember that Mr. Hall has also given you a practical view of this subject. Mr. Hall, Mr. Myrick, and Mr. Churchill, located on Prince Edward Island. To be sure it is their misfortune not yet to be naturalized British subjects. Detract whatever you choose from the weight of their evidence because they are Amercians, but give to it as much as its intrinsic candour and reasonableness require at your hands. What do these gentlemen tell you of their practical condition? Mr. Hall says that when the duties were put on, at first, people on the Island were helped by a good catch, a good quality, and by a short catch in the United States, and by the condition of the currency, but when they began to feel the full effect of the imposition of the duties they were ruined. His partner confirms the same story. Mr. Churchill, the other man, whose business it is to hire by the month the fishermen of the island and pay them wages, says he could not afford to hire the men if a duty was put upon the fish. Do you suppose he could? The fish landed on the shore of Prince Edward Island are worth 3 dol. 75 c. a barrel—that is what they are sold for there. The fishermen earn for catching them from 15 to 25 dollars a month. Put a tax of 2 dollars on to 3 dol. 75 c. worth of mackerel, and can there be any doubt of the result?

If this subject interests you, or if it seems to you to have a bearing upon the result, I invite your careful attention to the testimony of Hall, Myrick, and Churchill. Do they not know what the result of putting a tariff upon their mackerel would be? Do not the people of Prince Edward Island know? If they have been stimulated to a transient, delusive belief that they may in some way get the control of the markets of the United States for the 80,000 or 90,000 barrels which, at the utmost, is produced in the Provinces, and put the price up as high as ever they please, do you not think that that delusion will be dissipated, and that their eyes will be most painfully opened, if it ever comes to pass that a duty shall be reimposed?

It may be said that this question of duties is a question of commercial intercourse, and that it is for the benefit of all mankind that there should be free commercial intercourse, no matter whether one side gains and the other side loses, o not; no matter where the preponderance of advantage is, we believe in untrammelled commercial intercourse among the whole human family. I am not at all disposed to quarrel with that doctrine. But that is not the case we are trying here. We are trying a case under a Treaty where there has been an exchange of free fish against free fishery; and you are to say on which side the preponderance of benefits lies. We have no right, then, to indulge theories as to universal freedom of trade, because we are bound by a charter under which we are acting. You are to have regard to this question, so the Treaty says. Everybody has had regard to it since it first began to be agitated in both countries. Statesmen, public writers, business men—they have all considered it of the utmost consequence, and certainly this Commission, enjoined in the Treaty to have regard to it, are not going to disregard it and leave it out of consideration.

Now am I not right in saying, that the whole value of whatever fish we catch in the territorial waters of these Provinces, when landed on the shores of the Provinces, or landed on the decks of our vessels, is of far less pecuniary magnitude than the direct pecuniary gain resulting from free importation into our markets? and that is a gain that is constantly increasing. Twice as large a quantity has gone from Nova Scotia and Prince Edward Island to Boston this year, as went last year up to the same date, and making a moderate allowance for the vicissitudes of the business, and for one year being a little worse than another, there has been a continued development of the fishing business and fishing interests of these Provinces;

and what has it sprung from? Do not these gentlemen understand the sources of their own prosperity? Do they not know, when they speak of the business having developed, that it is the market that has developed the business? They cannot eat their mackerel, they have too good taste to desire to eat them, apparently, after they are salted. The only place where they are able to dispose of them is in the United States. There is no evidence that the price of the fish has been lowered to the consumer by the circumstance that any more comes from the Provinces than did formerly, when the duty was imposed upon it. The price to the actual consumer has remained the same. If it could be shown that there has been a trifling reduction to the consumer, is that of any consequence compared with this direct and overwhelming advantage which the Provincials gain? Why, it is not only in this fish business that the control of the United States' markets bears with such tremendous power upon the productions of the Dominion. In 1850, when the subject of reciprocity was being discussed, Mr. Crampton, then British Minister at Washington, requested Hon. William Hamilton Merritt, a Canadian of distinction, to prepare a Memorandum on the subject, which I have here before me. He is speaking of the effect of duties in the United States on Canadian products generally, He says :—

"The imports from Canada since 1847 have in no instance affected the market in New York. The consumer does not obtain a reduction of prices; the duty is paid by the grower, as shown by the comparative prices on each side of the boundary, which have averaged in proportion to the amount of the duty exacted."

The Canadians in their fishing industry, as I have said over and over again, have very great natural advantages over the fishermen of the United States, in the cheapness with which they can build their vessels and hire their crews, and the cheapness of all the necessaries of life. This increased cheapness is virtually a bounty upon the Canadian fisheries. It gives them the effect of a bounty as compared with United States' fishermen. While there was a duty upon imported fish into the United States, it counteracted that indirect bounty. Now that the duty has been taken away, this immense development of the fishing interests of the Provinces of which they are so proud, and of which they have said so much, has taken place, and out of this salt mackerel business it seems to me that they are quite sure eventually to drive the American fishermen. Everybody is going into the business in Prince Edward Island, as their witnesses say. Out of 300 fishermen from one port, who used to be in our vessels and who have returned, hardly twelve are going back to the United States. They are going to have a monopoly of this branch of the fishing industry. It has been of great value to them; it will continue hereafter to be of greater value to them, and it is a value that no vicissitudes in the business are likely to take from them, because there is a certain quantity of mackerel which they will be able to catch near home, which they can afford to sell in the markets of the United States at low prices, and from which they cannot fail to derive a very great and permanent advantage.

Gentlemen of the Commission, I have tried to make a business speech on a business question, and I shall spare my own voice and your patience any peroration. I hope I have established to your satisfaction that the exchange of the right to the inshore fisheries for the free markets of the United States leaves the preponderance of benefits and advantages largely on the side of the Canadians. Such certainly is the belief of the Government and people of the United States. A declaration to that effect, that is, a declaration that no money award ought to be made, in our opinion is required by the evidence, and by every consideration of justice. If this be so, the consequences are immaterial to us, but I cannot refrain from saying that though such a result might cause a little transient disappointment to a few individuals, it would, in my judgment, tend more than anything else to establish the permanent relations between the United States and the Dominion of Canada on a footing of justice and peace, friendship and commercial prosperity. We are neighbours in geographical position; we are sprung from the same common origin; we speak the same language; have inherited the same literature; to a large extent, have common traditions and history; we live under very similar laws and free institutions; we are two great, free, energetic, and prosperous countries, which cannot help respecting each other, and though the surface may be occasionally for a short time ruffled to a trifling degree, yet in the depths of the hearts of the people of each country they entertain for each other a sincere and profound good will.

Closing Argument of Hon. Wm. H. Trescot, on behalf of the United States.

Mr. President and Gentlemen of the Commission,—I am very glad that in this controversy there is one point upon which we are all agreed, and that is, the importance of settling it, of having a source of constant irritation dried up for ever, or, better still, if it be possible, of having it converted into a spring of mutual and perpetual benefit. Whatever, therefore, may be the direct practical result of this investigation, we shall have achieved no small or inconsiderable thing, if we have learned at its close to appreciate each other's rights and interests fairly, justly, and kindly.

The best way to secure that end is to speak on both sides with entire candour, to state our respective views as clearly and as strongly as we can, and then to leave it to the impartial judgment of the Commission to balance our calculations, compare our pretensions, and estimate at their true value the claims which we have submitted; only asking them to remember that they do not sit here as arbitrators to compromise rival interests, but as the appraisers of certain values, as the judges of the correctness of certain facts and figures.

I conceive it to be the duty of every one participating in this investigation to do all he can to aid the Commission in reaching an agreement, and that you will arrive at some sound and satisfactory conclusion I sincerely hope; for, during the whole of our examination, I confess I have never looked up at the picture of His Majesty George III, which hangs behind the President's chair, without feeling that it is not creditable that two great and kindred nations should to-day be still angrily discussing a question which he thought he had finally settled with Franklin and Adams, with Jay and Laurens, a hundred years ago, when he recognized the independence of the United States with all its consequences.

You have been told, and with truth, by the representatives of both contestants, that the Treaty of 1871 is the charter of your authority. To ascertain, therefore, the extent of the powers which have been given, and the character of the duties which have been imposed, we must go to the Treaty of Washington. But we cannot go to that Treaty alone. The Treaty of 1871 is but one phase of the fishery negotiations. It was a marked change from the condition of things in 1866; that was a change from the condition of things in 1854; that, again, was a large departure from the Convention of 1818, and that Convention was in itself a very great change from the Treaty of 1783.

It is simply impossible to understand the meaning of the Treaty of 1871 correctly without reference to the history of those negotiations, and the positions which have been taken, and which have been abandoned or maintained by the respective Governments.

And the British Case, as filed, distinctly recognizes this necessity, not only in the elaborate history of those negotiations with which it prefaces its argument, but in the central assumption of its formal contention, viz., that the Treaty of 1818 is part and parcel of the Treaty of 1871.

These negotiations, fortunately, lie within a compact and manageable compass, and it is possible, I think, briefly and clearly to develop their history and sequence.

The Treaty of 1783, the Convention of 1818, the Reciprocity Treaty of 1854, and the Treaty of Washington of 1871, are landmarks in our navigation over these rather troubled waters. If I may borrow a figure from our subject, I will endeavour, in my argument, to keep well within the three-mile limit, not to run between headland and headland, unless I am driven by extraordinary stress of weather, and even then I shall not enter and delay in every port that lines the coast for shelter, food, or fuel, unless the persuasive rhetoric of my friend from Prince Edward's Island should detain me in the magnificent harbours of Malpeque and Cascumpeque, or my friend from Newfoundland should toll me with "fresh squid" into the happy and prosperous regions of Fortune Bay.

But before I go into the discussion of these Treaties, I wish to ask your consideration to some observations on the general meaning and proper interpretation of the Treaty of 1871, in order that they may be out of the way of the main argument. And first I will ask you to carry with you throughout the discussion a fact so obvious that I would not have referred to it at all, had not the whole argument of the British Case entirely ignored it. That fact is, simply, that this Convention, and the Treaty upon which it is founded, are transactions between the United States on the one side

and Great Britain on the other. Let me ask your attention to the XXIInd Article of the Treaty of 1871 :—

"Inasmuch as it is asserted by the *Government of Her Britannic Majesty*, that the privileges accorded to the citizens of the United States under Article XVIII of this Treaty are of greater value than those accorded by Articles XIX and XXI of this Treaty *to the subjects of Her Britannic Majesty*, and this assertion is not admitted by the Government of the United States; it is further agreed that Commissioners shall be appointed to determine, having regard to the privileges accorded by the United States *to the subjects of Her Britannic Majesty*, as stated in Articles XIX and XXI of this Treaty, the amount of compensation," &c., &c.

Now, who are the subjects of Her Britannic Majesty? Are they only the inhabitants of the Dominion of Canada? The fishermen of the Maritime Provinces? The boatmen of the bend of Prince Edward Island? The herring and squid catchers of Newfoundland? We have been told in prose and poetry that the dominion of Her Britannic Majesty is one on which the sun never sets, and it is to the subjects of this dominion, in its widest extent, that we have given the privileges granted by the United States in this Treaty. And I ask if, in equalizing this privilege, the *value* of the privilege is one of the elements of your calculation, is not the *extent* to which those privileges are opened an equal subject of valuation?

I know what my friends will say. They will say, of course, "it is obvious that it is neither possible nor probable that any of the subjects of Her Britannic Majesty will use these privileges, except the inhabitants of the Dominion. Well, I do not know that my friends have the right to assume any such ground, after the brilliant exhibition of their closing testimony. Do you not recollect what the confidential scientific adviser of the gentlemen on the other side told you, that the time was coming—had come, when the fishing industry of the world would be a common fishery to the whole world; when a skipper would go out of harbour with an orographic chart of the coast in one hand, and a thermometer in the other, to measure the variations of zone temperature; when he would, day by day, learn the condition of the controversy between the Labrador Arctic current and the Gulf Stream; when, by a system of telegraph and signal stations, there would be a new meaning given to the Scripture, "Deep calleth unto deep;" that Labrador would speak to Newfoundland, and Newfoundland to Nova Scotia, and Nova Scotia to Cape Cod; and that, wherever the fishes were, there would the fishermen of the world be gathered together. I cannot accept that prophecy in all its fulness. I know it has been said very often that fish diet is a wonderful stimulant to the mental powers. I think, since we have been discussing this case, we have found that mackerel, especially, has a most wonderful effect upon the arithmetical faculties of the intellect; that it stimulates the imagination until it sets all the powers of calculation at defiance; and I am satisfied that the princely fortune that was supposed to have been made by the boy in the Arabian fable out of his basket of eggs—which were unfortunately destroyed before he realized it—is nothing compared with the profits that my friend from Prince Edward Island, through cross-examination, can develop from an ordinary catch of 400 barrels of mackerel. I presume that my friends will not allow me to assume, even upon their own testimony, that this millennial fishery will be in perfect working order until the Treaty of 1871 has expired, and they will therefore insist that it is neither possible nor probable that any of the subjects of Her Britannic Majesty, except the inhabitants of the Dominion, can ever use these privileges. Suppose I grant that, what then? I find in the British Case a very elaborate statement of a very sound principle, page 34 :—

"It is possible, and even probable, that the United States' fishermen may avail themselves of the privilege of fishing in Newfoundland inshore waters to a much larger extent than they do at present; but even if they should not do so, it would not relieve them from the obligation of making the just payment for a right which they have acquired, subject to the condition of making that payment. The case may be not inaptly illustrated by the somewhat analogous one of a tenancy of shooting or fishing privileges; it is not because the tenant fails to exercise the rights which he has acquired by virtue of his lease, that the proprietor should be debarred from the recovery of his rent."

I think it will take more than the very large ability and ingenuity of the British Counsel to show any difference between the two cases. If the American fisherman is bound to pay for the inshore fisheries of Newfoundland, which he does not use, on the principle of tenancy, why should not the British subject pay for the inshore United States' fisheries which he does not use?

Mr. Thomson.—I understand you admit the principle?

Mr. Trescot.—I am using it as a reply to this argument. I am going to show you that my argument is based on yours; and I contend, therefore, on the very principle that you state.

"It is not because the tenant fails to exercise the rights which he has acquired by virtue of his lease, that the proprietor should be debarred from the recovery of his rent." On this principle, we claim that all the subjects of Her Britannic Majesty are tenants, under the Treaty, and must pay for the privilege whether they use it or not, and you are bound to take that into consideration, in establishing the value of the privileges exchanged.

Further, if this is a Treaty between Great Britain and the United States, it cannot be converted into a Treaty between the United States and Canada. This Commission cannot alter it, or supplement it. Certain specified provisions in the Treaty it can execute, but it cannot amend its errors, or correct its faults. If in that Treaty the British Government has compromised or endangered the interests of the Colonies, much as it is to be regretted, you have no power to undo the work; it is a matter with which the Commission has nothing to do.

Upon the negotiation of the Treaty of 1871, the most correct and influential representative of public opinion in England, the London "Times," used the following language:—

"We watched with some uneasiness the repeated splutters of bad feeling between the fishermen of New England and the people of the Maritime Provinces, because we could never be certain that an ugly accident might not some day force us, much against our will, to become the champions of a quarrel we could only half approve. It is very easy, therefore, to understand with what motives our Ministers suggested a Commission, and with what readiness they yielded to the hint that it should be allowed to settle all subjects of difference between the two countries. Lord Derby has repeatedly blamed their eagerness, and the American Government could not but be sensible of the advantage they obtained when the Commisssioners arrived at Washington, bound to come to some settlement on the points in dispute. It is true that one of the Commissioners was the Prime Minister of Canada, but against this circumstance must be set the facts that the other four approached their work from an English point of view, that the Commissioners, as a body, were instructed from day to day, and, we may almost say, from hour to hour, by the English Cabinet, and their work was done with an eye to the approval of the English people. It was inevitable that the results of their labours should not satisfy the inhabitants of the Dominion. We are far from saying that the Commissioners did not do their best for Canadian interests as they understood them, but it was not in human nature for them or their instructions to be to Canada what they are to England; and, as the Treaty was conceived for the purpose of removing the present and contingent liabilities of England, it was agreed upon as soon as it was believed that these liabilities were settled."

If this is so, then surely this Commission was not appointed to correct "the inevitable" results of the Treaty which created it.

The Colonial authorities recognized this view. When that Treaty was formed, Earl Kimberley, writing to the Colonial Governor, made this statement, in a paragraph which is not too long to read, for I do not mean to trouble you with a great many quotations. It is a statement of the Secretary of State for the Colonies to the Governor-General, dated, "Downing Street, June 17, 1871," and published at Ottawa:—

"The Canadian Government itself took the initiative in suggesting that a joint British and American Commission should be appointed, with a view to settle the disputes which had arisen as to the interpretation of the Treaty of 1818. But it was certain, that however desirable it might be, in default of any complete settlement, to appoint such a Commission, the causes of the difficulty lay deeper than any question of interpretation, and the mere discussion of such points as the correct definition of bays, could not lead to a really friendly agreement with the United States. It was necessary, therefore, to endeavour to find an equivalent which the United States might be willing to give in return for the fishing privileges, and which Great Britain, having regard both to Imperial and Colonial interests, could properly accept. Her Majesty's Government are well aware that the arrangement which would have been most agreeable to Canada, was the conclusion of a Treaty similar to the Reciprocity Treaty of 1854, and a proposal to this effect was pressed upon the United States' Commissioners, as you will find in the 36th Protocol of the Conferences. This proposal was, however, declined, the United States' Commissioners stating that they could hold out no hope that the Congress of the United States would give its consent to such a tariff amendment as was proposed, or to any extended plan of reciprocal free admission of the products of the two countries. The United States' Commissioners did indeed propose that coal, salt, and fish should be reciprocally admitted free, and lumber after the 1st July, 1874; but it is evident that, looked at as a tariff arrangement, this was a most inadequate offer, as will be seen at once when it is compared with the long list of articles admitted free under the Reciprocity Treaty. Moreover, it is obvious from the frank avowal of the United States' Commissioners, that they only made this offer because one branch of Congress had recently more than once expressed itself in favour of the abolition of duties on coal and salt, and because Congress had partially removed the duty from lumber, and the tendency of legislation in the United States was towards the reduction of taxation and of duties, so that to have ceded the fishery rights in return for these concessions would have been to exchange them for commercial arrangements, which there is every reason to believe may before long be made without any such cession, to the mutual advantage of both the Dominion and the United States; and Her Majesty's Government are bound to add, that whilst, in deference to obtain a renewal in principle of the Reciprocity Treaty, they are convinced the establishment of free trade between the Dominion and the United States is not likely to be promoted by

making admission to the fisheries dependent upon the conclusion of such a Treaty; and that the repeal by Congress of duties upon Canadian produce, on the ground that a protective tariff is injurious to the country which imposes it, would place the commercial relations of the two countries on a far more secure and lasting basis than the stipulations of a Convention framed upon a system of reciprocity. Looking, therefore, to all the circumstances, Her Majesty's Government found it their duty to deal separately with the fisheries, and to endeavour to find some other equivalent; and the reciprocal concession of free fishery with free import of fish and fish-oil, together with the payment of such a sum of money as may fairly represent the excess of value of the Colonial over the American concession, seems to them to be an equitable solution of the difficulty.

"It is perfectly true that the right of fishing on the United States' coasts, conceded under Article XIX, is far less valuable than the right of fishing in Colonial waters, conceded under Article XVIII, to the United States, but on the other hand, it cannot be denied that it is most important to the Colonial fishermen to obtain free access to the American market for their fish and fish-oil, and the balance of advantage on the side of the United States will be duly redressed by the Arbitrators under Article XXII. In some respects a direct money payment is perhaps a more distinct recognition of the rights of the Colonies than a tariff concession, and there does not seem to be any difference in principle between the admission of American fishermen for a term of years, in consideration of the payment of a sum of money in gross, and their admission under the system of licences, calculated at so many dollars per ton, which was adopted by the Colonial Government for several years after the termination of the Reciprocity Treaty. In the latter case, it must be observed, the use of the fisheries was granted without any tariff concessions whatever on the part of the United States, even as to the importation of fish.

"Canada could not reasonably expect that this country should, for an indefinite period, incur the constant risk of serious misunderstanding with the United States; imperilling, perhaps, the peace of the whole Empire, in order to endeavour to force the American Government to change its commercial policy; and Her Majesty's Government are confident that, when the Treaty is considered as a whole, the Canadian people will see that their interests have been carefully borne in mind, and that the advantages which they will derive from its provisions are commensurate with the concessions which they are called upon to make. There cannot be a question as to the great importance to Canada of the right to convey goods in bond through the United States, which has been secured to her by Article XXIX; and the free navigation of Lake Michigan under Article XXVIII; and the power of transshipping goods under Article XXX, are valuable privileges which must not be overlooked in forming an estimate of the advantages which Canada will obtain. Her Majesty's Government have no doubt that the Canadian Government will readily secure to the citizens of the United States, in accordance with Article XXVII, the use of the Canadian Canals, as, by the liberal policy of the Dominion, these canals are already open to them on equal terms with British subjects; and they would urge upon the Dominion Parliament and the Legislature of New Brunswick, that it will be most advisable to make arrangements as to duty on lumber floated down the St. John River, upon which the execution of Article XXX, as to the transshipment of goods, is made contingent."

That is the view he took of that Treaty. What was the view that the Canadian Government took of it? On page 47 of this same pamphlet will be found the reply of a Committee of the Privy Council to that letter of the Earl of Kimberley, in which will be found this statement:—

"When the Canadian Government took the initiative of suggesting the appointment of a joint British and American Commission, they never contemplated the surrender of their territorial rights, and they had no reason to suppose that Her Majesty's Government entertained the sentiments expressed by the Earl of Kimberley in his recent despatch. Had such sentiments been expressed to the delegate appointed by the Canadian Government to confer with his Lordship a few months before the appointment of the Commission, it would at least have been in their power to have remonstrated against the cession of the inshore fisheries, and it would, moreover, have prevented any member of the Canadian Government from acting as a member of the Joint High Commission, unless on the clear understanding that no such cession should be embodied in the Treaty without their consent. The expediency of the cession of a common right to the inshore fisheries has been defended, on the ground that such a sacrifice on the part of Canada should be made in the interests of peace. The Committee of the Privy Council, as they have already observed, would have been prepared to recommend any necessary concession for so desirable an object, but they must remind the Earl of Kimberley that the original proposition of Sir Edward Thornton, as appears by his letter of the 26th January, was that a friendly and complete understanding should be come to between the two Governments, as to the extent of the rights which belong to the citizens of the United States and Her Majesty's subjects respectively, with reference to the fisheries on the coasts of Her Majesty's possessions in North America."

Then there is a continuation of the argument.

Mr. Thomson.—Won't you read it?

Mr. Trescot.—I will read it if you wish.

Mr. Thomson.—I would like to hear it, if it is not too much trouble to you.

Mr. Trescot.—I will read it with great pleasure, although it does not bear upon the point I desire to present.

"In his reply dated 30th January last, Mr. Secretary Fish informs Sir Edward Thornton, that the President instructs him to say that 'he shares with Her Majesty's Government the appreciation of the importance of a friendly and complete understanding between the two Governments, with reference to the subjects specially suggested for the consideration of the proposed Joint High Commis-

sion.' In accordance with the explicit understanding thus arrived at between the two Governments, Earl Granville issued instructions to Her Majesty's High Commission, which, in the opinion of the Committee of the Privy Council, covered the whole ground of controversy. The United States have never pretended to claim a right on the part of their citizens to fish within three marine miles of the coasts and bays, according to their limited definition of the latter term, and although the right to enjoy the use of the inshore fisheries might fairly have been made the subject of negotiation, with the view of ascertaining whether any proper equivalents could be found for such a concession, the United States was precluded, by the original correspondence, from insisting on it as a condition of the Treaty. The abandonment of the exclusive right to the inshore fisheries without adequate compensation —mark that, 'the abandonment of the exclusive right to the inshore fisheries without adequate compensation' was not therefore necessary in order to come to a satisfactory understanding on the points really at issue. The Committee of the Privy Council forbear from entering into a controversial discussion as to the expediency of trying to influence the United States to adopt a more liberal commercial policy. They must, however, disclaim most emphatically the imputation of desiring to imperil the peace of the whole Empire, in order to force the American Government to change its commercial policy. They have for a considerable time back ceased to urge the United States to alter their commercial policy; but they are of opinion that when Canada is asked to surrender her inshore fisheries to foreigners, she is fairly entitled to name the proper equivalent."

I need not go any further. You can read it if you wish. Then, of course, Lord Kimberley replied to that communication. The reply it is not worth while to read. The Privy Council then replied to his strictures upon their opinion, and their communication is the point to which I wish to come.

"In the course of the negotiations, the United States' Commissioners had offered, as an equivalent for the rights of fishery, to admit Canadian coal and salt free of duty, and lumber after the 1st July, 1874. This was deemed both by the Imperial and Canadian Governments an inadequate offer, and a counter proposition was made by the British Commissioners, that lumber should be admitted free immediately, and that in consideration of the continued exclusion of cereals, live stock, and other articles admitted under the Treaty of 1854, a sum of money should be paid to Canada. The United States' Commissioners not only refused the counter proposition, but withdrew their former offer, substituting one which the Committee of Council infer from the Earl of Kimberley's despatch was, in the opinion of Her Majesty's Government, more favourable to Canada than that which had been rejected as inadequate. Wide, however, as are the differences of opinion on this Continent regarding the Treaty, there is but one opinion on the point under consideration. It is clear that the United States preferred paying a sum of money to the concession of commercial advantages to Canada, and the Committee of Council feel assured that there is not a single member of the Canadian Parliament who would not have much preferred the rejected proposition to that which was finally adopted.

"The Committee of Council cannot, with the Earl of Kimberley's despatch before them, continue to affirm that Her Majesty's Government are of opinion that the cession of the fishery rights was made for an inadequate consideration, but they regret that they are themselves of a different opinion.

"While still adhering to their expressed opinions as to the Fishery Articles of the Treaty of Washington, they are yet most anxious to meet the views of Her Majesty's Government, and to be placed in a position to propose the necessary legislative measures, and they will therefore proceed to make a suggestion which they earnestly hope may receive a favourable response.

"The adoption of the principle of money payment in satisfaction of the expenses incurred by the Fenian raids, would not only be of no assistance with reference to the Treaty, but might lead to some complications. It is not improbable that differences of opinion would arise in the discussion of the details of those claims between the two Governments, which might lead to mutual dissatisfaction. Again, such a solution of the question would necessitate a discussion in the Imperial Parliament, in the course of which opinions might be expressed by members which might irritate the people of Canada, and might moreover encourage the Fenian leaders in the United States, who have not ceased their agitation.

"There is, in the opinion of the Committee of Council, a mode by which their hands might be so materially strengthened, that they would be enabled, not only to abandon all claims on account of the Fenian raids, but likewise to propose, with a fair prospect of success, the measures necessary to give effect to those clauses in the Treaty of Washington which require the concurrence of the Dominion Parliament. That mode is by an Imperial guarantee to a portion of the loan which it will be necessary for Canada to raise, in order to procure the construction of certain important public works, which will be highly beneficial to the United Kingdom as well as to Canada."

Now I ask, if, in the face of that official demand for a guarantee of that loan in compensation for the sacrifice of the fisheries, which demand was recognized as just, and granted by the British Government, it is possible to claim that those interests were not sacrifices which were compensated, or whether any construction is just, which, isolating the Articles of this Treaty, and converting it into a separate negotiation, determines that there were certain Imperial advantages gained by the British Government in return for the sacrifice of those fisheries, and then claims that that compensation should be made part and parcel of the consideration in a case like this? I beg you to understand distinctly that I do not contend that this Commission is not bound to equalize the two exchanges which have been committed to them. That is their duty. But I mean to say, that in making that equalization, they are bound to consider nothing but the specific

value of the articles exchanged, and that the question whether or not equalization is compensation for any sacrifices made by the Treaty, is one with which they have nothing to do; the question which is submitted to them is the value, and nothing else, of the two exchanges. It is not the duty, nor is it within the power of this Commission, as the British Counsel seem to suppose, to make the Treaty of 1871 an equal Treaty, but simply to equalize a specific exchange of values under a special provision of that Treaty. It is precisely, as far as you are concerned, as if, instead of the exchange of fishing privileges, that Treaty had proposed an exchange of territory. For instance, if that Treaty had proposed the exchange of Maine and Manitoba, and the United States had maintained that the value of Maine was much larger than Manitoba, and referred it to you to equalize the exchange. It is very manifest that to New England, for instance, it might not only be disadvantageous, but very dangerous; but the only question for you to consider would be the relative value of the two pieces of territory. So here I do not care what the consequences may be. It may be that when you have equalized these privileges so as to make the exchange of privileges precisely even, that then the consequences of the exchange of fisheries might be the destruction of all the fisheries of Prince Edward Island, the entire destruction of the fishing industry of the Maritime Provinces. But that is a matter with which you have nothing to do. This is a consequence of the Treaty, and not a consequence of the difference in value between the two articles of exchange which you are called upon to appraise.

The same principle would lead to this result also; that with the consequential profit or loss of the fisheries you have nothing to do. You have a right to measure the value of the fisheries as they are, and what they are, but you have no right to put into that estimate a calculation of the enterprize, industry, skill, and capital which the Americans put into the fishery: that is, brains, and money, and experience, which is entirely foreign to the fishery as a fishery. It is free to be employed anywhere else, and you have no right to calculate that. The fish in the water have a certain value, but the skill, and capital, and enterprize which are required to take them out, does not belong to the fishery as a fishery, and it is not a matter that you have any right to take into calculation. Take, for example, the extraordinary principle that is stated in the British Case, on page 34:—

> "A participation by fishermen of the United States in the freedom of these waters must, notwithstanding their wonderfully reproductive capacity, tell materially on the local catch, and, while affording to the United States' fishermen a profitable employment, must seriously interfere with local success."

Is that a principle of calculation which you can apply to a case like this? Was there ever a case of such absolute forgetfulness of that homely old proverb over which every one of us has painfully stumbled in his walk through life, that "you cannot eat your cake and have it too?" Why, take that favourite and apt illustration of the British case, a tenancy for shooting. If I exchanged a grouse moor in Scotland for a pheasant preserve in England, and my friend Her British Majesty's Agent was arbitrator to equalize their values, what would he think of the claim that the grouse moor was the more valuable because I used a breech-loader, carried two keepers with extra guns, shot over dogs costing 100 guineas a-piece, and bagged 100 brace, where the other sportsman stuck to the old muzzle-loader, carried no keeper, shot over an untrained pointer, and only bagged twenty-five brace, or to the still more extraordinary complaint that the freedom of the moor, notwithstanding its wonderful reproductive capacity, must tell materially on the local shooting, and while affording the lessee profitable and pleasant employment, "must seriously interfere" with the pot-shooting of the boys of the lessor's family. Yet that is just precisely the argument that our friends have made. They undertake, not to decide the value of the fishery, but they undertake to put into arbitration here what we do with the fishery. That is, we are to pay, not only for the privilege of going mackerel fishing in the bend of Prince Edward Island, but we are to pay for every dollar of capital and industry we employ, and for the men employed, and the result of that combination is the money to which they are entitled.

So also with the consequential damages, with regard to the destruction of fish, trawling, seining, and all those things with which you have nothing to do. I think I can reply to the whole of that by a very pithy sentence, uttered by one of your citizens who was very famous, the late Joseph Howe, in a speech made in my country in regard to the fisheries here. He said: "As for the destruction of the fisheries, when one thought that the roes of thirty cod supply all the waste of the American, British, and Colonial fisheries, it was not worth while to discuss that question;" and I do not think it

is either, because all those arguments apply to the Treaty. They are very good reasons why the exchange never should have been made at all, why American fishermen never should have been admitted at all, why the Treaty should never have been made, but they are arguments which cannot be employed in the consideration of the question submitted to you—the value of the fishery.

And now, with regard to this question of consequences, there is but one other illustration to which I which I will refer and I will be done. I find at the close of the British testimony an elaborate exhibit of 166 lights, fog-whistles, and humane establishments used by United States' fishermen on the coast of the Dominion, estimated to have cost in erection, from the Sambro Lighthouse, built in 1758, to the present day, 832,138 dollars, and for annual maintenance 268,197 dollars. I scarcely know whether to consider this serious, but there it is, and there it has been placed, either as the foundation for a claim, or to produce an effect. Now, if this Dominion has no commerce; if no ships bear precious freight upon the dangerous waters of the gulf, or hazard valuable cargoes in the straits which connect it with the ocean; if no traffic traverses the Imperial river which connects the Atlantic with the great lakes; if this fabulous fishery, of which we have heard so much, is carried on only in boats so small that they dare not venture out of sight of land, and the fishermen need no other guiding and protecting light than the light streaming from their own cabin windows on shore; if, in short, this Dominion, as it is proudly called, owes nothing to the protection of its commerce and the safety of its seamen; if these humane establishments are not the free institutions of a wise and provident Government, but charitable institutions to be supported by the subscriptions of those who use them, then the Government of the Dominion can collect its 200,000 dollars by levying light dues upon every vessel which seeks shelter in its harbours or brings wealth into its ports. But if, in the present age of civilization, when a common humanity is binding the nations of the world together every day by mutual interests, mutual cares, and privileges equally shared, the Dominion repeals her light dues in obedience to the common feeling of the whole world, with what justice can that Government ask you, by a forced construction of this Treaty, to reimpose this duty, in its most exorbitant proportions and its most odious form, upon us and upon us alone?

But that is not, perhaps, the question I should ask you. I should ask, and I do ask, where do you find in Article XVIII of the Treaty, among the advantages which the Treaty of 1871 gives us, and authorizes you to value any such "advantage" as the use of lighthouses and fog whistles? And if you decided, and properly decided, that you could not take into consideration the advantages of commercial intercourse, purchasing bait and supplies, and the privilege of transshipping, because they were not given by the Treaty, identified as they were with the use of the fishery, how can you be asked even to take this preposterous claim into consideration? If the principle laid down by the British Case (page 13) is true, "it is submitted that in order to estimate the advantages thereby derived respectively by subjects of the United States and of Great Britain, the following basis is the only one which it is possible to adopt under the terms of the first portion of Article XVIII of the Treaty of Washington of 1871, viz., that the value of the privileges granted to each country, respectively, by Articles XVIII, XIX, and XXI of that Treaty, *which were not enjoyed under the Ist Article of the Convention of the 20th October*, 1818, is that which the Commission is constituted to determine." If this principle of interpretation be true, how can such a demand be made until it is shown that under the Ist Article of the Convention of 1818 the privilege of using the lighthouses and fog whistles—that is, the privilege of seeing a light or hearing a sound—was not enjoyed? Illiberal, unjust, and narrow as was the policy of that Convention, it has not yet been charged with so grievous an offence against humanity. It might stop our fishing, but it did not assume to stop our sight and hearing at the three-mile limit.

And in leaving this question of "consequences," I may say, in justification of the length with which I have dwelt on it, that this "consequential"—I might almost say "inconsequential"—reasoning pervades the whole British Case, and infects the whole cross-examination of counsel on the other side. The effort has been studiously made to create an atmosphere in which the uncertain and doubtful advantages of the Treaty would loom out so largely as to deceive the inexperienced eye as to the exorbitant value that was sought to be attached to them.

I have but one other consideration to suggest before I come to the history of this question, and it is this: If you will examine the Treaties you will find that everywhere it is the "United States' fishermen," "the inhabitants of the United States"—the citizens of the United States who are prohibited from taking part in the fishery within the three-mile limit. Now, I say—remember I am not talking about local legislation

on the other side at all, I am talking about Treaties—I say there is nothing in any Treaty which would forbid a Nova Scotian or a Prince Edward Island citizen from going to Gloucester, hiring an American vessel with an American register and coming within the three-mile limit and fishing—nothing at all. If such a vessel be manned by a crew half citizens of the United States and half Nova Scotians, who are fishing on shares recollect, and who take the profits of their own catches, where is the difference? The United States' citizen may violate the law, but are the citizens of Nova Scotia doing so? They are not not the "inhabitants" or "fishermen of the United States" excluded from fishing within the three-mile limit. Take the analogy suggested by the British Case. Suppose, for instance, there was a law forbidding shooting in the Dominion altogether by any one not a citizen, might not a citizen of the United States lend a gun to a citizen of the Dominion who wanted to shoot game and pay him for the game that he shot? It comes to this, that when Nova Scotia fishermen fish in an American vessel within the three-mile limit, always supposing that they engage in the business on shares, they are simply using an instrument lawfully under the Treaty that the American part of the crew are using unlawfully, that is all. I do not press this legal view, because it is one which, one of these days, will have to be taken up and decided; I simply say that that is common sense opinion, that if, out of 5,000 fishermen 2,500 are British subjects, and fishing in American vessels, taking their own catches, making their own profits, in that case you cannot, in equity and justice, consider that as part of the privilege given to the fishermen or inhabitants of the United States. I am glad I am furnishing my friends something to think of even if it amuses them.

Mr. Thomson.—You are.

Mr. Trescot.—I thought I was. The three points which I make are these:—

1. That in valuing the exchange of privilege, the *extent* to which the privilege is offered is a fair subject of calculation, and that a privilege opened to "all British subjects" is a larger and more valuable privilege than one restricted to only the British subjects resident in the Dominion.

2. That in valuing the exchange of privilege, only the direct value can be estimated, and the *consequences* to either party cannot be taken into account.

3. That so far as British subjects participate in the inshore fishery in United States' vessels upon shares, their fishery is in no sense the fishing of fishermen or inhabitants of the United States.

With regard to the history of these Treaties, there are two subjects in that connection which I do not propose to discuss at all. One is the headland question. I consider that the statement made by my distinguished colleague who preceded me has really taken that question out of this discussion. I do not understand that there is any claim made here that any portion of this award is to be assessed for the privilege of coming within the headlands. As to the exceedingly interesting and very able brief, submitted for the other side, I am not disposed to quarrel with it. At any rate, I shall not undertake to go into any argument upon it. It refers entirely to the question of territorial right, and the question of extent of jurisdiction—questions with which the United States has nothing to do. They have never been raised by our Government, and probably never will be, because our claim to fish within the three-mile limit is no more an interference with territorial and jurisdictional rights of Great Britain, than a right of way through a park would be an interference with the ownership of the property, or a right to cut timber in a forest would be an interference with the fee-simple in the soil.

Mr. Thomson.—Do you mean to say there would be no interference there?

Mr. Foster.—Certainly not. It would be simply a servitude. You do not mean to say that my right to go through your farm interferes with the fee-simple of the property?

Mr. Thomson.—It does not take away the fee-simple, but it interferes with my enjoyment of the property.

Mr. Trescot.—That is another question, because compensation may be found and given. I simply say that it does not interfere with the territorial or jurisdictional right. That is the view I take of it, at any rate, and I think I can sustain it, if it ever becomes necessary.

Then, with regard to the character of the Convention of 1818. I wish to put on record here my profound conviction, that by every rule of diplomatic interpretation, and by every established precedent, the Convention of 1818 was abrogated by the Treaty of 1854, and that when that Treaty was ended in 1866, the United States and Great Britain were relegated to the Treaty of 1783, as the regulator of their rights. That proposition I will maintain whenever the proper time arrives. But, certainly, I am not

at liberty to take that ground here at all, and for this reason: that by the action of the two Governments, and by the formal incorporation, so to speak, of the Treaty of 1818 in the Treaty of 1871, that Treaty is made the practical rule of decision in this case; consequently, we have nothing to do with that, except to say this: that the Treaty of 1818 depends for its validity and its existence upon the headland question; that the two stand or fall together; because the Convention of 1818 was a relinquishment of certain rights upon certain conditions, and if those conditions are not understood in the same sense by the parties to the contract, the contracts ends, or is to be submitted to arbitration. If, then, the Treaty of 1871 should end with nothing else to supply its place, it would be absolutely necessary, either that the headland question should be settled, or the Convention of 1818 should be considered as annulled.

I cannot enter into the history of the Treaties as fully as I could wish.* The subject is not only one of great historical interest, but in certain contingencies would be of direct consequence. It cannot, however, be treated briefly or without travelling too far from the immediate question at issue. I will, therefore, only summarize those conclusions which are relevant to the present investigation.

And I refer to them in this connection, because, underlying the whole British Case, just like the consequential argument to which I have already referred, there runs the assumption that in all these transactions the policy of the United States has been one of encroachment and invasion, while the conduct of Great Britain has been that of generous concession. Never was there an assumption more entirely the reverse of historical truth.

The Treaty of 1783 ascertains and defines what were the original relations of the parties to this controversy. I need not read its provisions, but I do not think I will be contradicted when I say that they were simply the recognition of absolute and equal rights. The separation of the Colonies rendered necessary, not only their recognition, but the definite and precise adjustment of their territories and possessions; and among the latter was recognized and described, not as a grant or concession, but as an existing right, the use of the fisheries, not only as they had been used, but as they ever should be used by British subjects. Reserving the territorial and jurisdictional rights on the adjacent shores to the owners of the land, the fisheries—the right to use the waters for the purpose of fishing—was made a joint possession.

At that time the only parties in interest were the citizens of the United States, and the British owners of a few fishing settlements along the coasts. The parties who are now the real complainants were not then even in existence. Speak of encroachments! Encroachments upon whom? Why, in those days, where was Newfoundland, who comes here to-day as an independent sovereignty, and invests her distinguished representative with a measure of Ambassadorial authority? Not even a colony—a fishing settlement, owned by a British corporation—governed without law by any naval officer who happened to be on the coast with a marling spike in one hand and the Articles of War in the other—no Englishman allowed to make a home on the island—and the number of women permitted to reside there limited, so as to prevent the growth of a native population. Where was Prince Edward Island, which speaks to-day through a Premier and an Assembly? Why, in the early years of the revolution, an American skipper, not then having the fear of the three-mile limit before his eyes, entered that famous bend, of which we have heard so much, fishing for men instead of mackerel, and he caught the Governor and the Executive Council—a catch which, I am sure, my friend on the other side will admit to be all "Number one's"—and carried them to General Washington, who, not knowing what use to put them to, treated them as our witnesses have told us the fishermen treat young cod, threw them back into the water, and told them to swim home again. Why, the very names with which we have become so familiar in the last months—Tignish and Paspebiac, Margaree and Chetticamp, Sciminac and Scatterie, had not then risen from the obscurity of a vulgar geography to shine in the annals of international discussion. There was then no venerable Nestor of Dominion politics, to whose experienced sagacity the interests of an empire might be safely entrusted—there were no learned and dignified Queen's Counsel to be drawn up in imposing contrast to the humble advocates who

* The British Case, referring to the Treaty of 1783, says, "The rights conceded to the United States' fishermen under this Treaty were by no means so great as those which, as British subjects, they had enjoyed previous to the War of Independence; for they were not allowed to land to dry and cure their fish in any part of Newfoundland, and only in those parts of Nova Scotia, the Magdalen Islands, and Labrador, where no British settlement had been or might be formed, expressly excluding Cape Breton, Prince Edward Island, and other places." There is no express exclusion of Cape Breton and Prince Edward Island in the Treaty. Both were acquired by the Treaty of 1763, and were formally annexed to Nova Scotia. It was not until 1770 that Prince Edward Island had a separate government as an experiment, and a very poor experiment it turned out to be. To the American negotiators of 1783, Nova Scotia included both Cape Breton and Prince Edward Island.

address you from this side of the table. There was no Minister of Marine, with 160 fine fog-whistles at his command, ready to blow a blast of triumph all along the coast upon the receipt of this award. There were no rights to invade, and the Maritime Provinces and the Dominion came into existence, subject to the conditions of national life which that Treaty created. When they did come into these waters they found us there.

Our rights, and the character of our rights, under the Treaty of 1783, were never questioned or disputed for over a quarter of a century, not until the war of 1812, and then the question was made only as an effort of diplomatic *finesse*. The Treaty of 1783 had given to British subjects the right of navigation on the Mississippi River, under the belief that the boundary line between the two countries touched the sources of that river. By 1814 it was discovered that this was not so; and, as the right to use the territory of the United States to reach the river had not been given, the right to use the river was not available. Then was invented the theory that the war of 1812 abrogated the Treaty of 1783, and by it the British Government were enabled to propose to renew the Fishery Articles, if we would remodel and make effective the Article as to the Mississippi. We denied the theory. I will not, of course, trouble you with any detailed account of the negotiations; the correspondence between Mr. Adams and Lord Bathurst, and the negotiations of the Treaty of Ghent, are matters of familiar history.

The question thus raised was left unsettled, both Governments maintaining their positions until the Convention of 1818. Two things are evident from that Convention. First, that our right, as we maintained it, to the inshore fisheries, was recognized, because Great Britain accepted from us the relinquishment of a portion of it, and by accepting what we gave, recognized our right to give. Second, that we relinquished this right because our fishing was at that time entirely a deep-sea fishing, and because the settlement of the coasts of the Maritime Provinces, and the development of local Colonial fisheries anticipated in the Treaty of 1783 were now being realized. That Convention was a friendly and liberal concession on the part of the United States, and when we are required to-day to pay for the restoration of the former condition, we are simply made to pay for our own liberality. For what are the Treaties of 1854 and 1871 but a restoration of the conditions of the Treaty of 1783, accompanied by that freer commercial intercourse which the interests and the intelligence of both countries demand?

I had proposed to trace the negotiations from 1818 to 1854, and thence to the Protocol and Treaty of 1871. But these latter were somewhat fully discussed in the argument upon the motion formerly made on behalf of the United States, and my colleague has fully explained to you how, and by what agencies, the restrictions of the Convention of 1818 became so odious to our people.

I need not do more than refer you to the instructions of the British Government to the negotiators of the Treaty of Washington, and recognize, as I do most gladly, the wisdom and liberality of their spirit, and I now turn to the practical question which that Treaty submits to your decision.

I come now to the questions which that Treaty of 1871 raises, and they are simply these: what is the difference in value gained by us, and the advantages gained by you—that is to say, what is the difference in value between the right to fish within the three-mile limit, on one side, and the right to fish on the United States' shores on the other, coupled with the right to send fish and fish-oil to the United States' market free of duty?

With regard to the fisheries: the fisheries with which the Treaty of 1871 is concerned, are the cod, the herring, the mackerel, the hake, the haddock, and halibut fisheries, within the three-mile limit. For the purposes of this argument there will be, I think, a general agreement that we can dismiss the hake, haddock, and halibut fisheries. It is admitted, also, that the cod fishery is essentially a deep-sea fishery, and does not, therefore, come within the scope of your examination, especially as the question of bait and supplies, which alone connected it with this discussion, has been eliminated by your former decision.

We have left, then, only the herring fishery and the mackerel fishery. As to the herring fishery, I shall say but very few words. The herring fishery on the shores of the Magdalen Islands, we claim of right—a few scattering catches elsewhere are not appreciable enough to talk about; and we have, therefore, only the herring fisheries of Newfoundland and Grand Manan. The former is essentially a frozen herring business, and I do not believe there exists a question that this business, both at Newfoundland and Grand Manan, is entirely a mercantile business, a commercial transaction, a buying and selling, not a fishing. The testimony on this subject is complete, and is confirmed by Mr. Babson, the Collector of the Port of Gloucester, who has told you that the

Gloucester fleet, the largest factors in this business, take out licences to touch and trade, when they go for frozen herrings, thus establishing the character of their mercantile voyage.

The only open question, then, as to the herring fishery, is the fishery for smoked and pickled herring at Grand Manan and in the Bay of Fundy, from Letite to Lepreaux, and whether that is conducted by United States' fishermen within the three-mile limit; a question, it seems to me, very much narrowed when you come to consider that from Eastport in Maine to Campobello, is only a mile and a-half, and from Eastport to Grand Manan is only six or seven miles.

Mr. Thomson.—Twelve or fourteen miles.

Mr. Trescot.—Not according to the statement of the witnesses. But call it ten miles, still it leaves a very small margin to make an agreement upon. I will not dwell upon that. The open question is whether there is fishing at Grand Manan that is participated in by American fishermen, within the three-mile limit, and what advantages they derive from it, and what element that will make in the calculation of the award.

The testimony lies in a very small compass. There are three or four witnesses on either side. You saw and heard them; and I am very wiling to leave that whole Grand Manan business to you, without one word of comment upon the testimony, except to ask you one simple question, as plain, practical, business men. Were you compelled to-morrow to invest money in the herring fishery of Grand Manan, and the adjoining mainland and islands, to whom would you go for information, upon whose judgment would you rely? Upon Mr. McLean, who estimates the value of that Lilliputian fishery at 3,000,000 dollars annually, one-half of which is the unlawful plunder of United States' fishermen, a fishery which, according to his estimate, would require, instead of the few unknown vessels which cannot be named, a fleet which could not sail from any port without being registered, and making it more than one-third of all the fisheries of the United States—of all the fisheries of the Dominion, and everywhere recognized; or would you go to Mr. McLaughlin, the keeper of one of those 165 lighthouses for which we are to pay, and fish-warden, who says it is his duty to make inquiries of every fisherman of his catch, but who adds that every fisherman of whom he inquired deliberately lied to him, in order to evade the school tax, and who then proceeds to fill out the returns from his inner consciousness of what the returns ought to be, and makes that return double his own official return to the Minister of Marine? Would you not go to the very men whom we have placed on the stand, men who, and whose fathers, have for sixty years, been engaged in purchasing all these fish, furnishing supplies to all these fishermen, directing and controlling the whole business, and whose fortunes have been made and preserved by their precise and complete knowledge of the value and condition of this very fishery.

And now as to the mackerel fishery. There are two singular facts connected with it. The first is that, valuable as it is represented to be, lying, as it is claimed to do, within an almost closed sea, the mackerel fishery of the gulf has been, until within a few years, the industry of strangers. It has not attracted native capital, it has not stimulated native enterprise, it has not developed native ports and harbours, while you claim and complain that it has built up Gloucester into established wealth and prosperity, and supplies, to a large degree, a great food market of the United States. I find the following "remarks" in a report of Commander Cochran to Vice-Admiral Seymour, in 1851:—

"The curious circumstance that about 1,000 sail of American schooners find it very remunerative to pursue the herring and mackerel fisheries on the shores of our northern provinces, while the inhabitants scarcely take any, does indeed appear strange, and apparently is to be accounted for by the fact that the colonists are wanting in capital and energy. The Jersey merchants, who may be said to possess the whole labour market, do not turn their attention to these branches. The business of the Jersey houses is generally, I believe, with one exception, carried on by agents; these persons receive instructions from their employers to devote their whole time and energy to the catching and curing of cod. Such constant attention to one subject appears at least to engender a perfect apathy respecting other branches of their trade. They are all aware, I believe fully aware, of the advantages to be derived from catching the herring and mackerel, when these come in shoals within a few yards of their doors, but still nothing is done.

"Commercial relations of long standing, never having engaged in the trade before, possible want of the knowledge of the markets, and the alleged want of skill among the fishermen of the method of catching and curing of these fish, together with the 20 per cent. duty on English fish in America, may tend to induce the Jersey houses not to enter into these branches. Added to all these reasons the capital of the principals is, I am informed, in most instances small. It will probably be difficult to find about the Bay of Chaleurs and Gaspé any fishermen not engaged by some one of the numerous Jersey houses, and it may be said that a new branch of industry would much interfere with the cod-fishery, but so lucrative a trade as the herring and mackerel one would prove, would enable higher

wages to be given than are done for cod. In fact, I believe that very small, if any wages are given at all, the money due to the fisherman for his summer labour being absorbed in food and clothing for himself and family, repairs of boats and fishing gear, almost always deeply in debt in the spring, or at any rate sufficiently so to ensure his labour for the ensuing summer, and so more persons would be induced to resort here in the summer season."—(*Confidential Official Correspondence, pp.* 4 *and* 5.)

This is precisely the testimony of the Gaspé witnesses who were put upon the stand. The great Jersey houses which do represent the capital, enterprise, experience, and skill of the country, do not touch the mackerel fisheries. As they did a quarter of a century ago, so they do to-day; they abandon, neglect utterly, what has been called the California of the coast, and make and maintain their fortunes by giving up mackerel fishing, and confining their attention exclusively to cod fishing.

The other fact which strikes me is this: that whatever development there has been, and it has been chiefly, if not entirely, on Prince Edward Island, has come since 1854, and has grown larger and richer under the Reciprocity Treaty. In 1852 the Legislative Council and Assembly of Prince Edward Island, in Colonial Parliament assembled, declared that "the citizens of the United States have an advantage over the subjects of your Majesty on this island, which prevents all successful competition, as our own fish caught on our own shores by strangers, are carried into their ports by themselves, while we are excluded by high protective tariffs." (Confidential Official Correspondence, page 5.)

From 1854, two years only after this declaration, there was a large and prosperous development of the Prince Edward shore fishery. This point has been insisted on, and reiterated over and over again by the British witnesses. And yet we are asked now to pay 15,000,000 dollars for the twelve years' use of the very privileges given by that Treaty under which this prosperity was developed: for, as far as the fishing articles and the fisheries are concerned, the provisions and privileges of the Treaty of 1871 are almost identical with the Treaty of 1854, the Treaty under which this fishery, which now demands 15,000,000 dollars compensation, was, I may almost say, created.

Passing by these topics, however, let me ask you to consider the difference in the character of the testimony upon which the two cases rest. I do not mean to institute any comparison between the veracity of the witnesses, or to imply that one has more than another deviated from the truth. But I can best illustrate what I do mean by asking the same question I did as to the herring fishing.

If you wished to invest in mackerel, would you trust the rambling stories of the most honest of skippers, or the most industrious of boat-fishers, against the experience and the books of men like Procter, Sylvanus Smith, Hall, Myrick, and Pew? Would you feel safe in buying when they refused to buy? Would you be disposed to hold when you saw them selling? And here lies the whole difference between us. Ours is the estimate of the capitalist, theirs the estimate of the labourer. Let me take another illustration. Suppose that, instead of estimating the relative value of these fisheries, you were called on to estimate the relative value of the cotton crops of Georgia and Mississippi. Would it enter your minds to go into remote corners of these great States, and gather together eighty-three small farmers, planting on poor lands, without artificial manure, without capital to hire labour, and draw your inference of production from their experience, although every word of it were true? Would you go to a few great planters and judge of the return of cotton planting from the results of lavish expenditure? No. You would go to Savannah and Mobile, to Charleston and New York, to the offices of the factors, to the counting-houses of the great buyers, to the receipts of the railroads, to the freight lists of the steamers. I may safely say that there is no great industry, the cost and profits of which can be ascertained by such partial, individual inquiry. I am willing to admit perfect honesty of intention on the part of the individuals, but they never can understand how small a portion of a great result is the product of their local contribution; and, just as a small farmer in all sincerity measures the crop of grain or cotton that feeds and clothes the world, from the experience of his few acres, so the boat fishermen of Prince Edward's measures the mackerel catch of the gulf by the contents of his boat, and imagines the few sail he sees in the offing of his harbour to be a huge fleet that is stealing his treasure. I mean no disrespect to very excellent people, but as I have heard their testimony, I could not but recall the humble address of the Legislative Council and House of Assembly of Nova Scotia, "to the Queen's most Excellent Majesty," in March, 1838, in which the fishermen of Prince Edward and the Magdalen Islands are tersely described as "a well-intentioned but secluded and uninformed portion of your Majesty's subjects."

Let me call your attention to another important point of difference between their testimony and ours. Theirs is the affirmative in this contention. They must prove their

allegation. What is their allegation? They allege that the catch of mackerel by American fishermen within the three-mile limit is of more pecuniary value to us than the right to fish in the same limits in United States' waters, with the additional right to send in fish and fish-oil free, is to them. We say, prove it. Now, there can be but two ways of furnishing such proof. Either the British Counsel must produce the evidence of a positive catch, of value sufficient to sustain the allegation, or they must prove such a habit of successful fishing by Americans within the limits, as justifies their inference of a proportion of such value.

They have not attempted to do the first. Nowhere in their evidence have they shown so many barrels of mackerel positively caught within the three-mile limit, and said, "there is the number, and here is the value for which we are entitled to be paid." If all the mackerel that have been sworn to by every witness as caught within the limit—not what he has heard has been caught, or thinks has been caught, but knows from his personal knowledge—be added together, it would not make 100,000 dollars. Their value would be utterly inappreciable, compared with the amount claimed.

They have adopted the other course, and by it they must stand or fall. They have put on the stand (leaving out Newfoundland) about fifty witnesses who swore that they in United States' ships caught mackerel within the limits, and they claim that this fact proves "the habit" of fishing within the limits. In reply, we put on an equal number of witnesses, who prove that they caught habitually good fares in the Bay, without fishing withing the three-mile limit. "Granted," they say, "but this only proves that your fifty witnesses did not fish within the three-mile limit." That is true, but is it not equally true that their testimony only proves that their witnesses, and those alone, fished within the limits, and leaves the question simply, whether they caught enough to justify an award? To go a step further, you must prove "the habit" of United States' fishermen. But how can you prove a habit with equal testimony for and against it? It is exactly like what all lawyers and business men know as proving "commercial usage." In the absence of Statute law, if you wanted to prove "commercial usage" at Amsterdam or New York, as to what days of grace were allowed on commercial paper, what would you do? Examine the merchants of these cities as to "the habit" of commercial people. Now, if fifty merchants swore that one day was allowed, and another fifty swore three days were allowed, you might not know whether it was one or three, but you would know that you had not proved any "habit." Just so, if fifty fishermen of a fishing fleet swore that it was "the habit" of the fleet to fish inshore, and fifty swore that it was "the habit" never to fish inshore, you might not know which to believe; but supposing, what in this case will not be disputed, that the witnesses were of equal veracity, you would certainly know that you had not proved "the habit."

You will see, therefore, that the burden of proof is on our friends. They must prove their catch equal in value to the award they claim. If they cannot do that, and undertake to prove "habit," then they must do—what they have not done—prove it by an overwhelming majority of witnesses. With equal testimony, their proof fails.

And now, with such testimony, let us take up the mackerel fishery. Before you can fix the relative value of American or British interest in this industry, you must ascertain what it is. Before you can say how it is to be divided, you must know what you are to divide. Fortunately, we are agreed that there is but one market for all mackerel, whether caught on the United States' shores or in the Gulf of St. Lawrence, and that is the United States. No statement has gone beyond the estimate of a supply from all the fisheries of more than 400,000 barrels. In fact, that is considerably above the average supply. Then no statement has gone beyond an average of 10 dollars per barrel as the price. That makes 4,000,000 dollars. Next, I think I am safe in saying that the consent of the most competent witnesses has fixed 400 barrels as the limit below which a vessel must not fall in order to make a saving trip. If that be so, the supply of 400,000 barrels represents 1,000 profitable trips. That is, not catches making large amounts of money, but catches that did not lose. What, then, is the average value of a profitable trip? Take the estimates of Mr. Sylvanus Smith, Mr. Procter, and Mr. Pew, and see what profits you can make out of even such a trip. I am taking a large result from these calculations when I take Mr. Smith's estimate of 220 dollars, where the owner runs the vessel, and that will give you from the 400,000 barrels a resulting profit of 220,000 dollars. And in this calculation I have not attempted to separate the Gulf catch from the United States' shore catch, or to determine what portion of the Gulf catch was made within the three-mile limit. Take the largest estimate that has been made by any body; call the Gulf catch a third of the whole; say 75,000 dollars to avoid fractions, and then consider half of that caught within three miles, and you have 36,000 dollars annually, or 432,000 dollars in twelve years, for the privilege of making

which you ask over one million annually, or 15,000,000 dollars for the twelve years. But even with this result, this is an exaggerated, a very exaggerated estimate of the value of the mackerel fishery, because it assumes the highest catch ever known as the average. Now, there are two facts upon which all the testimony agrees. 1. The variable character of the mackerel fishery. 2. The steady diminution of the supply from the Gulf as compared with the supply from the United States' shores. If these be taken into calculation, what margin is left for an award, especially when it is remembered that this award is for twelve years, and, in the opinion of those most experienced, the variation in the mackerel catch passes from its minimum to its maximum every seven years—giving, therefore, in this period but one maximum year in return for the payment. Upon these two facts we can rest. I do not care to go through the testimony that you have had before you. I did make one or two tabular statements, but I do not think it worth while to trouble you with them. The general results you can get at as well as I did. You know the general run of the testimony. You know whether I am saying what is fairly and reasonably accurate. Our contention is that we have proved these points conclusively, and taking them as the basis, there is no margin whatever left for an award on account of profits accruing to the United States from the privilege of inshore fishing.

But there is another fact not stated in any of the evidence, but which is clearly proven by the whole of it, and it is this: The mackerel market is a speculative market; its profit represents simply a commercial venture, and not the profit to the fishermen. In other words, a barrel of mackerel salted, packed and sold, produces a result in which the profit of the fisherman makes but a small part. Take the statement of Mr. Hall, that he purchases regularly from the fishermen of Prince Edward Island their mackerel at 3 dol. 75 c. per bbl. Now, whatever Mr. Hall sells that barrel of mackerel for, above and beyond 3 dol. 75 c., represents capital, labour, skill, with which the fishery, as a fishery, has no concern. Between the fish in the water and the fish in the market, there is as much difference as there is between a pound of cotton in the field and a pound of cotton manufactured; and you would have as much right to estimate the value of a cotton plantation by the value of the cloth and yarn into which its production has been manufactured, as you have to value the fisheries by the value of the manufactured fish which are sold.

Suppose that Mr. Hall, or a combination of Mr. Hall's, should purchase the whole mackerel catch at 3 dol. 75 c., and then hold for such a rise in price as they might force. This speculation might make Mr. Hall a millionaire, or a bankrupt, but would any man in his senses consider the result, be it profit or loss, as representing the value of the mackerel fishery?

So little, indeed, does the value of the fish enter into the market value of the mackerel, that you have this statement from Mr. Pew, the largest and longest established fish merchant on this continent: "No. 1 bay mackerel in the fall were bought by us at 22 dol. 50 c., and piled away over winter, and I think the next May or June they sold down as low as 4 dollars, 5 dollars, and 6 dollars a barrel—the same fish, and I think that shore mackerel, which had sold as high as 24 dollars, were then sold for about the same price." Would the mackerel market of that year have afforded you any fair criterion by which to appraise the mackerel fishery of that year? What interest had the mackerel fishermen in this speculative variation of the market price? And you have the further and uncontradicted testimony of more than one competent witness, that when the mackerel catch of 1870 was, with one exception, the largest ever known, prices were maintained at a higher point than in years of very small catch.

Upon this state of facts, proven by such competent witnesses as Procter, Sylvanus Smith, Myrick, Hall, and Pew, I submit that in estimating the value of the fishery you can only take the value of the raw material—that is, the fish as taken by the fisherman, and by him sold to the merchant; and even then, the price he receives represents, besides the value of the raw material, his time, his labour, his living, and his skill. For throughout this argument, you must not forget that the British Government gives us nothing. For the freedom from duty, and the right to fish in United States' waters, it gives us the privilege only of using our own capital, enterprise, and industry, within certain limits. It cannot secure us, and does not offer to secure us, a single fish. It cannot control the waters or the inhabitants thereof. It cannot guarantee that, in the twelve years of the Treaty, the catch in the Gulf will be even tolerable, and, indeed, for the five years that have already run, it has been pure loss. And yet, the British Case demands that we should pay, not only for the little we do catch, but for all that, under other circumstances, we might catch; and not only that, but that we should pay for all the fish that the British fishermen do not catch.

We contend, then, that we have proved that the mackerel fishery of the Gulf is so variable that it offers no certainty of proof; that the use of the Gulf fishery has diminished steadily; that in the Gulf there is no evidence of any habitual fishing within the three-mile limit; that an equal number of experienced and competent fishermen prove that they do not fish at all inside the limits, and that the development of the United States' coast fishery has offered, and is offering, a more profitable field for the industry and capital of United States' fishermen, while the supply of fish from the lakes, and the transport of fresh fish far into the interior, are superseding the use of salted mackerel as an article of food; and therefore there is no ground in any advantage offered by the Treaty of 1871 upon which to rest a money award.

We now go further, and maintain that if in this condition of the mackerel fishery, you can find any basis for such award, then the advantages offered to the subjects of Her Britannic Majesty by the United States in the same Treaty are a complete offset.

These advantages consist, first, in the right to share the shore fisheries of the United States. It will not do to assert, as the British Case does, that "their modes of fishing for menhaden and other bait are, furthermore, such as to exclude strangers from participating in them, without exceeding the terms of the Treaty; and even without this difficulty, it must be apparent that such extensive native enterprise would bar competition, and suffice to ensure the virtual exclusion of foreigners." (Page 29.)

These, as they stand, are mere assertions, unsupported by any proof. The Treaty provision is the highest law of the land, and no local legislation can prevent the exercise of the privileges it confers. The competition of native enterprise is just what the United States' fishermen meet in British waters, and that the native enterprise is more extensive on the United States' shores, only proves that there is an industry which better rewards the enterprise. It is like all Treaty privileges—one, the use of which depends upon those who take it, and if, when given and taken in exchange, the parties taking do not choose to use it, this refusal cannot deprive it of its value.

2. The second advantage given to Her Britannic Majesty's subjects is the right to export into the United States fish and fish oil, free of duty. The estimate which we have submitted as to the value of this privilege is that it is worth about 350,000 dollars annually.

This has not been denied, but I am concerned with the principle, not the amount. To this offset the British Counsel object, upon the ground that the duty taken off the British producer reduces the price to the American consumer, and is, therefore, a benefit to the latter to the same extent, for, if imposed, the consumer would have to pay. Into the politico-economical argument I shall not enter. You have heard enough of it in the cross-examinations, where Counsel and witnesses gave you their opinions; and our view of the case has been placed before you with great clearness and force by the learned Counsel who preceded me. Upon that question I have but two remarks to make, and I do not think either can be controverted:—

1. If it be assumed, as a general principle, that the consumer pays the duty, it is equally true that he does not pay the whole of it. For to assume any such position would be to strike out all possibility of profit. Take an illustration: A merchant imports 1,000 yards of broadcloth, which, adding all costs and duties, he can sell at a profit at 6 dollars a yard. Now add a duty of 2 dollars a yard. He cannot sell his customer at 8 dollars a yard; he must divide the rise in price, and while he adds the duty, he must diminish the profit. Except in case of articles of luxury, such as rare books, jewels, costly wines, scientific instruments, works of art, the increase of duty cannot, and never has been, imposed entirely upon the consumer.

2. If this be true, then you must ascertain what is the proportion of increase in price of mackerel, consequent upon the duty which is paid by the consumer, before you can say what he, the consumer, gains by the removal. There has been no attempt to do this on the part of Counsel. Our most experienced witnesses testify that the additional duty of 2 dollars would raise the price of mackerel about 50 cents a barrel, which would leave 1 dol. 50 c. to be paid by the producer. I do not undertake to say whether this is right or wrong, for I am discussing the principle, not the amount. The question is an insoluble one. You have been told by competent witnesses, and after a fortnight's preparation for rebuttal they have not been contradicted, that the mackerel market is a speculative one; that in one year the speculative price has varied from 22 dollars to 4 dollars, while for ten years the price to the daily consumer has scarcely varied at all; that the price depends much upon the catch, and yet, that in the year of the largest catch, the price has not gone down; and that, being food for poor people, there is a price which, when reached, with duty or without duty, the consumption is

immediately reduced; and, added to all this, that the competition of fresh fish is fast driving it out of use. With all these conditions to be ascertained first, who can ever say what proportion of duty is paid by the producer, and what by the consumer, or if any is paid by the latter?

I do not believe it is possible to do it, but if it were possible to do it, you cannot make it an offset. If you undertake to make an offset of it, let us know what it is. We state our account. We take this statement, and we say, "In the year 1874 the duty remitted was 355,972 dollars." Now what are you going to set off against that?—an opinion, a theory, a belief, a speculation to weigh it down with? If you are going to set off dollars against that, tell us how many dollars, in 1874, you are going to set off against that. How are you going to find out? How can you ever tell us? But if the gentlemen's theory is right, they have not converted it into a practical theory that you can apply. If they will undertake to tell us, "In 1874 and '75, we will show you a reduction of price in mackerel to a certain number of consumers, to the amount of 200,000 dollars or 250,000 dollars," strike the balance. But you cannot strike the balance with an opinion. Before they can make this claim they must submit that statement to us. But I do not intend to dwell upon that, for this reason. The principle that I hold ought to be applied to the solution of this question, is this: that it is one with which, under the Treaty, you have nothing on earth to do. If our friends on the other side could show dollar for dollar that every dollar of the 355,000 dollars remitted by the renewal of the duty was 355,000 dollars to the benefit of the American consumers, you could not reckon it.

Now, let us look at the Treaty:—

"ARTICLE XXII.—Inasmuch as it is asserted by the Government of Her Britannic Majesty that the privileges accorded *to the citizens of the United States, under Article XVIII* of this Treaty are of greater value than those accorded by Articles XIX and XXI of this Treaty to the subjects of Her Britannic Majesty, and this assertion is not admitted by the Government of the United States, it is further agreed that Commissioners shall be appointed to determine, having regard to the privileges accorded by the United States to the subjects of Her Britannic Majesty, as stated in Articles XIX and XXI of this Treaty, the amount of any compensation which, in their opinion, ought to be paid by the Government of Her Britannic Majesty *in return for the privileges accorded to the citizens of the United States under Article XVIII.*"

Now, under this Treaty there stands before you to-day a balance, on one arm of which hangs the XVIIIth Article of the Treaty of 1871, and on the other the XIXth and XXIst Articles. You cannot add to either scale one scruple, one pennyweight, which the Treaty has not put there. You cannot transfer weights from one to the other. You can only look at the index and see whether the register shows that one is heavier than the other, and how much heavier. What are the advantages conferred by the XVIIIth Article of the Treaty of 1871 on the citizens of the United States?

"It is agreed by the High Contracting Parties, that in addition to the liberty secured to the United States' fishermen by the Convention between Great Britain and the United States, signed at London on the 20th day of October, 1818, of taking, curing, and drying fish on certain coasts of the British North American Colonies therein defined, the inhabitants of the United States shall have, in common with the subjects of Her Britannic Majesty, the liberty for the term of years mentioned in Article XXXIII of this Treaty to take fish of every kind except shell-fish, on the sea coasts and shores, and in the bays, harbours, and creeks of the Provinces of Quebec, Nova Scotia, and New Brunswick, and the Colony of Prince Edward's Island and of the several islands thereunto adjacent, without being restricted to any distance from the shore, with permission to land upon the said coasts and shores, and islands, and also upon the Magdalen Islands, for the purpose of drying their nets and curing their fish."

That is the only advantage which is given to us by the XVIIIth Article of the Treaty, and it is the only advantage so given to us the value of which you have any right to estimate. I am perfectly willing to admit a set-off of this kind, which is provided for apparently. It is agreed in Article XXI that for the term of years mentioned in Article XXXIII of this Treaty, fish-oil, and fish of all kinds (except fish of the inland lakes and of the rivers falling into them, and except fish preserved in oil), being the produce of the fisheries of the United States or of the Dominion of Canada or of Prince Edward Island, shall be admitted into each country respectively free of duty.

Now, if against the 350,000 dollars of duty remitted upon fish and fish-oil imported from the Dominion into the United States, you can set off any duty on fish and fish-oil imported from the United States into Canada, you will have the right to do it; but that is the extreme limit to which, under the words of that Treaty, you have a right to go. It is nothing whatever to you whether the advantage to us is great or small of the remission of that duty. It is a positive advantage to the citizens of the Dominion; it is

given to them as an advantage, and in return for it they have given us a right to do one thing and nothing else, and under that Treaty, you have no right to value any other advantage against us.

I have now stated as concisely as I have been able, the scope of our argument—the principles which we think ought to be applied to the solution of this question. As to the facts, you will judge them by the impression the witnesses have made upon yourselves, and not by any representations of the impressions they have made upon us. And we fully and gratefully recognise that you have followed the testimony with patient and intelligent attention.

It seems to me (and this I would say rather to our friends on the other side than to you) that at the end of this long investigation, the true character of the case is not difficult to see. For a century the relations of the two countries on this question have been steadily improving. We have passed from the jealous and restrictive policy of the Convention of 1818 to the free and liberal system of the Treaty of 1854, and with good sense and good temper it is impossible that we should ever go backward. The old feuds and bitternesses that sprang from the Revolution have long since died out between the two great nations, and in fact, for Great Britain, the original party in these negotiations, has been substituted a nation of neighbours and kinsmen, a nation working with us in the wise and prosperous government of this vast Continent, which is our joint possession; a nation, I may add, without presumption or offence, whose existence and whose growth is one of the direct consequences of our own creation, and whose future prosperity is bound up with our own. In the Treaty of 1871 we have reached a settlement which it depends upon your decision to make the foundation of a firm and lasting union. Putting aside for the moment the technical pleadings and testimony, what is the complaint and claim of the Dominion? It is that where they have made of the fishery a common property, opened, what they consider a valuable industry to the free use of both countries, they are not met in the same spirit, and other industries, to them of equal or greater value, are not opened by us with the same friendly liberality? I can find no answer to this complaint, no reply to this demand, but that furnished by the British case, your own claim to receive a money compensation in the place of what you think we ought to have given. If a money compensation is recompense—if these unequal advantages, as you call them, can be equalised by a money payment, carefully, closely, but adequately estimated—then we have bought the right to the inshore fisheries, and we can do what we will with our own. Then we owe no obligation to liberality of sentiment or community of interest; then we are bound to no moderation in the use of our privilege, and if purse-seining and trawling and gurry poison and eager competition, destroy your fishing, as you say they will, we have paid the damages beforehand; and when at the end of twelve years we count the cost and find that we have paid exorbitantly for that which was profitless, do you think we will be ready to renew the trade, and where and how will we recover the loss?

No. I believe that this Treaty as it stands executed to-day, interpreted in the broad and liberal spirit in which it was conceived, is, whether you regard the interests of the Maritime Provinces or the wider interests of the whole Dominion, a greater advantage in the present and a larger promise in the future than any money award which may belittle the large liberality of its provisions. As it stands, it means certain progress. After the thorough investigation which these interests have now for the first time received, a few years, a few months of kindly feeling and common interest will supply all its deficiencies and correct all its imperfections.

And, therefore, do I most sincerely hope that your decision will leave it so, free to do its own good work, and then we who have striven together, not, I am glad to say, either unkindly or ungenerously, to reach some just conclusion, will find in the future which that Treaty contains the wisest solution, and we shall live to see all possible differences which may have disturbed the natural relations of the two countries, not remotely, but in the to-morrow of living history, not metaphorically but literally, "in the deep bosom of the ocean buried."

Closing Argument of Hon. Richard H. Dana, Jun., on behalf of the United States.

Friday, November 9th, 1877.

May it please your Excellency and your Honours—

Certainly, in the discharge of our respective duties on this high occasion, we are met under most favourable auspices. Our tribunal is one of our own selection. The two parties to the question (Great Britain and the United States of America) have each chosen its Representative upon the Board; and as to the President and Umpire of the tribunal, while the Treaty obliged us, by reason of the lapse of time, to refer the appointment to the Representative of a foreign Power at London, yet it is well known that the appointment was made in conformity with the expressed wish of those Governments, who found for the head of this Court one with character so elevated and accomplishments so rare that they had no difficulty in agreeing upon him themselves.

We have been fortunate, Gentlemen of the Commission, that no misfortune, no serious accident, in the long period of three months, while so many gentlemen have been together, has fallen upon us. The shadow of death has not crossed our path, nor that of any of ours at a distance, nor even has sickness visited us in any perilous manner. We have been sustained all the while by the extreme hospitality and kindness of the people of this city, who have done everything to make our stay here as agreeable as possible, and to breathe away any feeling we might have had at the beginning, lest there should be some antagonism which would be felt beyond the legitimate contests of the profession. The kindest feeling and harmony prevails among us all. Your Legislature of this Province has set apart for our use this beautiful hall; and while my friend and associate, Mr. Trescot, saw in the presence of the portrait of His Majesty which looks down upon us from the walls an encouragement for the settlement of the matter confided to us, because that King supposed it settled more than 100 years ago, I confess that the presence of that figure has been to me throughout most interesting and even pathetic. It was the year he ascended the throne that the French were finally driven from North America and that it all became *British* America, from the Southern Coast of Georgia up to the North Pole, and all these islands and peninsulas which form the Gulf of St. Lawrence passed under his sceptre. And what a spectacle for him to look down upon now after 100 years! A quiet assembly of gentlemen, without parade, without an armed soldier at the gate, settling the vexed question of the fisheries, which in former times and under other auspices would have been cause enough for war. And settling them between whom? Between his old thirteen Colonies—now become a Republic of forty millions of people, bounded by seas and zones—and his own Empire, its sceptre still held in his own line by the daughter of his own son, more extended and counting an immensely larger population than when he left it; showing us not only the magnitude and increase of the Republic, but the stability, the security, and the dignity of the British Crown. Yes, Gentlemen of the Commission, when he ascended the throne, and, before that, when his grandfather, whose portrait also adorns these walls, sat upon the throne of England, this whole region was a field of contest between France and Great Britain. It was not then British North America. Which power should hold it, with these islands and peninsulas and these fisheries adjacent to and about it, depended upon the issue of war, and of wars one after another. But Great Britain, holding certain possessions here, claimed the fisheries, and made large claims, according to the spirit of that day, covering the banks of Newfoundland, and the other banks, and the whole deep-sea fishery out of sight of land, and also up to the very shores within hailing distance of them, without any regard to a geographical limit of three miles, which is a very modern invention. That contest was waged, and the rights in these islands and these fisheries settled, by the united arms of Great Britain and of New England, and largely, most largely, of Massachusetts. Why, Louisburg, on Cape Breton, held by the French, was supposed to be the most important and commanding station, and to have more influence than any other upon the destinies of this part of the country. Its reduction was ordered by the Legislature of Massachusetts. And, Mr. President, it was a force of between 3,000 and 4,000 Massachusetts men, under Pepperell, and a few hundreds from the other Colonies, with 100 vessels, that sailed to Louisburg, invested and took it for the British Crown, in trust for Great Britain and her Colonies. Gridley, who laid out the fortifications at Bunker Hill, and Prescott, who defended them, were in the expedition against Louisburg, and the artillery was commanded by Dwight, a maternal ancestor of our friend Judge Foster. And whenever there was war between France and England for the possession of this continent or any part of it, or these

islands and these fisheries, the militia and volunteers of Massachusetts fought side by side with the regulars of Great Britain. They fought under Wolfe at Quebec, under Amherst and Lord Howe at Ticonderoga; and, even at the confluence of the Alleghany and Monongahela, Washington saved the remnant of Braddock's command. We followed the British arms wherever they sought the French arms. The soldiers of Massachusetts, accompanying the British regulars to the sickly sugar islands of the West Indies, lay side by side on cots in the same fever hospitals and were buried in the same graves. And if any of you shall visit the old country again, and your footsteps lead you to Westminster Abbey, you will find there a monument to Lord Howe, who fell at Ticonderoga, erected in his honour by the Province of Massachusetts; and there let it stand, an emblem of the fraternity and unity of the olden times, and a proof that it was together by joint arms and joint enterprise, blood, and treasure that all these Provinces, and all the rights appertaining and connected therewith, were secured to the Crown and the Colonies. Yes, Gentlemen of the Commission, every one of the Charters of Massachusetts gave her a right to fish in these north-western seas; and that, you will observe, was irrespective of her geographical position. None of them washed her shores, but they were the fruits of the common toil, treasure, and blood of the Colonies and of the Crown, and they were always conceded to the Colonies by the Crown. The last Massachusetts Charter granted by the Crown is in these words: it assures to Massachusetts "the right to use and enjoy the trade of fishing on the coast of New England, and *all the seas thereto adjoining, or arms of said seas,* where they have been wont to fish." The test was the habit of the people; "where they had," in the good old Saxon English, "been *wont* to fish." It did not depend on geographical lines. They had no idea then of excluding the Colonies from three miles of the shore, and giving them a general right on the seas, but whatever right Great Britain had here she shared with the Colonies to the last.

I may as well present here, Gentlemen of the Commission, as at any other time, my view respecting this subject of the right of deep-sea fishery. The right to fish in the sea is in its nature not real, as the common law has it, nor immovable, as termed by the civil law, but personal. It is a liberty. It is a franchise, or a faculty. It is not property pertaining to or connected with the land. It is incorporeal; it is aboriginal. The right of fishing, dropping line or net into the sea, to draw from it the means of sustenance, is as old as the human race, and the limits that have been set about it have been set about it in recent and modern times, and wherever the fisherman is excluded, a reason for excluding him should always be given. I speak of the free swimming fish of the ocean, followed by the fishermen through the deep sea, not of the crustaceous animals or any of those that connect themselves with the soil under the sea, or adjacent to the sea, nor do I speak of any fishing which requires possession of the land or any touching or troubling the bottom of the sea—I speak of the deep-sea fishermen who sail over the high seas pursuing the free-swimming fish of the high seas. Against them, it is a question not of admission, but of exclusion. These fish are not property. Nobody owns them. They come we know not whence, and go we know not whither. The men of science have been before us, and fishermen have been before us, and they do not agree about it. Professor Baird, in a very striking passage, gave it as his opinion that these fish retire in the winter to the deep sea, or to the deep mud beneath the sea, and are hidden there, and in the spring they invade this great continent as an army, the left wing foremost, touching the Southern States first, and last the northern parts of the British Colonies. Others think they go to the south and come back in lines and invade this country; but at all events, they are more like those birds of prey and game which come to the north in the summer, and appear again and darken the sky as they go to the south for the winter. They are no man's property; they belong, by right of nature, to those who take them, and every man may take them who can. It is a totally distinct question whether, in taking them, he is trespassing upon private property, the land or park of any individual holder. "The final cause," as the philosophers say, "of the existence of the sea-fish is that they shall be caught by man, and made an article of food by man." It is an innocent use of the high seas, that use which I have described. More than that, it is a meritorious use. The fisherman who drops his line into the sea creates a value for the use of mankind, and therefore his work is meritorious. It is, in the words of Burke, "wealth drawn from the sea," but it was not wealth until it is drawn from the sea.

Now, these fishermen should not be excluded except from necessity, some kind of necessity, and I am willing to put at stake whatever little reputation I may have acquaintance with the jurisprudence of nations (and the less reputation, the more important to me) to maintain this proposition, that *the deep-sea fisherman, pursuing the free-swimming fish of the ocean with his net, or his leaded line, not touching shores or*

troubling the bottom of the sea, is no trespasser, though he approach within three miles of a coast, by any established, recognized law of all nations. It may possibly cross the minds of some of this Tribunal, that perhaps that is not of very great importance to us here, but from the reflection I have been able to give to this case (and I have had time enough, surely) it seems to me that it is. I wish it to be fully understood, what is the nature of that exclusive right for the withdrawing of which we are asked to make a money compensation? What is its nature, its history, and its object? The Treaty between Great Britain and France of 1839, which provides for a right of exclusive fishery by the British on the British side of the channel, and by the French on the French side of the channel, each of three miles, and measures the bays by a ten-mile line, is entirely a matter of contract between the two nations. The Treaty begins by saying, not that each nation acknowledges in the other the right of exclusive fishery within three miles of the coast; nothing of the kind. It begins by saying, "It is *agreed between the two nations* that Great Britain shall have exclusive fishery within three miles of the British coast, and that the French shall have exclusive fishery within three miles of the French coast," and then it is further agreed that the bays shall be measured by a ten-mile line. All arbitrary alike, all resting on agreement alike, without one word which indicates that the law of nations any more gives an exclusive right to these fisheries for three miles from the coasts, than it does to measure the bays by ten miles. In the time of Queen Elizabeth this matter seemed to be pretty well understood in England. Her Majesty sent a Commission, an embassy to Denmark, on the subject of adjusting the relations between the two countries, and among the instructions given the Ambassadors were these:—

"And you shall further declare that the Lawe of Nations alloweth of fishing in the sea everywhere; as also of using ports and coasts of princes in amitie for traffique and avoidinge danger of tempests; so that if our men be barred thereof, it should be by some contract. We acknowledge none of that nature; but rather, of conformity with the Lawe of Nations in these respects, as declaring the same for the removing of all clayme and doubt; so that it is manifest, by denying of this fishing, and much more, for spoyling our subjects for this respect, we have been injured against the Lawe of Nations, expresslie declared by contract as in the aforesaid Treaties, and *the King's* own letters of '85.

"And for the asking of licence, (your Honours will be pleased to observe that the Danish statute required the English to pay licences for fishing in certain parts of said sea close to the shore), if our predecessors yelded thereunto, it was more than by Lawe of Nations was due; yelded, perhaps, upon some special consideration, yet growing out of use, it remained due by the Lawe of Nations, what was otherwise due before all contract; wherefore, by omitting licence, it cannot be concluded, in any case, that the right of fishing, due by the Lawe of Nations faileth; but rather that the omitting to require licence might be contrarie to the contract, yf any such had been in force.

"Sometime, in speech, *Denmark* claymeth propertie in that Sea, as lying between *Norway* and *Island*,—both sides in the dominions of oure loving brother *the King*, supposing thereby that for the propertie of a whole sea, it is sufficient to have the banks on both sides, as in rivers. Whereunto you may answere, that though propertie of sea, in some small distance from the coast, maie yeild some oversight and jurisdiction, yet use not princes to forbid passage or fishing, as is well seen in our seas of England."

Though possession of the land close to the sea, says this remarkable letter of instructions, "may yield some oversight and jurisdiction, yet used not Princes to forbid passage or fishing, as is seen by our law of England." There is much more to the same effect. So that whatever claim of jurisdiction over the sea a neighbouring nation might make, whatever claim to property in the soil under the sea she might make, it was not the usage of Princes to forbid passage, innocent passage, or the fishing and catching of the free-swimming fish, wherever they might be upon the high seas.

I wish particularly to impress upon your Honors that all the North British Colonies were in possession and enjoyment of the liberty of fishing over all the North Western Atlantic, its gulfs and bays. There is no word indicating the existence of a three mile line of exclusion, or of an attaching the right of fishing to the geographical position of the Colony. No, gentlemen, the Massachusetts fisherman who dropped his leaded line by the side of the steep coast of Labrador, or within hail of the shore of the Magdalen Islands, did it by precisely the same right that he fished in Massachusetts Bay, off Cape Cod or Cape Ann. Nobody knew any difference in the foundation or the test of such rights in those days. It was a common heritage, not dependent upon political geography. As I have said, it was conquered by the common toil, blood, and treasure, and held as a common right and possession. "Be it so," your Honours may say, "but could not Great Britain take it from her Colonies?" Well, the greatest philosopher, who gave ever his life to statesmanship—Edmund Burke—said, "that is a question which can better be discussed in the schools, where alone it can be discussed with safety." He compared it with the question of the right to shear wolves. He was

not disposed, perhaps, to deny the right in the abstract, but as a servant of the Crown he could not advise the Crown to try that kind of experiment. I recollect that when, before our civil war, an ardent and enthusiastic admirer of slavery said on the floor of Congress that capital ought to own labour, and that we had made a great mistake in New England that the capitalist did not own the men who worked in the factories and the men who followed the sea, Mr. Quincy replied by an anecdote respecting the bounty which the State of Maine gave for every wolf's head. A man was asked why he did not raise a flock of wolves for the bounty. He said he was afraid it would turn out to be a hard flock to tend. And the wisest men in Great Britain—and I can say this in the presence of gentlemen who are almost all British subjects now, without fear of giving offence—the wisest men of Great Britain thought it was an attempt which had better not be made. But the Act of March 1775, urged by the obstinacy of George III and his adherence to worn-out traditions, was passed. After a conflict with the Colonies on the subject of the Stamp Act and the Tea Tax, that fatal Act was passed, aimed at home rule, self-government, and the trade of the New England people, or rather, I should say, in the first instance, of Massachusetts, because it was Massachusetts over which the contest was waged during the early part of our struggle, and attempting to undo all we had been doing for 150 years; to revolutionize our entire political system, and instead of leaving us what we had enjoyed for that time, home rule, to substitute a government at St. James' or St. Stephens'. Among other things, it attempted to deprive us of our right in the fisheries. The Statute acknowledged the existence of the right, but Massachusetts was to be deprived of her right by the Act of Parliament. Then came the debate, fiercer than ever, "Can Parliament take from us this right?" Well, the claim rested upon the assumption that all the grants the Charters vested in us were held at the discretion of Parliament, and if Parliament could take away our fisheries she could take away our landmarks, she could take Boston and Salem, which had been granted to us under the same Charter that the fisheries had been granted: and when that Act was passed, Burke and Fox, and Sheridan, and Barré, and others, our friends in the British Parliament, called it a simple provocation to rebellion. Burke said, "It is a great Penal Bill which passed sentence on the trade and sustenance of America." New England refused obedience. The other Colonies assisted her, and we always treated it as void. Then came the war, and what was the effect of that on our title? Why, may it please you, gentlemen, I do not deny that war has an effect, but not the kind of effect which has been contended for by the British Government and by counsel. I agree that war puts at hazard, not only every right of a nation, but the existence of the nation. There are boundary lines before war, and they are good against neutrals, and good between the belligerents, unless something else happens; but the boundary lines and everything they inclose are put at stake by the war. If one party entirely conquers the other, it has a right to decide upon the future existence of the other nation, and all its rights; and when our ancestors pledged their "lives, fortunes, and sacred honour" to maintain all their rights, including this right against the demands of Parliament, I agree that they put this right, as they put their lives, at hazard; but, fortunately for us, the war did not turn out a conquest of any of our rights. At the close of the war the Treaty of 1783 was made. Now, at the time when the Treaty of 1783 was made, Great Britain did not claim to have conquered America, or to have taken from us by military force any of our rights, and the consequence was that in framing the Treaty of 1783, while we altered by common consent some of the boundary lines, none by right of conquest, it was declared that the people of the United States shall "continue to enjoy unmolested the right to take fish of every kind on the British banks, and all other banks of Newfoundland; also in the Gulf of St. Lawrence, and all other places in the sea where the inhabitants of both countries used at any time heretofore to fish." What could be stronger than that? It was an acknowledgment of a continued right possessed long before. And if any question of its construction arose, it appealed to what they had been heretofore accustomed to do, "where the inhabitants of both countries used at any time heretofore to fish."

How was it construed by British statesmen? Is there any doubt about it? I take it my brethren of the Colonial Bar will consider Lord Loughborough good authority. He said these words in the House of Lords respecting the fishery clause of the Treaty: "*The fisheries were not conceded, but recognized as a right inherent in the Americans, which, though no longer British subjects, they are to continue to enjoy unmolested.*" The same thing, substantially, was said by Lord North, who had been, we are told now by his biographers, the unwilling, but certainly the subservient instrument in the hands of his King for trying to deprive us of this, as well as our other rights. We then did continue to enjoy them, as we had from 1620 down. We had as much right to them as the

British Crown, because it was our bow and our spear that helped to conquer them. Then came the war of 1812, and we had enjoyed the fisheries freely, without geographical limit, down to that time. The war of 1812 certainly did not result in the conquest of America, either maritime or upon the land. It was fought out in a manly way between two strong people without any very decided result; but after the war in 1814, about the time we were making the Treaty of Peace at Ghent, that memorable correspondence took place between John Quincy Adams and Earl Bathurst, in which Earl Bathurst took this extraordinary position, that a war terminates all Treaties. He took that position without limitation. Mr. Adams said, "Then it puts an end to our independence." "No," was Earl Bathurst's answer, "your independence does not rest upon the Treaty. The Treaty acknowledged your independence as a fact, and that fact continues. No Treaty now can take it from you; no Treaty is needed to secure it to you, but so far as it was a Treaty—I mean so far as any right rested upon it as a Treaty gift, or Treaty stipulation—the war put an end to the Treaty." Mr. Adams' answer was twofold, first, he denied the position. He took the ground, which statesmen and jurists take to-day, that a war does not, *ipso facto*, terminate a Treaty. It depends upon the results of the war; it depends upon the nature of the Treaty; it depends upon its language and terms. Each case is *sui generis*. Whether any war—I mean the entering into war, the fact that the two nations are at war—terminates a Treaty, depends upon these questions. The Treaty is put at hazard, like all other things. The termination of the war may terminate all Treaties by a new Treaty, or by conquest; but the fact that there is war, which is the only proposition, does not terminate any Treaty necessarily. Then Mr. Adams farther says, Our right does not rest upon the Treaty. The Treaty of 1783 did not give us this right; we always had it. We continued to enjoy these rights without geographical limitation, and it was conceded that we did so by the Treaty of 1783, and we no more depend upon a Treaty gift of 1783 for the right to these fisheries than we depend upon it for the enjoyment of our right to our territory or our independence. Of course the gentlemen of the Commission are familiar with that correspondence, and I will go no farther with it. The whole subject is followed up with a great deal of ability in that remarkable book which has been lying upon the table, I mean John Quincy Adams' book on "The Fisheries and the Mississippi," in connection with the Treaty of Ghent, and his reply to Mr. Jonathan Russell.

Well, in 1814, the parties could not agree, and it went on in that way until 1818, and then came a compromise, and nothing but a compromise. The introduction to the Treaty of 1818 says: "Whereas differences have arisen respecting the liberty claimed by the United States and inhabitants thereof to take, dry, and cure fish in certain coasts, harbours, creeks, and bays of His Majesty's dominions in America, it is agreed between the High Contracting Parties"—it is all based upon "differences," and all "agreed." Now, the position of the two parties was this: the people of the United States said, "We own these fisheries just as much to-day as we did the day that we declared war." Great Britain did not declare war, nor did she make a conquest. The declaration of war was from Washington, from the Congress of the United States, and it ended by a Treaty which said nothing about fisheries, leaving us where we were. The ground taken by the United States was that the common right in the fisheries, irrespective of the three-mile limit, or anything else, belonged to us still. Great Britain said, "No, you lost them," not by war, because Earl Bathurst is careful to say that the war did not deprive us of the fisheries, but the war ended the Treaty, and the fisheries were appended solely to the Treaty, and when the Treaty was removed, away went the fisheries. Now, it is a singular thing, in examining this Treaty, to find that there is nothing said about our right to take fish on the banks, in the Gulf of St. Lawrence, and in the deep sea. The Treaty of 1783 referred to that, among other things, and it is well-known that Great Britain claimed more than a jurisdiction over three miles. She claimed general jurisdiction and authority over the high seas, to which she appended no particular limit, and her claim admitted of no limit. You were told by my learned associate, Judge Foster, that in those days they arrested one of our vessels at a distance of sixty miles from the shore, claiming that we were within the King's chambers. Nothing is said in that Treaty upon the subject. It is an implied concession that all those rights belong to the United States, with which England would not undertake after that ever to interfere. And then we stood in this position—that we had used the fisheries, though we did not border upon the seas, from 1620 to 1818, in one and the same manner, under one and the same right, and if the general dominion of the seas was shifted, it was still subject to the American right and liberty to fish.

I shall say nothing in this discussion about the right to land on shores for the

purpose of drying nets and curing fish. That was a very antique idea. It has quite passed out now, fortunately, for these provinces are becoming well settled, and no right ever existed to land and dry fish where a private right is interfered with. There is no evidence to show that, since 1871, we have exercised that right or cared anything about it. It was put in the Treaty to follow the language of the old Treaties, for whatever it might be worth.

Your Honours will also observe that, until 1830, the mackerel fisheries were unknown. There was no fishery but the cod-fishery. The cod-fisheries were all the parties had in mind in making the Treaty of 1818, and to this day, as you have observed from some of the witnesses "fishing," by the common speech of Gloucester fishing, means, *ex vi termini*, cod-fishing. Fishing is one thing, and "mackereling" is another. In Mr. Adams' pamphlet, on the 23rd page, he speaks of "fishery," as synonymous with cod-fishery. In 1818 the question was of the right of England to exclude. Now, for the first time, the doctrine respecting the three-mile line had begun to show itself in international law. Great Britain availed herself of it, contrary to the doctrine stated by Queen Elizabeth—a very wise princess, certainly surrounded by very wise counsellors—availed herself of it to set up a claim to exclude the deep-sea fishermen, though they did not touch the land or disturb the bottom of the sea, for a distance of three miles out. We denied that there was any such right by international law, certainly none by Treaty. But England was a powerful nation. She fought us in 1812 and 1814 with one hand—I acknowledge it, though it may be against the pride of American citizens—while she was fighting nearly all Europe with the other, but she was now at peace. Both nations felt strong; both nations were taking breath after a hard conflict, and it was determined that there should be an adjustment, and there was an adjustment, and it was this: Great Britain tacitly waived all claim to exclude us from any part of the high seas She expressly waived all right to exclude us from the coasts of Labrador, from Mount Joly northward and eastward indefinitely, through those tumbling mountains of ice, where we formerly pursued our gigantic game. She expressly withheld all claim to exclude us from the Magdalen Islands, and from the southern, western, and northern shores of Newfoundland; and, as to all the rest of the Bay of St. Lawrence and the coasts of Nova Scotia and New Brunswick, we agreed to submit to her claim to exclude us. So that it stood thus: that, under that Treaty, and only under that Treaty, we admitted that Great Britain might exclude us, for a distance of three miles, from fishing in all the rest of her possessions in British North America, except those where it was expressly stipulated she should not attempt to do it. So she had a right to exclude us for a distance of three miles from the shores of Cape Breton, Prince Edward Island, Nova Scotia, a portion of Newfoundland and New Brunswick, and what has now become the Province of Quebec, while she could not exclude us from the coast of Labrador, the Magdalen Islands, and the rest of Newfoundland. There was the compromise. We got all that was then thought useful in the times of cod-fishing, with the right to dry nets and cure fish wherever private property was not involved. The Treaty of 1818 lasted until 1854—thirty-six years. So we went on under that compromise, with a portion of our ancient rights secured, and another portion suspended, and nothing more.

Great changes took place in that period. The mackerel fishery rose into importance. Your Honours have had before you the interesting spectacle of an old man who thinks that he was the first who went from Massachusetts into this gulf and fished for mackerel in 1827, or thereabouts. He probably was. But mackerel-fishing did not become a trade or business until considerably after 1830, and the catch of mackerel became important to us as well as to the provinces.

But there were great difficulties attending the exercise of this claim of exclusion, very great difficulties. There always have been, there always must be, and I pray there always shall be such, until there be free fishing, as well as free trade in fish. They put upon the stand Captain Hardinge, of Her Majesty's navy now or formerly, who had taken an active part in superintending these fisheries, and driving off the Americans. We asked him whether the maintenance of this marine police was not expensive. He said that it was expensive in the extreme, that it cost 100,000*l.*—I believe that was the sum named. He did not know the exact amount, but his language was quite strong as to the expensiveness of excluding the Americans from these grounds, of maintaining these cruizers. But it also brought about difficulties between Great Britain and her provinces. The provincial authorities, on the 12th April, 1866, after this time (but they acted throughout with the same purpose, and the same spirit) undertook to say that every bay should be a British private bay which was not more than ten miles in width;

following no pretence of international law, but the special Treaty between Great Britain and France, and afterwards they gave out licences for a nominal sum, as they said, for the purpose of obtaining a recognition of their right. They did not care, they said then, how much the Americans fished within the three miles, but they wished them to pay a "nominal sum for a license," as a recognition of the right. Well, the "nominal sum" was 50 cents a ton; but, by-and-by, the Colonial Parliament thought that nothing would be a "nominal sum" unless it was 1 dollar a ton; and, at last, they considered that the best possible "nominal sum" was 2 dollars a ton.

But Her Majesty's Government took a very different view of that subject, and wherever there has been an attempt to exclude American fishermen from the three-mile line, there has been a burden of expense on Great Britain, a conflict between the Colonial Department at London and the provincial authorities here—Great Britain always taking the side of moderation, and the Provincial Parliaments the side of extreme claim and untiring persecution. Then there was a difficulty in settling the three-mile line. What is three miles? It cannot be measured out as upon the land. It is not staked out or buoyed out. It depends upon the eye-sight and judgment of interested men, acting under every possible disadvantage. A few of the earlier witnesses called by my learned friends for the Crown undertook to say that there was no difficulty in ascertaining the three-mile line, but I happened to know better, and we called other witnesses, and at last nobody pretended that there was not great difficulty. Why, for a person upon a vessel at sea to determine the distance from shore, everything depends upon the height of the land he is looking at. If it is very high, it will seem very much nearer than if it is low and sandy. The state of the atmosphere affects it extremely. A mountain side on the shore may appear so near in the forenoon that you feel that you can almost touch it with your fingers' ends, while in the afternoon it is remote and shadowy, too far altogether for an expedition with an ordinary day's walk to reach it. Now, every honest mariner must admit that there is great difficulty in determining whether a vessel is or is not within three miles of the shore when she is fishing. But there is, further, another difficulty. "Three miles from the shore"—what shore? When the shore is a straight or curved line, it is not difficult to measure it, but the moment you come to bays, gulfs, and harbours, then what is the shore? The headland question then arose, and the provincial officials told us—the provinces by their acts, and the proper officers by their proclamations, and the officers of their cutters, steam or sail—told our fishermen upon their quarter-decks that "the shore" meant a line drawn from headland to headland, and they undertook to draw a line from the North Cape to the East Cape of Prince Edward Island, and to say that "the shore" meant that line, and then they fenced off the Straits of Northumberland; they drew another line from St. George's to the Island of Cape Breton; they drew their headland lines wherever fancy or interest led them. And not only is it true that they drew them at pleasure, but they made a most extreme use of that power. We did not suffer so much from the regular navy, but the provincial officers, wearing for the first time in their lives shoulder-straps, and put in command of a vessel, "dressed in a little brief authority, played such fantastic tricks before high heaven" as might at any moment, but that it was averted by good fortune, have plunged the two countries into war. Why, that conflict between Patillo and Bigelow amused us at the time, but I think your Honours were shocked when you thought that, as Patillo escaped, was pursued, and the shots fired by his pursuers passed through his sail and tore away part of his mast and entered the hull, if they had shed a drop of American blood, it might "the multitudinous seas incarnadine" in war. Why, people do not go to war solely for interest, but for honour, and everyone felt relieved, drew a freer breath, when he learned that no such fatal result followed. None of us would like to take the risk of having an American vessel beyond the three miles, but supposed to be within it, or actually within it, for an innocent purpose, attacked by a British cutter, or attacked because she was within three miles from a headland line, and blood shed in the encounter. Now, Great Britain felt that, and felt it more than the provinces did because she had not the same money interest to blind her to the greatness of the peril.

The results of the seizures were very bad. In the case of the "White Fawn," tried before Judge Hazen at New Brunswick, he says, "This fact has not been accounted for, that so long a time has elapsed from the time of the seizure until the case was brought into Court;" so that, although he discharged the ship as innocent, the crew were dispersed, the voyage was broken up, and yet no answer was made to that pertinent inquiry of his Honour. It was a very common thing to hold vessels seized until it became immaterial to the owners, almost, whether they were finally released or finally convicted. My learned friend, Judge Foster, laid before your Honours a Nova Scotia Statute of 1836,

(I confess I have not read it: I looked for it, but was not able to find it) in which he said there was a provision, that if, in case of capture, an American seaman, fisherman, or master, did not make true answers, he forfeited 100*l.*; that the onus, the burden of proof, to show that the vessel was not subject to capture was upon the owner, not upon the captor; that before the owner could contest the question with the man who seized his vessel, he must file a bond of 60*l.* for costs; he could bring no suit against his captor until one month's notice, giving the captain an opportunity, as it is said, to obtain evidence, but, as a practical lawyer, I should add, giving him also an opportunity to escape and to conceal his property; finding treble costs in case the American was convicted; and also providing that the simple judicial signature, declaring, *ex parte*, that there was probable cause for the seizure, prevented any action or suit whatever.

Now, these were strong penal measures, unknown to anything but criminal law, and even stronger than the laws of war; because if in high war a vessel is seized and released, the owner of the vessel may sue the commander of the cruizer, though he bears the colours of Great Britain or of the United States; he may sue him without giving him any previous notice, without giving any previous bond, and no *ex parte* certificate of probable cause from the Court will prevent the trying of the suit. I know it is true that if the Court which tries the suit decides that there was probable cause, the captain of the cruizer is not to be condemned, but the owner is not barred of the right to arrest and try him before a competent Court. But all these rights were brushed away by the Legislature of Nova Scotia—always supposing that Judge Foster was right in his statement of the character of that law.

Nor is that all, by any means. There was a further difficulty. No one could know what would become of us when we got into court. There was a conflict of legal decisions. One vessel might go free, when under the same circumstances another vessel might be condemned. The Treaty of 1818 did not allow us to go within three miles of certain shores, except for the purpose of shelter, and getting wood or supplies, and prohibited fishing within three miles. The Act of the 59th of George III was the Act intended to execute that Treaty. That Act provided that, "if any such foreign vessel is found fishing, or preparing to fish, or to have been fishing, in British waters, within three miles of the coast, such vessel, her tackle, &c., and cargo shall be forfeited." That was the language of the Statute of George III, and of the Dominion statutes. It is not plain enough,—it seems to me, it has seemed so to all Americans, I think,—that that statute was aimed, as the Treaty was, against fishing within three miles? But in one court the learned Judge who presides over it, a man of learning and ability, recognized in America and in the provinces, therefore giving his decision the greater weight, decided two points against us We had supposed that the statute meant "for fishing within three miles, you will be condemned," and in order that it should not be required that a man should be caught in the very act of drawing up fish (which would be almost impossible), it was explained by saying "or caught having fished or preparing to fish," meaning such acts as heaving his vessel to, preparing his lines, throwing them out, and the like. The learned Court decided, first, that buying bait, and buying it on shore, was "preparing to fish," within the meaning of the statute. If an American skipper went into a shop, leaned over the counter, and bargained with a man who had bait to sell on shore, he was "preparing to fish," and, as he certainly was within three miles of the shore, his preparation was made within three miles; and the judge treated it as immaterial whether he intended to violate the provision of the Treaty by fishing within three miles of the shore, so long as he was preparing, within three miles, to fish anywhere in the deep sea, on the banks of Newfoundland, or in American waters. Then came the decision of another learned judge in New Brunswick (they were both in 1871), who said that buying bait was not the "preparing to fish" at which the statute was aimed; and further, that it was essential to prove that the fishing intended was to be within three miles of the shore. There was a conflict of decisions, and we did not know where we stood.

Another effect of this restriction was, that it brought down upon the Dominion fishermen the statute of the United States, laying a duty of two dollars a barrel upon every barrel of mackerel, and one dollar a barrel upon every barrel of herring. That statute was,—and I shall presently have the honour to cite the evidence upon that point, that I may not be supposed to rely upon assertion—that statute was, in substance, prohibitory. The result was, that it killed all the vessel fishing of these provinces. They had no longer seamen who went to sea in ships. A shore fishery sprung up for the use of the people themselves, and was gradually somewhat extended—I mean a boat fishery around the shores. But, as I shall cite authorities to show, as I hope that your Honours already believe, that the first effect was to draw away from these provinces the

enterprising and skilled fishermen, who had fished in their vessels and sent their catches to the American market. It drew them away to the American vessels, where they were able, as members of American crews, to take their fish into the market free of duty.

There was, at the same time, a desire growing on both sides for reciprocity of trade, and it became apparent that there could be no peace between these countries until this attempt at exclusion by imaginary lines, always to be matters of dispute, was given up—until we came back to our ancient rights and position. It was more expensive to Great Britain than to us. It made more disturbance in the relations between Great Britain and her provinces than it did between Great Britain and ourselves; but it put every man's life in peril; it put the results of every man's labour in peril; and for what? For the imaginary right to exclude a deep-sea fisherman from dropping his hook or his net into the water for the free-swimming fish, that have no habitat, that are the property of nobody, but which are created to be caught by fishermen, *prædæ humani generis.* So at last it was determined to provide a Treaty by which all this matter should be set aside, and we should fall back upon our own early condition.

Now, your Honours will allow me a word, and I hope you will not think it out of place—it is an interesting subject; I do not think it is quite out of place, and I will not be long upon it—on the nature of this right which England claimed in 1818, to exclude us from the three miles, by virtue of some supposed principle of international law. I have stated my opinion upon it, but your Honours will be pleased to observe, that on that, as upon the subject of headlands, an essential part of it, without which it can never be put in execution, there is no fixed international law. I have taken pains to study the subject; have examined it carefully since I came here, and I think I have examined most of the authorities. I do not find one who pledges himself to the three mile line. It is always "three miles," or "the cannon shot." Now, "the cannon shot" is the more scientific mode of propounding the question, because it was the length of the arm of the nation bordering upon the sea, and she could exercise her right so far as the length of her arm could be extended. That was the cannon shot, and that, at that time, was about three miles. It is now many more miles. We soon began to find out that it would not do to rest it upon the cannon shot. It is best to have something certain. But international writers have arrived at no further stage than this: to say that it is "three miles or the cannon shot." And upon the question, "How is the three-mile line to be determined," we find everything utterly afloat and undecided? My purpose in making these remarks is, in part, to show your Honours what a precarious position a State holds which undertakes to set up this right of exclusion, and to put it in execution. The international law makes no attempt to define what is "coast." We know well enough what a straight coast is and what a curved coast is, but the moment the jurists come to bays, harbours, gulfs, and seas, they are utterly afloat—as much so as the sea-weed that is swimming up and down the channels. They make no attempt to define it, either by distance or by political or natural geography. They say at once: "It is difficult, where there are seas and bays." Names will not help us. The Bay of Bengal is not national property; it is not the King's chamber; nor is the Bay of Biscay, nor the Gulf of St. Lawrence, nor the Gulf of Mexico. An inlet of the sea may be called a "bay," and it may be two miles wide at its entrance; or it may be called a "bay," and it may take a month's passage in an old-fashioned sailing vessel to sail from one headland to the other. What is to be done about it? If there is to be a three-mile line from the coast, the natural result is, that the three-mile line should follow the bays. The result then would be that a bay more than six miles wide was an international bay; one six miles wide, or less, was a territorial bay. That is the natural result. Well, nations do not seem to have been contented with this. France has made a Treaty with England saying that, as between them, anything less than ten miles wide shall be a territorial bay.

The difficulties on that subject are inherent, and, to my mind, they are insuperable. England claimed to exclude us from fishing in the Bay of Fundy, and it was left to referees, of whom Mr. Joshua Bates was umpire, and they decided that the Bay of Fundy was not a territorial bay of Great Britain, but a part of the high seas. This decision was put partly upon its width, but the real ground was, that one of the assumed headlands belonged to the United States, and it was necessary to pass the headland in order to get to one of the ports of the United States. For these special reasons, the Bay of Fundy, whatever its width, was held to be a public and international bay.

Then look at Bristol Channel. That question came up in the case of *Queen* v. *Cunningham.*—Bell's Cr. Cas. p. 72. A crime was committed by Cunningham in

the Bristol Channel more than three miles from the shore of Glamorganshire on the north side, and more than three miles from Devonshire and Somersetshire on the south side. Cunningham was indicted for a crime committed in Glamorganshire. The place where the vessel lay was high up in the channel, somewhere about ninety miles from its mouth, and yet not as far up as the river Severn. The question was, whether that was a part of the realm of Great Britain, so that a man could be indicted for a crime committed there. Now, there is a great deal of wisdom in the decision made in that case. The Court say, substantially, that each case is a case *sui generis*. It depends upon its own circumstances. Englishmen and Welshmen had always inhabited both banks of the Bristol Channel. Though more than ten miles in width at its entrance, it still flowed up into the heart of Great Britain; houses, farms, towns, factories, churches, courthouses, gaols, everything on its banks; and it seemed a preposterous idea, and I admit it, that, in time of war, two foreign ships could sail up that Bristol Channel and fight out their battle to their own content, on the ground that they did not go within three miles of the shore. I think it would have been preposterous to say that a foreign merchantmen could have sailed up the centre of that channel, and defied the fleet and armies of Great Britain, and all her custom-house cutters, on the ground that she was flying the American or the French flag, and the deck was a part of the soil under that flag. It was a question of political geography—not of natural geography. It was a question of its own circumstances. It was decided to be a part of the realm of Great Britain. I do not know that anybody can object to the decision.

The "Franconia" case, 2 Ex. D. 159, which attracted so much attention a short time ago, did not raise this question, but it is of some importance for us to remember. In that case there was no question of headlands. It was a straight line of coast, and the vessel was within three miles of it. But what was the ship doing? She was beating her way down the English Channel against the sea and wind, and she made her stretches toward the English shore, coming as near as safety permitted, and then to the French shore. She was in innocent use of both coasts. She was not a trespasser because she tacked within three miles of the British shore. It was a necessity, so long as that Channel was open to commerce. The question which arose was this. A crime having been committed on board that ship while she was within three miles of the British coast, was it committed within the body of the county? Was it committed within the realm, so that an English sheriff could arrest the man, an English grand jury indict him, an English jury convict him, under English law, he being a foreigner on board a foreign vessel, bound from one foreign port to another, while perhaps the law of his own country was entirely different from that of England? Well, it was extraordinary to see how the common-law lawyers were put to their wits' end to make anything out of that statement. The more thoroughbred in the common-law, the less did the lawyers understand it; it was the more variously trained men who sat upon the bench who understood it better, and at last, by a majority of one, it was most happily decided that the man had not committed an offence within a British county, and he was released. That case turned not on a question of natural geography, nor of political geography. It raised the issue: What is the nature of the authority that a neighbouring nation can exercise within the three-mile limit?

This naturally leads to the question: "Does fishing go with the three-mile line?" I have had the honour to say to this tribunal that there is no decision to that effect, though I admit that there is a great deal of loose language in that direction. I do not raise any question respecting those fish that adhere to the soil, or to the ground under the sea. But on what does that three-mile jurisdiction rest, and what is the nature of it? I suppose we can go no further than this—that it rests upon the necessities of the bordering nation—the necessity of preserving its own peace and safety, and of executing its own laws. I do not think that there is any other test. Then the question may arise, and does, whether, in the absence of any attempt by Statute of Treaty to prohibit a foreign vessel from following with the line or the seine, and net, the free-swimming fish within that belt, his doing so makes him a trespasser by any established law of nations? I am confident it does not. That, may it please the tribunal, is the nature of this three-mile exclusion, for the relinquishment of which Great Britain asks us to make pecuniary compensation. It is one of some importance to her, a cause of constant trouble, and, as I shall show you—as has been shown you already by my predecessors—of very little pecuniary value to England, in sharing it with us, or to us in obtaining our share, but a very dangerous instrument for two nations to play with.

I would say one word here about the decision in the Privy Council in 1877 respecting the territorial rights in Conception Bay. I have read it over, and though I have very great respect for the common-law lawyer, Mr. Justice Blackburn, who was

called upon to pronounce upon a question entirely novel to him, I believe that if your honours think it at all worth while to look over this opinion, in which he undertakes to say that Conception Bay is an interior bay of Newfoundland, and not public waters, although it is some fifteen or more miles wide, you will find that he makes this statement, which is true, that an Act of Parliament is binding upon him, whether the Act be in conformity with international law or not. But the Act is not binding upon you, nor is the decision. But there is nothing in the Act of Parliament which speaks upon that subject. It is the Act 59 George III, intended to carry out the Treaty of 1818, and for punishing persons who are fishing within the bays; and he infers from that, by one single jump, without any authority whatever, of judicial decision or legislative language, that it must have meant to include such bays as the bay in question. (*Direct United States Cable Co.* vs. *Anglo-American Telegraph Co.*, English Law Reports, appeal cases. Part 2, p. 394.)

This state of things lasted until the Treaty of 1854, commonly called the Reciprocity Treaty. The great feature of that Treaty, the only one we care about now, is, that it put us back into our original condition. It left us in possession of our general right. It made no attempt to exclude us from fishing anywhere within the Gulf of St. Lawrence, and it allowed no geographical limits. And from 1854 to 1866 we continued to enjoy and to use the free fishery, as we had enjoyed and used it from 1620 down to 1818.

But the Treaty of 1854 was terminated, as its provisions permitted, by notice from the United States. And why? Great Britain had obtained from us a general free trade. Large parts of the United States thought that free trade pressed hardly upon them. I have no doubt it was a selfish consideration. I think almost every witness who appeared upon the stand at last had the truthfulness to admit, that when he sustained either duties or exclusion, it was upon the selfish motive of pecuniary benefits to himself, his section, his State, or his country; and if that were the greatest offence that nations or individual politicians committed, I think we might well feel ourselves safe. We had received, in return for this advantage, a concession from Great Britain of our general right to fish, as we always had fished, without geographical exclusion. My learned friend, Judge Foster, read to you (which I had not seen before, and which was very striking), the confidential report of Consul Sherman, of Prince Edward Island, in 1864. I dare say my learned friend, the counsel frem that Island, knows him. Now, that is a report of great value, because it was written while the Treaty was in existence, and before notice had been given by our Government of the intention to repeal it. It was his confidential advice to his own country as to whether our interests, as he had observed them, were promoted by it; and he said, if the Reciprocity Treaty was considered as a boon to the United States, by securing to us the right to inshore fishing, it had conspicuously failed, and our hopes had not been realized. I think these are his very words. He spoke with the greatest strength to his country, writing from Prince Edward Island, which claims to furnish the most important inshore fishery of any, and declared that so far as the United States was concerned, the benefit that came from that was illusory, and it was not worth while for us any longer to pay anything for it. And that, as your Honours have seen, and as I shall have the pleasure to present still further by-and-by, was borne out by the general state of feeling in America. The result was, that in 1866, the Reciprocity Treaty was repealed. That repeal revived, as my country admitted, the Treaty of 1818, and we again laid, of course, the duties on the British importation of mackerel and herring. We were remitted to the antiquated and most undesirable position of exclusion; but we remained in that position only five years, from 1866 until 1871, until a new Treaty could be made, and a little while longer, until it could be put into operation. What was the result of returning to the old system of exclusion? Why, at once the cutters and the ships of war that were watching these coasts, spread their sails; they stole out of the harbours where they had been lurking; they banked their fires; they lay in wait for the American vessels, and they pursued them from headland to headland, and from bay to bay; sometimes a British officer on the quarter-deck—and then we were comparatively safe—but sometimes a new-fledged provincial, a temporary officer, and then we were anything but safe. And they seized us and took us, not into Court, but they took us into harbour, and they stripped us, and the crew left the vessel, and the cargo was landed; and at their will and pleasure the case at last might come into Court. Then, if we were dismissed, we had no costs, if there was probable cause; we could not sue if we had not given a month's notice, and we were helpless. Not only did it revive the expensive and annoying and irritating and dangerous system of revenue cutters, and marine police, up and down the coast, telegraphing and writing to one another, and burdening the Provinces with the expense of their most

respectable and necessary maintenance; but it revived, also, the collisions between the Provinces and the Crown; and when the Provincal Governments undertook to lay down a ten mile line, and say to the cutters, "Seize any American vessel found within three miles of a line drawn from headland to headland, ten miles apart," such alarm did it cause in Great Britain, that the Secretary of State did not write, but telegraphed instantly to the Provinces that no such thing could be permitted, and that they could carry it no further than the six-mile rule. Then attempts were made to sell licenses. Great Britain said: "Do not annoy these Americans; we are doing a very disagreeable thing; we are trying to exclude them from an uncertain three mile line; we would rather give up all the fish in the ocean than have anything to do with it; but you insist upon it; "do not annoy these Americans; give them a license—just for a *nominal* fee." So they charged a nominal fee, as I have said, of fifty cents a ton, which was afterwards raised—they know why, we do not—to a dollar. We paid the fifty cent fee, and some Americans paid the dollar fee—and why? They have told you why. Not because they thought the right to fish within three miles was worth that sum, but it was worth that sum to escape the dangers and annoyances which beset them, whether they were innocent or guilty, under the law. Then at last, the Provinces, as if determined that there should be no peace on that subject, until we were driven out of the fisheries, raised it to an impossible sum—two dollars a ton, and we would not pay it. What led them to raise it? What motive could there have been? They lost by it. Our vessels did not pay it. Why, this was the result—I do not say it was the motive—that it left our fishermen unprotected, and brought out their cutters and crusiers, and that whole tribe of harpies that line the coast, like so many wreckmen, ready to seize upon any vessel, and take it into port and divide plunder. It left us a prey to them and unprotected. It also revived the duties, for we, of course, restored the duty of two dollars a barrel on the mackerel, and one dollar a barrel on the herring. It caused their best fishermen to return into the employment of the United States, and their boat-fishing fell off. That has been stated to your Honours before, but it cannot be too constantly borne in mind. We restored the duties, and that broke up the vessel-fishing of the Provinces, it deprived them of their best men; it caused trouble between the old country and the provinces; it put us all on the trembling edge of possible international conflict. But we went on as well we could in that state of things, until Great Britain, desirous of relieving herself from that burden, and the United States desiring to be released from those perils, and having also another great question unsettled, that is, the consequences of the captures by the "Alabama," the two countries met together with High Commissioners, at Washington, in 1871, and then made a great Treaty of Peace. I call it a "Treaty of Peace," because it was a Treaty which precluded war, not restored peace after war, but prevented war, upon terms most honourable to both parties; and as one portion of that Treaty—one that, though not the most important by any means, nor filling so large a place in the public eye, as did the Congress at Geneva, yet fills an important place in history, and its consequences to the people of both countries, was the determination of this vexed and perpetual question of the rights of fishing in the bays of the northwestern Atlantic; and by that Treaty, we went back again to the old condition in which we had been from 1620 down, with the exception of the period between 1818 and 1854, and the period between 1866 and 1871. That restored both sides to the only condition in which there can be peace and security; peace of mind, at least, freedom from apprehension, between the two Governments. And when those terms were made, which were terms of peace, of good-will to men, of security for the future, and of permanent basis always, and we agreed to free trade mutually in fish and fish oil, and free rights of fishing, as theretofore almost always held, Great Britain said, "Very well; but there should be paid to us a money compensation." The United States asked none; perhaps it did not think it a fitting thing to do. Great Britain said, "This is all very well; but there should be a compensation in money, because we are informed by the Provinces"—I do not believe that Great Britain cared anything about it herself—"that it is of more pecuniary value to the Americans to have the right of fishing extended over that region from which they have been lately excluded, than it is to us to have secured to us free right to sell all over the United States the catchings of Her Majesty's subjects, free from any duty that the Americans might possibly put upon us." "Very well," said the United States, "if that is your view of it, if you really think you ought to have a money compensation we will agree to submit it to a tribunal." And to this tribunal it is submitted—First, under Article XVIII of the Treaty of 1871, what is the money value of what the United States obtains under that article? Next, what is the money value of what Great Britain obtains under Articles XXI and XIX? Second, is what the United States obtains under Article XVIII of more pecuniary value than what Great Britain obtains under

her two Articles? Because I put out of sight our right to send to this market, and the right of the people of the Provinces to fish off our coasts, as I do not think either of them to be of much consequence. "If you shall be of opinion that there is no difference of value—and of course that means no *substantial* difference in value—or that the advantage is with Great Britain, then your deliberations are at an end; but if you shall think there is a substantial difference in value in favour of the United States, then your deliberations must go further, and you must decide what is that value in money.

I hope, if your Honours are not already persuaded, that you will be before the close of the argument on the part of the United States, and may not be driven from that persuasion by anything that may occur on the other side, that the United States were quite honest when they made the statement in 1871, that in asking for the abandonment of the restrictive system in regard to the fisheries they did not do it so much because of the commercial or intrinsic value of the fishing within the three-mile line, as for the purpose of removing a cause of irritation; and I hope that the members of this Tribunal have already felt that Great Britain, in maintaining that exclusive system, was doing injustice to herself, causing herself expense, loss, and peril; that she was causing irritation and danger to the United States; that it was maintained from a mistaken notion, though a natural one, among the Provinces themselves, and to please the people of the Dominion and of Newfoundland, and that the great value of the removal of the restriction is that it restores peace, amity, good-will; that it extends the fishing, so that no further question shall arise in courts or out of courts, on quarter-decks or elsewhere, whatever may be the pecuniary value of the mere right of fishing by itself, and that it would be far better if the Treaty of Washington had ended with the signing of the stipulations, except so far as the Geneva Arbitration was concerned, and that this question had not been made a matter of pecuniary arbitration; that either a sum of money had been accepted at the time for a perpetual right, as was offered, or that some arrangement by which there should be the mutual right of free trade in timber, in coal, and in fish, or something permanent in its character. But that is a bygone, and we are to meet the question as it comes now directly before us. I think my learned friend, Judge Foster, said all that need be said and all that can be said of much value, in taking the position that we are not here to be cast in damages; we are to pay no damages, nor are we to pay for incidental commercial privileges, nor are they to pay for any; but it is a matter of remark, certainly, that when this cause came up, we were met by a most extraordinary array of claims on the opposite side—sounding in damages altogether, or sounding in purchase of commercial privileges which were not given to us by Article XVIII of the Treaty. Why, if there was a British subject in Prince Edward Island who remembered that his wife and family had been frightened by some noisy, possibly drunken, American fisherman, he was brought here and testified to it, and he thought that he was to obtain damages. Undoubtedly that was his opinion. If a fisherman in his boat thought that a Yankee schooner "lee-bowed" him, as they call it, he was brought here to testify to it, and that was to be a cause of damage and to be paid for, and ultimately, I suppose, to reach the pockets of those who in their boats had been "lee-bowed," for that would seem to be poetic justice. Then we had the advantage of being able to buy our bait here, which we had always done, about which no Treaty had ever said a word, and they had the great advantage, too, of selling us their bait. They went out fishing for themselves, they brought in the bait, they sold it to us, and when our vessels came down after bait or for frozen herring, they boarded the vessels in their eagerness to be able to sell them; and so great was their need of doing something in that season of the year, when those mighty merchants of Newfoundland, and those mighty middle-men of Newfoundland, planters, had nothing for them to do, that they made a bargain to furnish us frozen herring and our fishing bait at so much a barrel, went out and got it for us, and brought it on board. Then there was the right of procuring supplies, and of curing and transshipping our fish—purely commercial rights, not named in any Treaty bearing on fisheries.

Those were privileges for which the Americans were also to pay something. I have no doubt that those ideas gained great currency among the people of these Provinces. They supposed it to be so, and hence a great deal of the interest which they took in the subject, hence the millions that were talked about. You might have made their entire claim of fourteen millions a point of departure. If you had opened that subject, and made up an award on the right to buy bait, on the right to buy frozen herring, on the right to buy supplies, on the right to transship and to trade; not considering that these are mutual rights for the benefit of both parties, and as to which it is almost impossible to determine which party gains the most. Then a great deal of anxiety was created through the Provinces, undoubtedly, by the cry that we were ruining their fisheries by the kind of seines that we were using—purse-seines. We were destroying

the fish, and the ocean would be uninhabitable by fish—would be a desert of water. We were told that we were poisoning their fish by throwing gurry overboard, and for all that there were to be damages. Now these inflammatory harangues, made by politicians, or published in the Dominion newspapers, or circulated by those persons who went about through the Dominion obtaining affidavits of witnesses, produced their effect, and the effect was a multitude of witnesses who swore to those things, who evidently came here to swear to them, and took more interest in them, and were better informed upon them, than upon any of the important questions which were to be determined. When we came to evidence to be relied upon—the evidence of men who keep books, whose interest it was to keep books, and who kept the best possible books; men who had statistics to make up upon authority and responsibility; men whose capital and interest and everything were invested in the trade—then we brought forward witnesses to whom all persons looking for light upon this question would be likely to resort. And I have no doubt that as fast as it became known through these Provinces that no damages would be given for "lee-bowing," for poisoning fish, for purse-nets (which it appears we could not use), nor for the right to buy bait and supplies, and to transship; and that it was to come down to the simple question of, on the one hand, participating with them in the fisheries of this region to the full extent instead of to a limited extent; and they be relieved from all duties on their fish and fish-oil on the other, with the consequent stimulation of their boat-fishing and vessel-building and fishing, they all began to look at it in a totally different aspect. I am not able to produce it at this moment, but I will produce, before the argument closes, a Memorial addressed to the Province of Nova Scotia, requesting them to bring things back to the old condition—that the fishing shall be left in common—without any idea that free trade was to be granted as an equivalent.

Such was the state of things and the condition of feeling in the Provinces. I need not press upon your Honours that we are right in our position, for as to all, except the question of compensation, your Honours have already by an unanimous vote passed in our favour; and of course it requires no argument to show that as we are to make compensation for the value of what we obtain under the Article XVIII of the Treaty of 1871, in addition to what we had under the Treaty of 1818 (provided the British side of the account does not balance it), that is all we have to consider; and I dismiss all those elements which have undoubtedly been the prevailing means of securing witnesses, and of stimulating witnesses throughout these Provinces, up to the present time.

After the sound sense and humour of my learned friend Mr. Trescot on the subject of the lighthouses, I suppose I should be excusable if I touched upon them again. I see that the counsel on the other side already feel the humour of the thing, and I suppose they rather regret that the subject was ever opened, because it shows to what straits they were driven to make up a case against the United States to balance the over-powering advantage to them derived from the freedom of trade. Why, they come together, the wise men, and they say among themselves: "Free trade is a boon to us in our mackerel and our herring. It is stimulating our fisheries; it is recalling our sons from afar and employing them at home in our own industries; it is building up boat fishing; it is extending the size of our boats and building up vessel fishing. The profits on our trade are now all that we have a right to make, with no discount whatever. How can we meet that case of advantage? What can we say they ought to pay us, that shall be anything like a set-off for what we ourselves have received? The right to fish within three miles! Why, the Americans had the whole Gulf of St. Lawrence and all its bays; they had all its banks, shoals, ledges, eddies; they had Labrador and the Magdalen Islands; they had the north, west, and south parts of Newfoundland; they had everything except the three-mile line of the Island, and the western shore of Nova Scotia and New Brunswick. And what did they get? Not the value of the fish; not what the fish sold for in the American market; not the profit which the American dealer made on his fish: that is the result of his capital, industry, and labour. What do the American get? The value of the fish as it lies writhing on the deck? No; for that is the result of the capital that sends the ship and fits it out, of the industry and the skill of the fishermen. What do they get? They get only the liberty of trying to catch the fish, which were eluding them, with all their skill, in the water of the ocean; the right to follow them occasionally, if they desire to do so, in their big vessels, within the limits of three miles. But it will not do to go to such a tribunal as this with such a case as that. The free-swimming fish in the seas, going we do not know how far off, and showing themselves here to-day and there to-morrow; schooling up on the face of the sea, and then going out of sight in the mud; having no habitat, and being nobody's property, the right to try to catch them nearer the shore than heretofore, that is not capable of being assessed so as to be of much pecuniary value: we must have something else." So they started the theory of adding to this, compensation that ought to be made for right to buy the bait; for a

right to refit; for a right to get supplies; for a right to trade; to unload cargoes of fish at Canso and send them to the United States, and for all the damage that fishermen might do anywhere by their mode of fishing; for the injury done by throwing overboard the gurry, and for collisions between boats and vessels that might occur in the waters of the Island bend; and, adding those all together, they might make a claim that—what they lost in damages, and what they gave to us in facilities of trade, added to what we got by Article XVIII, might make up something to set-off against what they knew they were receiving in dollars and cents from us by the remission of duties. They felt that we had on our side a certainty; they had on their side altogether an uncertainty and a mere speculation; that we remitted from our Treasury and put back into their pockets exactly two dollars a barrel on every barrel of mackerel sent into port, and one dollar on every barrel of herring that was to be computed and estimated; so that the British fisherman, when he landed his fish on the wharf in Boston, landed it on the same terms that the American landed his, while heretofore he had landed it handicapped by two dollars a barrel, which he must first pay. Our charge is substantial; ours can be put into the columns of an account; ours is certain. Theirs is speculative and uncertain, and unless it could be backed up with some certainties of damages and of trade they felt that it fell beneath them.

It will be my duty hereafter to press upon your Honours a little further the consideration of the utterly uncertain estimate that can be put upon the mere franchise or liberty of attempting to catch the free-swimming fish within certain limits of the ocean. Now, first, with your Honours' leave, I will take up the consideration of the money value of the removal of this geographical restriction, for that is what it is. The ancient freedom is restored, the recent and occasional restrictions as to three miles is removed, and the colonists say that that has been of pecuniary value to us. Whether it is a loss to them or not is utterly immaterial in this consideration. They cannot ask you to give them damages for any loss to them. It is only the value to us. It is like a person buying an article in a shop and a third person appointed to determine what is the value of that article to the purchaser. It is quite immaterial how great a mistake the man may have made in selling it to him, or what damage the want of it may have brought upon his family or himself. If I have bought an umbrella across the counter, and I leave it to a third man to determine the value of the umbrella to me, it is totally immaterial whether the man has sold the only one he had, and his family have suffered for the want of it. That is a homely illustration, but it is perfectly apt. The question is, What is the value to the citizens of the United States, in money, of the removal of this geographic restriction? Not what damage this may have been to the Provinces by reason of the Treaty which Her Majesty's Governmant saw fit to make with us.

What, then, is the money value of the removal of the restriction? On the subject of Newfoundland—which I desire to treat with great respect, because of the size of the Island and its numerous bays, and because of my respect and affection for the gentleman who represents the semi-sovereignty before this Tribunal—there is an article in the "Revue des Deux Mondes" of November, 1874, on the value of Newfoundland and its fisheries to France, of extreme interest, from which I would like to quote largely. It seems to me to be exhaustive. It gives the whole history and present condition of these fisheries, and among other things, it shows that in attempting to grant us a right there, Great Britain made us overlap very much the rights of the French; and that if we should undertake to carry into effect some of the rights given us by the Treaty of 1871, we might have the Republic, or Monarchy, or Empire, or whatever it may be, on the other side of the water, to settle the question with, as well as this Tribunal. I suppose this Tribunal is satisfied that we do not catch cod within three miles of Newfoundland; that we do not catch even our bait there, but that we buy it. Finding that we had proved a complete case, that we bought our bait there, the very keen argument was made by the counsel on the other side, that though we bought our bait, we must be held to have caught it. "*Qui facit per alium, facit per se*," says the counsel; and so, if you buy a thing of a man and he sends a boy out to get it, the boy is your messenger, not his; and you have not bought it of him, but of the person to whom he sends for it! This again is a homely illustration, but it is perfectly plain. When a fisherman comes and says, "I will sell my fish at so much a pound," and has not got them, but goes off and catches them, and I pay him that price, I buy the fish of him, do I not? What is it but a mere illusion, a mere deception, a mere fallacy to say, that because I knew that he had not the fish on hand at the time and is going off to get it, though I agree to buy it of him at a fixed rate, and I am not going to pay him for his services, but for the fish when delivered—that I am fishing through him and not buying of him? It is very hard to argue a perfectly clear case, one that has but one side to it. Nothing but stress of

law, or stress of facts, or stress of politics, could possibly have caused so much intelligence to be perverted upon this subject, into an attempt to show that we were the catchers of the Newfoundland bait.

I will now take up for a moment the question of the cod-fisheries, and I know that, whatever I may have been thus far, I shall be somewhat tedious here in the course which I am about to pursue; but I do not wish it to be said on the other side, and my instructions are not to leave it to be said, that we have asserted and stopped at assertions, however certain we may be that our assertions are well founded, and even that they have the approbation of the Court. I shall endeavour to refer to the evidence, without reading much of it, on the principal points which I have so far assumed, and would be quite authorized in assuming.

In the first place, as to the cod-fishery, it is deep-sea fishery, or offshore; not a fishery within three miles. I do not mean to say that stray cod may not be caught occasionally within that limit; but as a business, it is deep-sea business. With your Honours' permission I will read some of the evidence on that point.

Nathaniel E. Atwood, of Provincetown, page 47 of the American evidence, says:—

"Q. Is the codfishery, as pursued by the Americans, exclusively a deep-sea fishery?—Well, we call it a deep-sea fishery; this is the case—the Labrador coast excepted, where it is prosecuted close inshore, in the Gulf of St. Lawrence, on the Grand Banks and on all the banks between that place and Cape Cod, and away out to sea in other parts. It is true that some codfish come inshore but they do not do so to such an extent as to enable the catching of them to be made a business of."

Wilford J. Fisher, of Eastport, page 316, says:—

"Q. How about the pollock?—A. The pollock is caught more offshore than in.

"Q. Then the codfish?—A. The codfish is caught almost exclusively offshore, except, as I tell you, in the early spring or late in the fall there is a school of small codfish that strikes within the limits, and the people there catch them more or less."

Professor Baird, on page 455, of the American evidence, says:—

"Q. Take them as a whole they are a deep-sea fish. I don't mean the deep sea as distinguished from the banks?—A. An outside fish? Well, they are to a very considerable extent. The largest catches are taken offshore, and what are taken inshore are in specially favoured localities, perhaps on the coast of Labrador, and possibly off Newfoundland. They bear a small proportion generally to what is taken outside, where the conveniences of attack and approach are greater."

Bangs A. Lewis, of Provincetown, page 96, American evidence, says, on cross-examination, in answer to Mr. Davies:—

"Q. And codfish, we all know, are taken chiefly outside of the limits; it is a deep-sea fishery as a rule?—A. Yes.

E. W. French, of Eastport, page 403, is asked:—

"What is the fishery at *Grand Manan* and the *Bay of Fundy* generally? A. Codfish, pollock, hake, haddock, and herring.

"Are any of those fisheries entirely offshore fisheries?—A. Codfish is an offshore fishery. Hake are taken offshore."

Capt. Robert H. Hulbert, of Gloucester, page 296, testifies:—

"Q. And your codfish have not been taken within how far from land?—A. From 15 to 25 miles of Seal Island, and in that vicinity."

John Nicholson, Louisburg, Cape Breton, page 207 of the British evidence, says:—

"Q. Well, cod are often caught inshore, but you would not say cod was a deep-sea fishery? A. Yes.

"Q. And halibut is the same?—Yes."

These are only passages selected from a large mass of testimony, but they were selected because the persons who testified in that way were either called by the British side, or they were persons of so much experience that they are fair specimens of our view of the subject.

Now, cod-fishery is the great trade and staple of the United States, and is growing more and more so. The small cod that were once thrown overboard are now kept. The oil is used a great deal, cod-fish oil, and there are manufacturing establishments in Maine, Connecticut, and Massachusetts, which we have been told by the witnesses work up a great deal of this material that used to be thrown overboard; they draw oil from it, and the rest is used for fertilizing the land, and that is a gradually increasing business.

One of the witnesses, I recollect, from Gloucester, told us how greatly the trade in cod-fish had improved, so that now, instead of sending it out as whole fish, it is cut in strips, rolled together, and put in cans, and sold in small or large quantities to suit purchasers, and in that very easy manner, sent all over the United States.

Charles N. Pew, of the firm of John Pew & Sons, on page 496 of the American Evidence, testified that the total value of fish production in seven years from 1870 to 1876 inclusive, was:—

	dol.	c.
* Bay Mackerel	77,995	22
* Shore ditto	271,333	54
Cod-fish, &c.	702,873	10
	1,052,201	86

"These figures give what our vessels caught. They do not give what we purchased outside of what the vessels caught."

The cod-fishery is also one as to which there is no fear of diminution—certainly none of its extermination. Professor Baird told us, on p. 456 of the American Evidence, that a single cod produces from 3,000,000 to 7,000,000 eggs, each one capable of forming another living animal in the place of its mother. He said, that owing to the winds and storms to which they were exposed, and to their being devoured by other fish which sought for them, the best information was that about 100,000 of these eggs prosper so as to turn into living fish, capable of taking care of themselves, the undefended and unrestricted navigators of the ocean. Although that is not a large percentage of the amount of ova, yet an annual increase of 100,000 for every one, shows that there is no danger of the diminution, certainly none of the extermination, of that class of fish. It is enormous in quantity, something which the whole world combining to exterminate could hardly make any impression upon; and when the argument is made here that we ought to pay more for the right to fish because we are in danger of exterminating what cod-fish we have—if that argument is made—it amounts to nothing. But if the further argument is made, that we have no cod-fishery to depend upon, then we have the statistics, and we have information from witnesses from all parts, that the cod-fishery shows no signs of diminution, and that it is as large and extensive and as prosperous as ever. Gloucester has gone more into the business than it ever has before, and I do not recollect that there is any evidence, of the least value, showing that that fishery is likely to fall off materially as a commercial product in our hands. There is a single British concurrence out of several others, I think, in this statement, which I will read:—

George Romeril, Agent of Robin and Co., one of the British witnesses, page 306, says:—

"Q. Is there much difference in the results of the cod fishery year after year?—A. No; just as much fish are now caught as ever was the case.

"Q. In making this statement your refer to an experience of 21 years?—A. Yes.

"Q. What is your evidence on this point?—A. That the cod-fishery is not precarious.

"Q. You have always an average catch?—A. It is always about the same.

"Q. This fishery can always be depended upon?—A. Yes.

"Q, Do those who engage in this fishery as a rule make a living?—A. A thriving fisherman will always make a good living about our coast.

"Q. But what will a fair average man do?—A. He can always make a good living."

I read that because it is the testimony of an intelligent British witness, who represents one of those great Jersey firms that deal in cod-fish on the west coast of the Gulf.

The bait of the cod-fish need not be caught within the three-mile line. That, I think, we have pretty well established. I referred just now to their argument, that we caught whatever we bought, but that I certainly may pass by. We may buy it when we wish it, but we need not have it. Your Honours recollect the testimony of our witnesses from Provincetown, as well as those from Gloucester, who said that they believed it was more for the interest of all concerned that the cod-fishery should be carried on with bait kept in ice as long as it can be, and salted bait—with fish, and bait, and liver, and everything else that can be carried out and kept there, and what birds and fish can be caught on the Banks, and the vessels stick to their business. The testimony was uniform; there was not one who failed to join in the expression of opinion, that that course was far better for the mercantile purposes of our community than that our fishermen should run inshore and buy the bait. But if they did go inshore and buy the bait, it would be a question entirely beyond your Honour's consideration. We have a right to buy it where we please, even here, and we certainly need not catch it. Among the curious grounds

* Bay mackerel meaning such as are caught in the Gulf of St. Lawrence; and shore mackerel, those caught off the coasts of the United States.

set forth to swell up the English claim against us, to make it meet, if possible, the obvious money claim we had against Great Britain, if it was seen fit to enforce it—we now put it in only as a set-off—appears in the testimony that our fishing-vessels, going into Newfoundland, employed the men there to fish, and that it had a very deleterious moral effect upon the habits of the Newfoundland fishermen; that they had been, up to the time the Americans appeared there to buy their bait, an industrious people, in a certain sense; they had fished a certain part of the year under contracts, which it seems they could not get rid of, with a class of owners who held them in a kind of blissful bondage; but that when the Americans appeared, they led them to break these contracts, sometimes tempted them to fall off from their agreements, and put money into their pockets; they paid them for work; they gave them labour at a time when they ought to have been lying idle, when it was better for them to lie idle! Oh, it steadied them, improved them, raised their moral tone, to be idle, and tended to preserve those desirable relations that existed between them and the merchants of St. John's! A great deal was said about that; but at last there came upon the stand a witness, whose name, if I recollect, was Macdonnell (p. 313 of the British testimony), a British witness. I did not know that he would not be fully as well filled with these feudal opinions as the others had been. He said the people at Fortune Bay were well off. I asked him :—

"Q. You say the people down at Fortune Bay are well off?—A. There are some poor people there, but as a general thing the people are all comfortable.

"Q. You say they have piles of money stored in their houses?—A. Some of them have. I know men who went from LaHave down there, who were so well off they retired from the fishing business. The largest part of the money they made was in supplying bait to those French vessels which come from France to fish.

"Q. Where did you find them?—A. At St. Peter's. The men of Fortune Bay seine herring, capelin and squid, and run them across to St. Peter's, and sell them to the French vessels which are lying waiting for them.

"Q. That is their market?—A. Yes.

"Q. They also sell to the Americans?—A. Yes; they go in and obtain a great deal of bait in Newfoundland, not so much Fortune Bay as at St. John's.

"Q. The men with piles of money, where do they live?—A. They may have plenty of money and yet live in a hovel. They are not sensible enough to enjoy the money after they have made it.

"Q. We have been told, on the contrary, that they spend all their money as fast as they get it on rum and tobacco; did you find that to be true?—A. I doubt that. For the last two or three years in Newfoundland I found very few men who drank rum, but when I first went there I found many rum drinkers. I think they must have had a Reform Club there.

"Q. You think they have improved?—A. Yes. They are comfortable in their homes.

"Q. They are saving people?—A. Yes.

"Q. I mean those people who catch bait, who are paid in cash on the spot; have they any market for that except the French and Americans?—A. I think not."

Nothing has been attempted since to contradict that statement. It is in accord with the nature of things. There is always danger in putting money in any man's hands, and there is also danger in poverty. The wise man saw that poverty had its perils as well as wealth; and nothing can be worse for a people in the long run than the condition to which the fishermen of Newfoundland had been reduced. And now, believing fully in this testimony of Mr. Macdonnell, I cannot doubt that our coming among them and buying their bait, stimulating them to work, and paying them money, has led to their hoarding money; has led to the abstinence from those habits which so beset the half employed and the idle man, who has a large season of the year with nothing to do, but has a reasonable expectation that, what with his labour and what with his credit, somebody or other who owns a ship will support him and his family.

I would like, also, to call your attention, on this question of getting bait, which is of some importance, to the testimony of Professor Baird, which, I suppose, none of you have forgetten, which shows that we need not catch our bait for the cod in British waters. He is asked, on page 457 of the American evidence :—

"Q. Well, now, what are the methods of preservation of this bait? We have heard of their using salt clams, etc. Has much attention been paid to the possibility of greater preservation of the bait than we have ever yet had?—A. Yes. The science of preserving bait, as well as of the preservation of fish on shipboard, is very low indeed, far below what can be applied, and I have no doubt will be applied, both in keeping fish for food and in keeping it for bait.

"Q. Now, will you state what observation you have made respecting the method of preserving fresh bait from the start all the voyage through?—A. As a general rule it is now preserved either by salting or freezing. Of course they keep it as long as it will remain without spoiling, and when you have to carry it beyond that time either ice it or salt it. Salting, of course, is a very simple process, but it alters materially the texture and taste to such a degree that fish or other bait that, under certain circumstances, is highly prized by the fish, is looked upon with a great deal of indifference when salted. Now, there are special methods of preserving the fish or bait by some chemical preparation, which preserves

the fish *without giving the saline taste.* There are preparations by means of which oysters or clams or fish can be kept in solutions for six months without getting any appreciable taste, and without involving the slightest degree of deterioration or destruction. One process submitted to the group of judges of whom I was chairman, was exhibited by an experimenter who placed a great jar of oysters in our room prepared in that way. I think about the 1st of August those were placed in our room, and they were kept there until the middle of September, for six weeks, during the hottest portion of the Centennial Summer, and that was hot enough. At the end of that time we mustered up courage to pass judgment upon this preparation, and we tasted these oysters and could not find them affected. We would have preferred absolutely fresh oysters, but there was nothing repugnant to the sensibilities, and I believe we consumed the entire jar. And we gave the exhibitor without any question an award for an admirable new method. That man is now using that process on a very large scale in New York for the preservation of fish of all kinds, and he claims he can keep them any length of time and allow them to be used as fresh fish quite easily. I don't suppose any fisherman ever thought of using any preservative except salt.

"Q. Well, there is a newer method of preservation, is there not?—A. There is a better method than using ice. The method described by the Noank witness by using what is equivalent to snow, allows the water to run off or to be sucked up as by a sponge. The mass being porous prevents the fish from becoming musty. But the coming methods of preserving bait are what is called the *dry air process* and the *hard freezing process.* In the dry air process you have your ice in large solid cakes in the upper part of the refrigerator and your substance to be preserved in the bottom. By a particular mode of adjusting the connection between the upper chamber and the lower there is a constant circulation of air by means of which all the moisture of the air is continually being condensed on the ice, leaving that which envelops the bait or fish perfectly dry. Fish or other animal substance will keep almost indefinitely in perfectly dry air about 40 degrees or 45 degrees, which can be attained very readily by means of this dry air apparatus. I had an instance of that in the case of a refrigerator filled with peaches, grapes, salmon, a leg of mutton and some beefsteaks, with a great variety of other substances. At the end of four months in midsummer, in the Agricultural Building, these were in a perfectly sound and prepossessing condition. No one would have hesitated one moment to eat the beefsteaks, and one might be very glad of the chance at times to have them cooked. This refrigerator has been used between San Francisco and New York, and between Chicago and New York, where the trip has occupied a week or ten days, and they are now used on a very large scale, tons upon tons of grapes and pears being sent from San Francisco by this means. I had a cargo of fish eggs brought from California to Chicago in a perfect condition. Another method is the *hard frozen* process. You use a freezing mixture of salt and ice powdered fine, this mixture producing a temperature of 20 degrees above zero which can be kept up just as long as the occasion requires by keeping up the supply of ice and salt.

"Q. How big is the refrigerator?—A. There is no limit to the size that may be used. They are made of enormous size for the purpose of preserving salmon, and in New York they keep all kinds of fish.

"Q. Now, to come to a practical question, is this a mere matter of theory or of possible use. For instance, could this method be adapted to the preservation of bait for three or four months, if necessary?—A. The only question of course is as to the extent. There is no question at all that bait of any kind can be kept indefinitely by that process. I do not think there would be the slightest difficulty in building a refrigerator on any ordinary fishing vessel, cod or halibut, or other fishing vessel, that should keep with perfect ease all the bait necessary for a long voyage. I have made some inquiries as to the amount of ice, and I am informed by Mr. Blackford of New York, who is one of the largest operators of this mode, that to keep a room ten feet each way, or 1,000 cubic feet at a temperature of 20 degrees above zero, would require about 2,000 pounds of ice, and two bushels of salt per week. With that he thinks it could be done without any difficulty. Well, an ordinary vessel would require about seventy-five barrels of bait, an ordinary trawling vessel. That would occupy a bulk something less than 600 feet, so that probably four and a half tons of ice a month would keep that fish. And it must be remembered that his estimate was for keeping fish in midsummer, in New York. The fishing vessels would require a smaller expenditure of ice as these vessels would be surrounded by a colder temperature. A stock of ten to twenty tons would in all probability be amply sufficient both to replace the waste by melting, and to preserve the bait.

"Q. Have you any doubt that some method like that will be put into immediate and successful use, if there is sufficient call for it?—A. I have no doubt the experiment will be tried within a twelvemonth. Another method of preserving is by drying. Squid, for instance, and clams, and a great many other kinds of bait can be dried without using any appreciable chemical, and can be readily softened in water. I noticed lately in a Newfoundland paper a paragraph recommending that in view of the fact that the squid are found there for a limited period of time the people should go into the industry of drying squid for bait, so that it would always be available for the purpose of cod-fishing. I think the suggestion is an excellent one, and I have no doubt it will be carried out.

"Q. Now, what is the supply of bait for cod-fish on the American coast?—A. Well, as the cod-fish eats everything, there is a pretty abundant stock to call upon. Of course the bait fish are abundant, the menhaden and herring. The only bait fish that is not found is the caplin. The herring is very abundant on the American coast, and the alewives enormously abundant. Squid are very abundant of two or three species, and, of course, clams of various kinds. Then we have one shellfish that we possess. It is never used here, although it is very abundant, but it is almost exclusively the bait for trawling on the coast of Great Britain. This shell is known as the whelk or winkle.

"Q. From all you have learned, have you any doubt that, supposing the fishermen of the United States were precluded from using any bait except what could be got upon their own coast, they could obtain a sufficient supply there?—A. Well, unless the American fishery should be expanded to very enormous limits, far in excess of what it is now, I can't see that there would be any difficulty."

That is, of course, not very material, because it only goes to the point that we are not dependent upon catching bait within three miles of the British coast, anywhere. We have ways of using salt bait, and the use of all these scientific methods of preserving bait, which will, no doubt, be resorted to and experimented upon, and we may be quite certain that they will, in skilful hands, succeed. Nothing further upon that point need be considered by your Honours.

I now call your attention to mackerel. It is a word that we have heard before. It is a word that we have become familiar with, and one which I hope we shall not view with disgust or distaste for its frequency when we shall have left this hospitable coast, and scattered ourselves to our far distant homes.

The mackerel, may it please your Honours, is a deep-sea fish. He does not lurk about anybody's premises. He does not live close in to the shore. He is a fish to whose existence and to whose movements a mysterious importance is attached. A certain season of the year he is not to be seen, and at other times mackerel are so thick upon the waters, that, as one of the most moderate of the British witnesses said, you might walk upon them with snow-shoes, I believe it was from East Point to North Cape. I do not know that I have got the geography quite right, but it is omething like that.

However, I do not doubt that the number is extraordinary at times, and at other times they are not to be seen. We do not know much about them. We know they disappear from the waters of our whole coast, from Labrador down to the extreme southerly coast, and then at the early opening of the spring they reappear in great numbers, armies of them. They can no more be counted than the sand of the sea, and are as little likely to be diminished in number. They come from the deep sea or deep mud, and they reappear in these vast masses, and for a few months they spread themselves all over these seas. A few of them are caught, but very few in proportion to the whole number, and then they recede again. Their power of multiplication is very great indeed. I forget what Professor Baird told us, but it is very great indeed. Methods have been taken to preserve their spawn, that it may be secured against the peril of destruction by other fish, and the perils of the sea. They are specially to be found upon the banks of the Gulf of St. Lawrence, the Bradelle or Bradley Banks, the Orphan, Miscou, Green, Fisherman's Bank, and off the coast of Prince Edward Island, and especially, more than anywhere else, about the Magdalen Islands; and in the autumn, as they are passing down to their unknown homes, they are to be found in great numbers directly off the western coast of Cape Breton, near the highlands opposite Margaree Islands, and near Port Hood; but in the main, they are to be found all over the deep sea of the Gulf of St. Lawrence. The Gulf of St. Lawrence is full of ledges, banks, and eddies formed by meeting tides, which Professor Hind described to us, and there the mackerel are especially gathered together. The map drawn on the British side, in the British interest, shows this enormous field forthe mackerel fisheries, and though very few comparatively of the banks and ledges are put down, yet in looking over this map, it seems as if it was a sort of great directory, showing the abodes of the mackerel, and also the courses that the mackerel take in passing from one part of this great sea to another. There is hardly a place where mackerel fishing grounds are not marked out here, and they are nearly all marked out at a considerable distance from the shore, all around the Magdalen Islands, for many miles; and at a distance from Prince Edward Island, and on the various banks, ledges, and shoals that are to be found, and it is there, as I shall have the honour to point out to the Court more particularly hereafter, that they have always been caught in the largest quantities, and the best of them by American fishermen.

There are one or two experienced witnesses from Gloucester, who have dealt with the subject carefully, for their own interests, not testifying for any particular purpose, but having kept their books and accounts, and dealt with the mackerel in their own business, whose words I would like to recall to the attention of the Court for a few moments.

Captain Maddocks, of Gloucester, on page 135 of the American evidence, testifies as follows:—

"From my experience my judgment leads me to think that our vessels would get full as many, if not more, by staying outside of the three-mile range altogether. By going inshore *they may sometimes get a spurt of mackerel*, but they are then liable to go further into the harbours, and lose a good deal of time. Whereas if they would fish further off they would save a good deal of time. I think that for ten or twenty years back they might have caught, well, somewhere from a tenth or a fifteenth part of

the mackerel within the three-mile range. I don't know but they have. I don't think anything more than a tenth part, certainly."

Joseph O. Proctor, of Gloucester, on page 196, says:—

"From the best of my judgment, the knowledge I have where my vessels have been, and conversation with the masters of the vessels, I believe that not one-eighth of the mackerel have been caught within, I should say less, and I should not say any more. It is nearer a tenth than an eighth.

"Q. Do you know where the bulk is caught?—A. At the Magdalens, or between the Magdalens and Cheticamp."

Captain Ezra Turner, of Gloucester, page 226, testifies—

"Q. Have you ever fished off Prince Edward Island?—A. Yes. I have fished all round the east side wherever anybody fished.

"Q. Did you fish within three miles of the shore there?—A. No. It is a rare thing that ever you got mackerel within the three miles. When they come within three miles they rise in schools, and we never calculate to do much out of them, but from four to six and seven miles off is the common fishing ground there."

The Commissioners will recollect the testimony of Mr. Myrick, an American merchant, who had established himself on Prince Edward Island. The inshore fishery, he said, is not suited to American vessels. Our vessels are large; they are built at a distance; they are manned by sixteen or seventeen men; they cost a great deal; they require large catches, and dealing with fish in large quantities; they deal at wholesale altogether, and not at retail. Retailing would ruin them. Anything short of large catches, large amounts, would be their end, and compel all the merchants to give up the business, or to take to boat fishing, which, of course, Gloucester or Massachusetts, or New England, or any part of the United States could not undertake to carry on here. It has been stated to the tribunal, by experienced men, as you cannot but remember, that our fishermen object to going very near shore in the Gulf of St. Lawrence. There are perils of weather connected with the coast which cannot be set aside by ridicule. Gloucester is a town full of widows and orphans, whose husbands and parents have laid their bones upon this coast, and upon its rocks and reefs, trusting too much to the appearance of fine weather, as we all did last night, waking up this morning in a tempest. Gloucester has tried to provide for these bereft people, by every fisherman voluntarily paying a small percentage of his earnings to constitute a widows' and orphans' fund. Even the tempestuous Magdalen Islands are safer for vessels than are the inshore coasts of those islands, where we are now permitted to fish; their harbours are poor, their entrances are shallowed by sand-bars, which are shifting, which shift with every very high wind, and sometimes with the season. They are well enough after you get inside of them, but they are dangerous to enter, to persons inexperienced—dangerous to any by night; and if a vessel is caught near the shore by a wind blowing inshore, against which she cannot beat with sails, for none of them carry steam, then she is in immediate peril. They therefore give a wide berth to the inshore fisheries in the main. They resort to them only occasionally. They are not useful for fishing with our seines. We find that the purse seines are too deep, that they are cut by the ground, which is rocky; that it is impossible to shorten them without scaring the mackerel, which must be taken by seines run out a great distance, for they are very quick of sight, and very suspicious of man; and they soon find their way out of the seines, unless they are laid a considerable distance off.

We need not catch our mackerel bait any more than our cod bait, within the three-mile limit. On the contrary, the best mackerel bait in the world is the manhaden, which we bring from New England. All admit that. The British witnesses say they would use it, were it not that it is too costly. They have to buy it from American vessels, and they betake themselves to an inferior kind of bait when they cannot afford to buy the best bait from us. And another result is that the Americans have shown for many years that what are called the shore mackerel—that is, those that are caught off the coast of Massachusetts and several other of the New England States, are really better than the bay mackerel. The evidence of that is the market prices they bring. It is not a matter of opinion. We have not called as witnesses persons who have only tasted them, and might have prejudices or peculiar tastes, but we have shown the market value.

James H. Myrick, page 433, American evidence, in answer to the question—"For a few years past, which have sold for the highest price, number ones from the bay or number ones from the American shore?" says, "Oh, their shore mackerel have been the best quality of fish."

Benjamin Maddocks, of Gloucester, page 134, says:—

"Q. Well, I take No. 1 then. How do those marked as No. 1 shore mackerel compare with those marked as No. 1 bay mackerel?—A. Well, the bay mackerel, at least I should say the shore mackerel, has been a great deal better than the bay mackerel the last seven or eight years.

"Q. That is not simply an opinion, but the market prices are better? How much more do the No. 1 shore mackerel bring than the No. 1 bay mackerel?—A. Well, there has been 7 or 8 dollars difference between them. I have seen the time when the bay mackerel was equal to our shore mackerel. It has not been for the last seven years."

It is also true, a matter of testimony and figures, that the American catch (the catch upon the American shore) is very large, and has increased, and is attracting more and more the attention of our people engaged in fishing, and it is only this year that the shore fishing proved to be unprofitable, and the confiding men who were led to send their vessels to a considerable extent, though not very great, into the Gulf by reason of the British advertisements scattered about Gloucester, have come away still more disappointed than they had been by the shore fishing, because they had employed more time and more capital than their catch compensated them for. There are some statistics which I will read, taken from a prominent and trustworthy man, as to the American catch. David W. Low, on page 358 of the American evidence, states the figures as follows:—

"1869.	194 vessels in gulf, average catch 109 barrels... ...	40,546	barrels.
„	151 „ off shore „ „ 222 „	33,552	„
	Mackerel caught by boats and some Eastern vessels packed in Gloucester...	19,028	„
	Mackerel inspected in Gloucester ...	93,126	„
1875.	58 vessels in gulf, average catch 191 barrels	11,078	barrels.
„	117 „ Am. shore „ „ 409 „	47,853	„
		58,921	„

"The average catch is based on the average catch of 84 vessels from 17 firms in 1869; and 28 vessels in bay and 62 vessels off American shore from 20 firms in 1875. These firms have done better than the rest."

The statistics of John H. Pew and Sons, put in by Charles H. Pew, page 496, for the last seven years, from 1870 to 1876, inclusive, show that the total, for that time, of bay mackerel that their own vessels caught, amounted to 77,995 dol. 22 c., and the shore mackerel for the same period was 271,333 dol. 54 c. Your Honours will recollect the statistics put in, which it is not necessary for us to transfer to our briefs, showing the exact state of the market on the subject of the proportion of American fish caught on the shores, and the proportion caught in the bay.

We have introduced a large number of witnesses from Gloucester, and I think I take nothing to myself in saying that the greater part of them—those who profess to be engaged in the trade or business at all—were men of eminent respectability, and commended themselves to the respect of the tribunal before which they testified. You were struck, no doubt, with the carefulness of their book-keeping and the philosophical system which they devised, by means of which each man could ascertain whether he was making or losing in different branches of his business, and as the skipper was often part-owner, and usually many dealers managed for other persons, it became their duty to ascertain what was the gain or loss of each branch of their business. They brought forward and laid before you their statistics. They surprised a good many, and I know that the counsel on the other side manifested their surprise with some dictness; but, may it please the Court, when the matter came to be examined into, it assumed a different aspect. We made the counsel on the other side this offer: We said to them, "there is time enough, there are weeks if you wish it, before you are obliged to put in your rebuttal; we will give you all the time you wish; send anybody to Gloucester you please to examine the books of any merchants in Gloucester engaged in the fishing business, and ascertain for yourselves the state of the bay and shore fishing as it appears there." You say that bay fishing is as profitable as the shore fishing; that it has made a great and wealthy city of Gloucester, and you assume that it is owing to their having had, for the greater part of the time, a right to fish inshore. It would seem to follow from this reasoning, that whenever we lost the right to fish inshore, Gloucester must have receded in its importance, and come up again with the renewal of the privilege of inshore fishing. Nothing of that sort appears in the slightest degree. "But," they

say, "the bay fishing must be of great importance, because of the prosperity of Gloucester." Now, the people of Gloucester have no disposition to deny their prosperity, but it is of a different kind from what has been represented. Gloucester is a place altogether *sui generis*. I never saw a place like it. I think very few of your Honours failed to form an opinion that it was a place well deserving of study and consideration. There is not a rich idle man, apparently, in the town of Gloucester. The business of Gloucester cannot be carried on, as mercantile business often is, by men who invest their capital in the business, and leave it in the hands of other people to manage. It cannot be carried on, as much of the mercantile business of the world is carried on, in a leisurely way by those who have arrived at something like wealth, who visit their counting-rooms at 10 o'clock in the morning and stay a few hours, then go away to the club, return to their counting-rooms for a short time, and then drive out in the enticing drives in the vicinity, and their day's work is over. It cannot be carried on as my friends in New Bedford used to carry on the whale fishery, where the gentlemen were at their counting-rooms a few months in the year, and when the off season came they were at Washington, Saratoga, or wherever else they saw fit to go. And yet they were prosperous. No, the Gloucester tradesmen are hard-working men, and they gain their wealth and prosperity on the terms of being hard-working men. The Gloucester merchants, if you see fit to call them so—they are not particular about their title, but are content to be "fish dealers"—are men who go to their counting-rooms early and stay late. If they go up to Boston on business, they take a very early train, breakfast before daylight, and return in season to do a day's work, though Boston is twenty-five or thirty miles distant; and when their vessels come in they are down upon the wharves, they stand by the large barges and they cull the mackerel with their own hands; they count them out with their own hands; they turn them with their own hands into the barrels, and cooper them and scuttle the barrels, and put in the brine and pickle the fish, and roll them into the proper places; and when they have a moment's leisure, they will go to their counting-rooms and carry on their correspondence, by telegraph and otherwise, with all parts of the United States, and learn the value of these mackerel. They are ready to sell them to the buyers, who are another class of persons, or they are ready to keep and sell them in the larger market of Boston. By their patient industry, by their simple hard days' works, they have made Gloucester an important place, but they have not added much to the mackerel fishery of the United States. Gloucester has grown at the expense of every other fishing town in New England. We have laid before your Honours, through Mr. Low, I think it was, or through Mr. Babson, the statistics of the entire falling-off of all the fishing towns of New England. Where are Plymouth, Barnstaple, where Marblehead, which was known the world over as a fishing town? There are no more fishing-vessels there. The people have all gone into the business of making shoes and other domestic manufactures. So with Beverly, so with Manchester, so with Newburyport, and so with the entire State of Maine, with the exception of a very few vessels on the coast. Two or three of the last witnesses gave us a most melancholy account of the entire falling-off of fishing in Castine, Bucksport, and all up and down that Penobscot bay and river, so that there is hardly any fishing left. When they were fishing towns, people employed their industry in it. Their harbours were enlivened by the coming and going of fishing-schooners, and now there is an occasional weekly steamer or an occasional vessel there owned, but doing all its business in Boston or New York. But the fishing business of all the towns of New England, except the cod fishery of Provincetown and of the towns near, has concentrated in Gloucester. It seems to be a law that certain kinds of business, though carried on sparsely at periods, must be eventually concentrated. When they are concentrated, they cannot be profitably carried on anywhere else. The result is, that the mackerel fishery and cod fishery, with the exception of the remote points of Cape Cod, have concentrated in Gloucester. There is the capital, there is the skill, there are the marine railways, there is that fishing insurance company, which they have devised from their own skill and experience, by which they insure themselves cheaper than any people in the world ever did insure themselves against marine risks, so much so that merchants of Gloucester have told us that if they had to pay the rates that are paid in stock companies, the fishing business could not be carried on by merchants who own their ships; the difference would be enough to turn the scale. Now it appears to be the fact—I will not trouble your Honours by going over the testimony to which every Gloucester man swore—it turns out to be the fact that the prosperity of Gloucester, while it has additional resources in its granite and as a sea-bathing place, has been owing mostly to the prudence and sagacity, the frugality and laboriousness of the men brought up as fishermen, who turn themselves into fish-dealers in middle life, and carry

their experience into it; and it is only on those terms that Gloucester has become what it is. An attempt was made at Salem, under the best auspices, to carry on this business with the best Gloucester fishermen and most experienced men concerned in it, by a joint stock company; but in the matter of deep-sea fishing, "the Everlasting" seems to have "fixed his canon" against its prosperity, except upon the terms of frugality and laboriousness. It never has succeeded otherwise, and scarce on those terms, except it be with the aid of bounties from the Government.

Now, we say that the whole bay-fishing for mackerel is made prosperous simply on those terms; that it is no Treaty gift that has created it, but it is the skill and industry of the fishermen, the capital invested by the owners, and the patient, constant labour and skill of the owners in dealing with their fish, after they are thrown upon their hands on the wharf, and they have paid their fishermen, that has given to it any value in the market. I do not think it is worth while to speculate upon the question whether fish in the water have any money value. I can conceive that fish in a pond and that fish that cling to the shore, that have a habitat, a domicile, like shell-fish, have an actual value. They are sure to be found. It is nothing more than the application of mechanical means that brings them into your hands. But certainly it is true that the value of the free-swimming fish of the ocean, pursued by the deep-sea fishermen, with line or with net, must be rather metaphysical than actual. To pursue them requires an investment of capital; it requires risk and large insurance; it requires skill, and it requires patient labour; and when the fish is landed upon the deck, his value there, which is to be counted in cents rather than in dollars, is the result of all these things combined; and if any man can tell me what proportion of those cents or dollars which that fish is worth on the deck of the vessel is owing to the fact that the fishermen had a right to try for him, I think he will have solved a problem little short of squaring the circle, and his name ought to go down to posterity. No political economist can do it. I will not say that the fish in the deep sea is worth *nothing;* but, at all events, the right to attempt to catch it is but a liberty, and the result depends upon the man.

If there can be no other fishery than the one which you have the privilege of resorting to, then it may be of great value to you to have that privilege. If there be but one moor where he can shoot, the person who is shooting for money, to sell the game that he takes, may be willing to pay a high price for the privilege. But recollect that the fishing for the free-swimming fish is over the whole ocean. The power of extending it a little nearer shore may be of some value—I do not say that it is not—but it strikes my mind as an absurd exaggeration, and as an utter fallacy, to attempt to reason from the market value of the fish there caught to the money value of the privilege so extended. The fish are worth, I will say, 12 dollars a barrel, but what does that represent when the American merchants, Hall and Myrick, both tell us that the value on the wharf at Prince Edward Island is about 3 dol. 75 c. a barrel? Well, suppose the mackerel to be worth 3 dol. 75 c. a barrel on the wharf in Prince Edward Island, what does that represent? Is that a thing which the United States is to pay Great Britain for? Has Great Britain sold us a barrel of pickled mackerel on the wharf? Has anybody done it? I think not. That represents the result of capital and of many branches of labour. Then, if you ask, "What is the worth to Mr. Hall or Mr. Myrick of the mackerel on the deck of the vessel?" I say it is next to nothing. The fish will perish if he is not taken care of. Skill is to be used upon him then; what costs money is to be used upon him, ice and pickle, and he is to be preserved. All this to the end that he may eventually, after a great deal of labour, skill, and capital, be sent to the market. But recollect that the vessel from whose deck he was caught cost 8,000 dollars. Recollect that the men who maintain that crew and feed them, and enable them to clothe themselves and follow that pursuit, are paying out large sums of money. Recollect that the fisherman who catches the fish has, as the result of many years' labour, which may be called an investment, learned how to catch him; and it is by the combination of all these causes that at last the fish is landed. Now, in my judgment, it is purely fallacious to attempt to draw any inference from the market value of the fish to the right to extend your pursuit of those animals nearer the coast than before, or to the market value of any right to fish over a certain portion of the ocean, when all other oceans are open to you, and all other fisheries.

Your Honours, of course, recollect that the mackerel fishery, taken at its best—I don't confine myself to the inshore fishery—I mean the mackerel fishery of the bay and the gulf, at its best, the whole of it is of a greatly decreasing and precarious value. I speak only of the salted mackerel that is sent into the United States. The lake fish are fast becoming a substitute for salt mackerel. I will call your Honours' attention to two or three rather striking proofs which were not read previously

by Judge Foster. Sylvanus Smith, of Gloucester, on page 336 of the American evidence, is asked :—

"Q. What causes have been in existence interfering with the sale of salt mackerel during the past few years ?—A. I think there have been several causes. One is the facility of carrying our fresh fish into distant parts of the country. That has materially interfered with it. Then there is the lake herring; during the months of November and December until May they are very plenty. They are now used in very large quantities all throughout the West.

"Q. What are lake herring ?—A. A species of white fish, only smaller.

"Q. What do they sell for per barrel ?—A. This party I referred to, speaking of his trade, said that last year he used 30,000 packages. A package is a half barrel.

"Q. How are these put up ?—A. Pickled. And he told me they sold at 2 dollars a package.

"Q. You say they have interfered with the constancy of the demand ?—A. I think during the months we used to depend very largely on the consumption of our mackerel, the lake herring has been one great cause for the decline during these months in the value of mackerel."

On page 468 Professor Baird testifies as follows :—

"Q. Have you any statistics respecting the lake fishery for the years 1876 and 1877 ?—A. I have only partial statistics for 1877. I published the statistics in detail in my report for 1872, and I am now having statistics for 1877 collected, and will have them I suppose by the end of the season.

"Q. 1872 represents but faintly the present state of things. Can you tell us how it was in 1872 ?—In 1872 the American production of fish in the great lakes was 32,250,000 lbs. That quantity of fish was taken, but how much more I cannot say. Those were marketed in Buffalo, Cleveland, Chicago, and many other stations.

"Q. Does that include the Canadian catch ?—A. I presume there is no Canadian catch in that amount. Those are the figures as they were obtained by my agents, from the fishermen and dealers.

"Q. You obtained them from the dealers in the large cities ?—A. Yes, and the fishermen at the grounds. This year I have had every station on the American side of the lakes visited and canvassed.

"Q. You have steady communication with and reports from the dealers ?—A. I have reports only when I send specially after them, as I did in 1872, and am doing this year.

"Q. How far have you got in your inquiry for *this year*?—A. I have only a partial return for Chicago.

"Q. What does that show ?—A. The total marketing of salted fish in Chicago up to the middle of October amounted to 100,000 half barrels, with about 20,000 half barrels expected for the rest of the season, or equal to 60,000 barrels of those fish for Chicago alone for the present year. The corresponding supply of barrels of fish in 1872 was 12,600 in Chicago, so that the Chicago trade has increased from 12,600 in 1872 to 60,000 in 1877, or almost five-fold—4 8-10. The total catch of fish in the lakes in 1872 was 32,250,000 pounds. If the total catch has increased in the same ratio as that market has done at Chicago, it will give 156,000,000 *pounds of fish taken on the American side of the lakes for the present year.*"

Then there are other fresh fish that are taking the place of the salt mackerel. The question is not between British mackerel and American mackerel, but it is between mackerel and everything else that can be eaten; because, if mackerel rise in market price, and in the cost of catching, people will betake themselves to other articles of food. There is no necessity for their eating mackerel. The mackerel lives in the market only upon the terms that it can be cheaply furnished. This tribunal will recollect that interesting witness, Mr. Ashby, from Noank, Ct., how enthusiastic he was over the large halibut that he caught; how his eyes gleamed, and his countenance lightened, when he told your Honours the weight of that halibut, the sensation produced in Fulton Market when he brought him there, and the very homely, but really lucid way in which he described the superior manner by which they were able to preserve those fish in ice, and the way they were brought into market; and how the whole horizon was dotted with vessels fishing for halibut, and other fresh fish there, with which to supply the great and increasing demand in the New York market. There is also the testimony of Professor Baird, who speaks of various kinds of fish. It is not worth while to enumerate them all, but he speaks especially of a fish known as "mullet," on the southern coast. So long as slavery existed, it is undoubtedly true that there was very little enterprise in this direction. It suffered like everything else but cotton, rice, and sugar, staples which could be cultivated easily by slave labour. Almost every other form of agriculture, almost all kinds of maritime labour, ceased. The truth was, the slaves could not be trusted in boats. The boats would be likely to head off from South Carolina or Virginia, and not be seen again. The vessels that went to the ports of the Slave States were Northern vessels owned and manned by Northern people. Southern people could not carry on commerce with their slaves, nor fishing with their slaves. Slavery being now abolished, the fisheries of the Southern States are to be developed. The negro will fish for himself. He will have no motive for running away from his own profits. The result has been that this mullet has come into very considerable importance. Professor Baird has his statistics concerning it, and he has certainly a very strong opinion that that fish is in danger of excluding salted mackerel from the Southern markets (indeed,

it is almost excluded now), and that it will work its way up to the Northern markets. Some of the Southern people think very highly of it, as the best kind of fish, think it has not its superior in the ocean; but, supposing that to be local exaggeration and patriotic enthusiasm, yet certainly it is a useful and valuable fish, and the demand for it is rapidly increasing. Professor Baird says, on page 460, that 1,000,000 barrels of mullet could be furnished annually from the south shore off Chesapeake Bay to the south end of Florida, if they were called for.

"Q. How far has the mullet come into the market now?—A. The mullet does not come into the Northern market at all, but in North Carolina, South Carolina, and Georgia, it fills the markets at the present time, excluding other kinds of imported fish. In former years there was a great demand for herring and mackerel, but the mullet is supplying the markets, because they are sold fresher and supplied at a much lower price, and they are considered by the Southern people a much superior article of food.

"Q. Is it preferred to mackerel as a salted fish?—A. The persons familiar with mackerel and with mullet from whom I have made inquiries—I have never tasted salt mullet—give the preference to mullet. It is a fatter, sweeter, and better fish, and of rather larger size. They grade up to 90 to a barrel of 200 pounds and go down to three quarters of a pound, and as a salt fish the preference is given by all from whom I have inquired to the mullet.

"Q. Do you think the failure of the mackerel market in the Southern and South-western States is largely attributable to the introduction of mullet?—A. I cannot say that, but I imagine it must have a very *decided influence.*

"Q. Can the mullet be caught as easily as mackerel?—A. More easily. It is entirely a shore fish, and is taken with seines hauled up on the banks by men who have no capital, but who are able to command a row boat with which to lay out their seines, and they sometimes catch 100 barrels a day per man, and sometimes as many as 500 barrels have been taken at a single haul. The capital is only the the boat, the seine, 100 or 200 yards long, the salt necessary for preserving the fish, and splitting boards and barrels.

"Q. Can pounds be used?—A. They have not been used, and I doubt whether they could be used. Pounds are not available in the sandy regions of the south.

"Q. They are taken by seining?—A. Yes, seines can be used. This work is entirely prosecuted by natives of the coast, and about two-thirds of the coast population are employed in the capture of those fish.

"Q. Then the business has grown very much?—A. It has grown very rapidly.

"Q. When was it first known to you as a fish for the market?—A. I never knew anything about it until 1872.

"Q. Then it has been known during only five years?—A. I cannot say; it has been known to me that length of time.

"Q. During that time the business has very much increased?—A. I am so informed; I cannot speak personally. All my information of it is from reports made to me in replies to circulars issued in 1872 and 1873. I have not issued a mullet circular since that time, when I issued a special circular asking information regarding the mullet.

"Q. Then it is your opinion that the mullet has become, to some extent, and will become an important source of food supply?—A. It is destined, I suppose, to be a very formidable rival and competitor of the mackerel. I know in 1872 *a single county in North Carolina put up* 70,000 *barrels* of mullet, a single county out of five States covering the mullet region."

Your Honours will recollect, as a striking illustration of the truth of the power of propagation, the statement of Professor Baird in regard to the River Potomac, where a few black bass, some half dozen, were put into the river, and in the course of a few years they were abundant enough to supply the market. Fish culture has become a very important matter, and, what we call in New England our "ponds," small lakes and rivers, are guarded and protected, and every dam built across any river where anadromous, or upward-going fish, are to be found, has always a way for their ascent and descent; so that everything is done to increase the quantity, kind, and value of all that sort of fish, making the salted mackerel less important to the people, and in the market.

Then the improved methods of preserving fish are astonishing. I think the evidence on that point was principally from Professor Baird, who has described to us the various methods by which fish, as well as bait, may be preserved. He told us that for months, during the hottest part of the Exhibition season at Philadelphia, during our Centennial year, fish were kept by these improved chemical methods of drying, and methods of freezing, so that after months, the Commissioners ate the fish, and found them very good eating. There was no objection whatever to them, although, of course, they were not quite as good as when they were entirely fresh. So that all science seems to be working in favour of distribution, instead of limitation, of what is valuable for human consumption; and the longer we live, and the more science advances, the less can any one nation say to the fishermen of another,—Thus far and no farther! We turn upon such an attempt at once, and say, "Very well; if you choose to establish

your line of exclusion, do it. If you choose to throw all open, do so. We prefer the latter, as the generous, the more peaceful and safe method for both parties. If you prefer the former, take the expense of it, take the risk of it, take the ignominy of it; If you give it up, and it costs you anything to do so, we will pay you what it is worth to us."

I certainly hope that after our offer to open the books of any merchant in Gloucester, or any number of merchants, to the other side, it will not be said that we have selected our witnesses. The witnesses that we brought here, both fishermen and owners, said that the bay fishery was dying out. They show it by their own statistics, and the statistics of the town of Gloucester show how few vessels are now engaged in the bay fishery; that they are confining their attention to the cod-fishing and shore fishing, with weirs, nets, pounds, and seines.

We did not bring the bankrupt fish dealers from Gloucester, the men who have lost by attempting to carry on these bay fisheries, as we might have done. We did not bring those who had found all fishing unprofitable, and had moved away from Gloucester, and tried their hand upon other kinds of business. We brought, on the other hand, the most prosperous men in Gloucester. We brought those men who had made the most out of the fisheries, the men who had grown richest upon them, and we exhibited their books; and as we could not bring up all the account books of Gloucester to this tribunal, we besought the other side to go down, or send down a Commission and examine them for themselves. We did not ask them to examine the books of the men who had become insolvent in the business, but the books of those who had been prosperous in the business; and after that, I think we have a right to say that we have turned Gloucester inside out before this tribunal, with the result of showing that the bay fishing has gradually and steadily diminished, that the inshore fishery is unprofitable, that the bay fishery has been, made a means of support only to the most skilful, and by those laborious and frugal methods which I have before described to this tribunal.

At this point Mr. Dana suspended his argument, and the Commission adjourned until Saturday at noon.

Saturday, November 10, 1877.

The Commission met at 12 o'clock, and Mr. Dana continued his argument.

May it please your Excellency and your Honours:—

We are met to-day, the seventieth of our session, to hear what may be said by me in behalf of the United States, closing the argument in our favour—a post which by the kindness and partiality of my associates has been assigned to me. While without, all is cheerless and wintry, we have within the bright beams of friendly, and, if not sympathizing, at least, interested countenances. I feel most painfully that, having the last word to say for my country, I may omit something that I ought to have said; or perhaps, which is quite as bad, that I may say more or other than I might well have said. Yet the duty is to be performed.

I have no instructions from my country, gentlemen of the Commission, and no expectation from its Government, that I will attempt to depreciate the value of anything that we receive. We are not, to go away like the buyer in the Scriptures, saying, "It is nought; it is nought;" but we have referred to a Commission, which will stand neutral and impartial, to determine for us; and no proclamations of opinion, however loud, will have any effect upon that Commission. My country stands ready to pay anything that this Commission may say it ought to pay, as I have no doubt Great Britain stands content, if you shall be obliged to say, what we think in our own judgment you should say, that you cannot see in this extension, along the fringes of a great garment, of our right to fish over portions of this region, anything which equals the money value that the British Dominion and Provinces certainly receive from an obligation on our part to lay no duties whatever upon their importations of fish and fish-oil. But while we are not here to depreciate anything, it is our duty to see to it that no extravagant demands shall pass unchallenged, to meet evidence with evidence, and argument with argument, fairly before a tribunal competent and able. We do not mean that our side shall suffer at all from too great depreciation of the evidence and arguments of the counsel for the Crown, as we feel quite sure that the cause of the Crown has suffered from the extravagant demands with which its case has been opened, and the extravagant and promiscuous kind of evidence, of all sorts of damages, losses, and injuries, which it saw fit to gather and bring before this tribunal, from the fisherman who thought that his

wife had been frightened, and his poultry yard robbed by a few American fishermen out upon a lark, to the Minister of Marine and Fisheries of the Dominion, with his innumerable lighthouses and buoys, and improved harbours. We are to meet argument with argument, evidence with evidence, upon the single question submitted; and that is, as I have had the honour to state before, "Is there a money value in this extension of our right, or rather this withdrawal of the claim of exclusion on the part of Great Britain, greater than the value which Great Britain certainly receives from our guaranty that we will lay no duties whatever upon her fish and fish-oil?"

Now, may it please your Excellency, the question is not whether 2 dollars a barrel on mackerel, and 1 dollar a barrel on herring is prohibitory, because we had a right, before making this Treaty, to lay duties that should be prohibitory, if those were not. If 2 dollars were not, we could lay as much as we pleased; so that it would be an imperfect consideration of this case, it has been all along an imperfect consideration of this case, to ask the question whether 2 dollars a barrel is prohibitory, whether 2 dollars a barrel on mackerel or 1 dollar a barrel on herring can be overcome by any commercial method or enterprise of the Dominion and the Provinces. The question has been between the right to be secured against laying duties indefinitely, on the part of the United States, on the one hand, and this extension of the right of fishing a little nearer to the shores, on the other. We could, if we saw fit, make a kind of self-adjusting tariff, that whenever fish rose above a certain price, then the Dominion and Canadian fish might be admitted, and otherwise not; or we could hold it in our hands, and legislate from day to day as we saw fit. Before leaving this question of the money value of the withdrawal of the claim of exclusion from a portion of this coast by Great Britain, I must take the liberty to repeat to this Court, that I may be sure that it does not escape their fullest attention, that the right to exclude us, independent of the Treaty of 1818, we do not, and never have acknowledged; and by the Treaty of 1818 we arranged it as a compromise on a disputed question. That claim to exclude is contested, difficult of interpretation, expensive, and dangerous. The geographical limit is not easily determined; in respect to bays and harbours, it is entirely undetermined, and apparently must remain so, each case being a case a good deal *sui generis*; and the meaning and extent of the power and authority which goes with that geographical extension beyond the shore, whatever it may be, is all the more uncertain and undetermined. Under the Treaty of 1818, my country certainly did agree that she would not fish nor assert the claim to the right of fishing within three miles of a certain portion of this great bay. Great Britain, by the Treaty of 1871, has withdrawn all claims to exclude us from that portion; and we agreed that if there is any pecuniary value in that beyond the pecuniary value of what we yield, we stand ready to make the requisite compensation. It is extremely difficult, certainly to my mind, and I cannot but think, from conversation and reading, that it must be to others, to determine the pecuniary value of a mere faculty, as we may call it, a faculty according to the Roman law, a liberty, perhaps, of endeavouring to catch the free-swimming fish of the ocean. What is its pecuniary value? How is it to be assessed and determined? Why, it is not to be assessed or determined by the amount of fish actually caught. That may be very small, or may be very large. The market value may be raised or decreased by accident; a war may so cut us off from making use of the privilege, that we should take nothing. It does not follow, therefore, that we are to pay nothing. Some cause, some accident, some mistake of judgment may send a very large fleet here, at a very great expense of men and money; we may make a very large catch, more than we can dispose of, but the pecuniary value of that catch is no test of the value of the liberty of trying to catch the fish. Then, what is the test? Is the use made, a test? Although, at first glance, it might seem that that was scarcely a test, yet I think that, on the whole, in the long run, if you have a sufficient period of time to form a fair judgment, if your judgment is based upon the use made by persons who are acting for their own interests in a large market, then you may form some judgment from the use actually made. This case has been likened by the counsel for the Crown to one where an individual has hired a farm, and on the farm there is a house or dwelling, and he has not used it. Of course he has to pay for it, whether he uses it or not. It is at his disposal; it belongs there; it is fixed there, and he may enter it when he pleases, and it is of no account whether he does use it or does not. But if the question was, whether a certain region of a city and the buildings thereon were of real value or not, and it was brought up as an argument against them, that they were not wholesome and not habitable, certainly the fact that in the market, for a long period of years, purchasers or tenants could not be found, would be a very strong argument against their value.

Now, with reference to these fisheries, what is the value of the mere faculty or

liberty of going over these fishing grounds, and throwing overboard our costly bait, and embarking our industry, capital, and skill, in the attempt to catch the fish? We venture to say that we have had many years of experience, and that there have been long periods of time when those fisheries have been opened to us, and they have been closed for short periods of time; that from 1871 down to the present time we have also had a fair test; and when we show, by undisputed testimony, that the citizens of the United States, during long periods of time, and as a result of long experience, have come to the conclusion that they are not of sufficient value to warrant them, as merchants and as men acting for their own interests, to make much use of them, I submit that we have brought before the tribunal a perfectly fair argument, and a very valuable test; because it is not what one man will do with one house; it is not what one ship-master or one ship-owner may fancy about the inshore or the outshore fisheries; but it is a question of what a large number of men, acting for their own interests, in a very large market, full of competition, will do. If, on inquiring into the state of that market, and the conduct of such men, who cannot be governed by any peculiar and special motive bearing upon the case, we have produced a fair and influential consideration, we claim that that is entitled to its fair weight. You might well say, perhaps, of a few fishermen of Gloucester, that so deep was their hostility to the British provinces, that they would be willing to abstain from using these fisheries, just for the purpose of reducing the amount that this tribunal might find itself called upon to adjudge. But, if there should be one such man so endowed with disinterested malice, I am quite certain that this tribunal will not believe so of the entire fishing community of buyers and sellers, fishermen and merchants, acting for a series of years, in view of their own interests. If, therefore, we have shown, as we certainly have, that the use of this bay fishery, as an entirety, the whole of it, deep-sea and inshore alike, has steadily diminished in market value, that our ship-owners are withdrawing their vessels from it, that fewer and fewer are sent here every year, and that they have said, man after man, that they do not value the extension of the territorial privilege, where that extension is always inshore, bringing them into more dangerous and less profitable regions—that being the case, we ask your Honours to consider all this as fair proof of the slight value which is actually put by business men, acting in their own interests, upon what has been conceded to us.

Now, what is this that has been conceded to us, or rather, what is this claim of exclusion from which Great Britain has agreed to withdraw herself during the period of this Treaty? What is the privilege? It is the privilege of trying to catch fish within that limit. That is all it is. All attempt to measure it by the value of the fish in barrels brought into the United States is perfectly futile and fallacious. A barrel of fish salted and coopered and standing on the wharf in Gloucester represents something very different from the value of a right to cross over a portion of the seas and attempt to catch the fish. It represents capital; it represents the interest on a vessel costing 8,000 dollars; it represents the interest upon the whole outlay of a permanent character, and it represents the absolute cost of all the outlay which is of a perishable character; it represents the wages of skilled labour; it represents mercantile capacity; and if you eliminate from the value of the mackerel standing upon the wharf at Gloucester all these elements, and turn me back to the mere fact that there was some mackerel, more or less, thin, meagre, fat, or heavy, as we please, to be found by the diligent and skilful mariner within that little fringe of this great garment, what do you show me at all by which I can estimate its value? And that is the whole of it. Furthermore, if you take, instead of that, the value of the mackerel as it stands upon the wharf at Prince Edward Island, soon after it is caught, 3 dol. 75 c. that represents, again, the interest on the cost of the ship, and all the outfit, and all the labour, and all the skill, and all the risk. Eliminate them, and what have you left? You have nothing left but the right or liberty to do something within certain limits; and that right is one any attempt to exclude us from which is very dangerous, uncertain, and precarious. I do not know what to liken it to. It certainly is not to be compared at all to a lease, because the lessor furnishes everything that the lease requires. Now, if in company with this privilege, Great Britain had furnished the fish, so that we should not have to employ vessels, or men, or skill, or labour, or industry, furnished them to us on the wharf at Prince Edward Island, then there might be some analogy between that and a lease. What is it like? Is it like the value of a privilege to practise law? Not quite, because there always will be lawsuits, but it is not sure that there always will be mackerel. Suitors, irritated men, may be meshed within the seine which the privileged lawyer may cast out; but it does not follow that the mackerel can be. On the contrary, they are so shrewd and so sharp that our fishermen tell us that they cannot use a seine within

their sight; that they will escape from it. But the lawyer is so confident in the eagerness of the client for a lawsuit, that, instead of concealing himself, and taking him unawares, he advertises himself and has a sign of his place of business. Suppose we were to compare it to the case of a lawyer who had a general licence to practise law in all parts of a great city, but not a monopoly. Everybody else had the same right; but he was excluded from taking part in cases which should arise in a certain suburb of that city—not the best, not the richest, not the most business-like—and which had lawyers of its own living there, accustomed to the people, who asserted the right to conduct all the lawsuits that might arise in that district. What would it be worth to a lawyer who had the whole city for the field of labour—plenty to do, to have his right extended into that suburb? What would it be worth if that suburb was an indefinable one, not bounded by streets, but by some moral description, about which there would be an eternal dispute, and about which the lawyer might be in constant trouble with the policeman? What would be its value? Who can tell? Or, a physician or merchant? Suppose a merchant is asked to pay for a licence to buy and sell, to keep a retailer's shop, everybody else has the same right that he has, and half the people are doing it without any licence; but he is asked to pay for a licence. What is it worth to him? Why, not much, at best. But suppose that the licence was confined to the right to deal in Newfoundland herring? While everybody else could deal with other fish, his licence extended his trade to Newfoundland herring alone. Why, his answer would be, "There are plenty of herring from other places that I can deal with. There is a large catch in the gulf; there is a large catch on the Labrador shore, and what is it worth to me, with my hands full of business, to be able to extend it a little farther, and include the dealing with this particular kind of fish?

None of the analogies seem to me to hold. Your Honours can do nothing else than first to look at the practical result in the hands of business men; and the result is this: to those who live upon the shore and can go out day after day and return at night, in small boats, investing but little capital, going out whenever they see the mackerel, and not otherwise, and coming back to finish a day's work upon their farms, to them it is profitable; for almost all they do is profit; but to those who come from a distance, requiring a week or a fortnight to make the passage, in large vessels, which the nature of the climate and of the seas requires should be large and strong and well manned, who have the deep sea before them, and innumerable banks and shoals, where they can fish—to them the right to fish a little nearer inshore is of very much less value. That is the position of the American. The other is the position of the Englishman. And the fact that we have steadily withdrawn, more and more, from that branch of the business, is a proof that it is of little value.

Then, beyond that, I suppose, you must make some kind of estimate, for I am not going to argue that the faculty is of no value. I suppose the right to extend our fisheries so far is of some value. I can find no fair test of it. But recollect, Mr. President and Gentlemen, as I say again, that it is but a faculty, which would be utterly useless in the hands of some people. Why, it has been found utterly useless in the hands of the inhabitants of this Dominion. What did they do with it until they took to their day and night boat-fishing? What has become of their fishing vessels? Gone! The whole inshore and outshore fishery became of no value to them, until they substituted this boat-fishing which we cannot enter into. Then having before you this very abstract right or faculty, obliged to disconnect from it everything except this, that it is an extension of the field over which we had a right to work, you can get nothing, I think, upon which you can cast a valuation. Nor is it strictly analogous to a field for labour, because a field for labour is a specific thing. When you buy it you know what it will produce; and if you sow certain seed, you will get certain results; and then having deducted the value of your labour, and skill, and industry, and capital, and allowed yourself interest, the residue, if any, is profit. That depends upon the nature of the soil with which you have been dealing. But nothing of that sort can be predicated of the free-swimming fish. They are here to-day and there to-morrow; they have no habitat; they are nobody's property, and nobody can grant them.

I have dealt with this subject as I said we were to deal with it; not to depreciate it unreasonably, but to analyze it, and try to find out how we are to measure it. And having analyzed it in this way—which I am sure is subject to no objection, unless I carry it to an extreme—the methods which I have used in themselves are subject to no objection; it cannot be strange to your Honours that the people of the United States said, through their Government, that in securing from Great Britain her withdrawal of this claim of exclusion from these three miles, we did it, not for the commercial or intrinsic value of the right, so much as because of the peace and freedom from irritation

which it secured to us. And that leads me to say what, perhaps, I should have otherwise forgotten, that in estimating the value to the people of the United States of the right to pursue their fisheries close to the shore in certain regions, you are not to estimate what we have gained in peace, in security from irritation, from seizures, and from pursuit. Those are the acts and operations of the opposite party. It is the value of the right to fish there alone that you are to consider. Why, if you pay to an organ-grinder a shilling to go out of your street when there is sickness in your house, it does not follow that his music was worth that price. Nobody would think of considering that a test of the value of his music, if a third person was appointed to determine what it was. So, here; what we were willing to do to get rid of a nuisance, of irritation, of dangers of war, of honest mistakes, and opportunities for pretended mistakes—what we were willing to pay for all that is no proof of the price at which we set the mere liberty of being there peacefully and in the exercise of a right.

The people of the United States can never look upon this exclusion, under the Treaty of 1818, as anything more than a voluntary surrender on their part for a Treaty purpose, over a certain limited region, of what they believed to be their right—their right by virtue, as I had the honour to say to this tribunal yesterday, of the grants in the Charters of Massachusetts and the other New England Provinces, of an unlimited right to fish over all this region—a right which we won by our own blood and valour; the whole privilege being contested between the French and English, all of which might have become French, I do not think I am going too far in saying, had it not been for the prowess and determination of New England. I reminded your Honours yesterday of instances in which we had contributed to force out the French from this country, to make it British, to make the seas British seas, and the fisheries British fisheries, in trust for the Crown and for ourselves. I may add one case, more interesting and bearing directly upon this Province, and that is, the final expulsion of the French, which was carried out at Grand Pré and its neighbourhood; and whatever of reproach may be cast upon those who did it by the harp of the poet, or the pen of the philanthropist, I cannot but remember that that reproach must be borne mainly by my own Massachusetts. For it was Massachusetts troops and Massachusetts ships, under a Massachusetts commander, that forced those people away from their shores. But the historian will not forget that, whatever may have been the right or the wrong of that proceeding, its result was that it put an end for ever to the machinations of the French with the Indians against the peace and security of this Province, and the Province of Cape Breton, and left them and their appurtenances wholly and entirely British.

Your Honours will be glad to know that I am now going to take up the last point of importance in our case, and that is, the value of the free trade which this Treaty has given to all the people of the Provinces. Recollect what that value is. It is true that in 1871, when we made this Treaty, our duties were 2 dollars a barrel on mackerel and 1 dollar a barrel on herring; but our right was to make these duties whatever we pleased—absolute exclusion if 2 dollars and 1 dollar did not exclude. We had a right to legislate with a simple view to our own interests in that matter, and neither the Crown nor the Dominion could be heard on the floor of Congress. But we have bound our hands, we have pledged ourselves that we will put no duties on any of their fish of any kind—fresh or cured, salted or otherwise—or their fish-oil. They may, so long as the Treaty lasts, be imported into any part of the United States without any incumbrance or duty whatever. Now, that the United States is the chief market for the mackerel of these Provinces I suppose it cannot be necessary for me to refer to any evidence to remind your Honours. We have had before us the merchants who deal most largely in Prince Edward Island, Mr. Hall and Mr. Myrick, and we have had two or three or more merchants of Halifax, who did not come here for the purpose of testifying against their own country and in favour of the United States; and from all this evidence it appears conclusively that, with the exception of some inferior mackerel, ill-pressed or ill-cured, and not much the worse for heat, that may be sent to the West Indies to be consumed by slaves, the entire product goes to the United States. There is no market for it in Canada proper; and the merchants here, the dealers in fish, lie awaiting the telegraphic signal from Boston or New York to send there whatever of best mackerel there is, now that they are free from duty, which is saved to them. I therefore think I may safely pass over the testimony introduced to prove that the United States is the great market. Some statistics were prepared to show that a duty of 2 dollars a barrel was prohibitory. In my view, it is quite immaterial. I cannot see how it is material, because, having the power to lay any duties we pleased, we have agreed to lay none; and the benefit to Great Britain, to these Provinces, and to this Dominion, is the obtaining of a pledge not to put on any duty, high or low, from a people who had

the right to exclude the fish utterly, or to make their utter exclusion or their admission dependent upon our sense of our own interests from day to day. Why, until recently, the Corn Laws of England were based upon this principle, that they should exclude all foreign *corn* (as it is called in old mother English), all foreign "wheat," so long as England could supply the market, and whenever England failed to fully supply the market, then the foreign corn was gradually let in according as the market price rose. We might do that; we might do what we pleased; but we have tied our hands and agreed to do nothing.

The evidence presented by my learned friend Judge Foster, and by my learned friend Mr. Trescot, to show that 2 dollars a barrel was prohibitory, on the testimony of these gentlemen from Prince Edward Island, and from the leading dealers in Provincetown and in Gloucester, was certainly abundantly sufficient. I think those gentlemen from Prince Edward Island said that if those duties were reimposed they should retire from the business. Mr. James H. Myrick (p. 432) in answer to the question "I understand you to say that if the duty on mackerel was reimposed in the United States your firm would, except for a small portion of the season, give up the mackerel business and turn to something else?" said, "That is my opinion, decidedly."

Mr. Isaac C. Hall (p. 485) says:—

"Q. Now, you take No. 3 mackerel, what would be the effect of a duty of 2 dollars a barrel in the United States' markets?—A. We could not catch them and ship them there unless there was a great scarcity there, as happens this season.

"Q. Practically what would become of your business of catching mackerel if the duty of 2 dollars a barrel were reimposed?—A. Well, when a man runs his head against a post he must get around the best way he can.

"Q. You are satisfied you could not add the duty to the price of the mackerel in the United States' market?—A. No, it can't be done."

Then Mr. Pew, of Gloucester, testifies to the same effect; but I suppose there can be no doubt, under this weight of testimony, that the money charge against Great Britain is for the privilege of exemption from prohibitory duties, whatever may be prohibitory, whether it be 2 dollars or more.

Now, how was it, with this plain fact in view, that the learned counsel for the Crown were able to produce so many witnesses, and to consume so much time, in showing that they did not, after all, lose much by 2 dollars a barrel duty? Why, my learned friends who have preceded me have exposed that very happily. I fear if I were to say anything I should only detract from the force of their argument; but I think it is fair to say that it will rest on our minds, after we have adjourned and separated, as a most extraordinary proceeding, that so many men were found in various parts of the island, and from some parts of the mainland, who came up here and said that the fact that they paid a duty of 2 dollars on a barrel of mackerel before they sold it in the States, which is their only market, did not make any difference to them. They said it did not make *any* difference. They did not say it made little difference, but they said it did not make *any*. Now, if they had said: "We can catch the fish so much cheaper because this is our home; we can catch them so much cheaper because we catch them in cheap vessels, and with cheap materials, close by where we live, that we can afford to undersell, to some extent, the American fishermen; and therefore the 2 dollars a barrel is not all to be counted to our debit," that would be intelligible. But these fishermen suddenly, by the magic wand of my learned friend the Premier of the island, and my learned friend who represents (I do not know in how high a position) the Province of New Brunswick, were all turned into political economists. "Well, my friend," says the learned counsel for Prince Edward Island, with that enticing smile which would have drawn an affirmative answer from the flintiest heart—"My dear friend! about this 2 dollars a barrel duty—does not that affect your profit in selling in Boston?" "No," says the ready witness. "And why not?" "Why, *because the consumer pays the duty.*" Then the next witness, under perhaps the sterner, but still equally effective discipline of the counsel from New Brunswick, has the question put to him, and he says "No;" and when he is asked how this phenomenon is to be accounted for, he says too that "*the consumer pays the duty;*" until, at last, it became almost tedious to hear man after man, having learnt by heart this *cantalina* "the consumer pays the duty," perfectly satisfied in their own minds that they had spoken the exact truth, say that it did not make any difference. What school of politicians, what course of public lectures, what course of political speaking, what course of newspaper writing, may have led to that general belief, or at least expectation, of those fishermen who came here as political economists, of course it is not for me to say. But I have observed one thing, that even with my limited know-

ledge of political economy, and under even my cross-examination, not one of those witnesses could explain what he meant by the phrase, "The consumer pays the duty;" nor could he answer one question that went to test the truth of the maxim, "Suppose the duty had been 5 dollars a barrel, would it have been true that the consumer paid the duty, and that it would not disturb you at all?" Well, they did not know but that, in that case, it might be a little different. "But the principle would be the same?" No, they did not know how that would be. "Will the demand continue at that price?" That they did not know, but they assumed it would. The truth was, as the Court must have seen, that they were simple, honest men, who had a certain phrase which they had learned by heart, which they used without any evil intent, which they supposed to be true, and which, to their minds, cleared the matter all up. They seemed to think there was a certain law—they did not know what—a law of nations, a law of political economy, by which it came to pass that, whenever they brought a barrel of mackerel to Boston to sell, the purchaser went kindly to the Custom-house and paid the duties, and then, having paid the duties, was prepared to deal with the owners of the fish on the same terms as if he had not done so, buy the fish, and pay them just what he would pay an American; and by some law, some inexorable law, the duties were paid by this man; and the duties having been paid by him, the owners might go into the market to sell as low as anybody else. I think the question was not put, but it might have been put to them: "Suppose the duty, instead of being laid by the United States, had been laid by the Provinces. Suppose the Dominion, for some reason or other, had laid a tax of 2 dollars a barrel on the exportation of fish to the United States?" where would this political economist from Gaspe and from Shediac have been then? Why, certainly he would have had to pay his 2 dollars a barrel before his fish left the Provinces, and he would have landed in Boston with his barrel of mackerel, so far as the duties went, 2 dollars behind the American fisherman.

I suppose it to be the case, that the British subject can catch his fish and get them to Boston cheaper than the American can. We have better vessels, we pay higher wages, we must have larger, stronger vessels, to come here and go back, to and fro; we cannot fish in boats; they can catch cheaper; and therefore, it is true that in fair, open competition, they have an advantage. I give them that credit on this calculation, and I hope your Honours will remember it when you come to consider what they have gained by the right to introduce their fish on free and equal terms with us. They are persons who can catch cheaper and bring cheaper than our own people. However, without reasoning the matter out finely, we must come to this result: that if the Americans can supply the market at the rate of 12 dollers a barrel, and make a reasonable profit, and the Canadian can furnish his fish at the rate of 11 dollars and make a reasonable profit, and has 2 dollars duty to pay, he is 1 dollar behind, and so on. This is an illustration. It must ordinarily be so. And the only time when it can be otherwise, is when the American supply fails, and fish become very scarce. I am sure that when I began the investigation of this case, I should have thought that it was in the main true, that, as fish became scarce on the American coast, and from the American fishermen in the bay everywhere, the British fishermen coming in there could, perhaps, afford to pay the duty and still sell. But such is not the result. The figures have shown it. That has been proved. The difficulty is, that mackerel is not a necessity. It is not British mackerel against American mackerel, but it is British salted mackerel against every eatable thing in nature that a man will take to, rather than pay very high prices. And it is true that fresh fish are more valuable and more desirable than salt fish; that fresh fish are increasing in number; that they are brought into market in quantities, 10, 20, 100 per cent. larger than they ever were before, and that the value of the salted mackerel is steadily and uniformly decreasing.

They brought men here also, who stated, under the same influence, that they would rather see the duties restored, and have the three-mile fishery exclusively to themselves, than to have what they now have. But I observed that the question was always put to them in one form: "Would you rather have the 2 dollar duty restored?" The question was never asked them: "Would you rather go back to the state of things when the United States could put what duty upon your fish they might see fit, and preserve your monopoly of the three miles?" No man would have answered that question in the affirmative. I venture to say, may it please this learned tribunal, that no man of decent intelligence and fair honesty could have answered any such question affirmatively. And those who said they would rather go back to the same state of things testified under a great deal of bias; they testified under a very strong interest on a subject right under their eyes, which they felt daily, and which they may have been made to feel by the urgency of others. They did not suffer at all. It was not they who suffered from the attempt to

exclude us. It was amusement to them, though it might have been death to some of us; and they imagined that if they did not have the duty to pay, which they all based their answer upon, of course they would rather go back to free trade and exclusion, for i their minds it amounted to that. They had not the duty to pay, although one was laid, and of course, with no duty to pay, they would rather go back to that old state of things, and have the exclusive right to fish within three miles. I think that illusion may be safely predicated of nearly all the witnesses brought upon the opposite side, by the counsel for the Crown.

A good deal of time was taken up on each side in presenting extracts from the speeches of politicians and parliamentarians, and men in Congress, as to what was the real value of free trade in fish, and the real value of the right to fish within three miles. Some extracts were read by the learned counsel for the Crown from speeches made by certain members of the American Congress, who had a point to carry, and some arguments, much stronger, were produced by us from members of the Dominion Government, who also had a point to carry. I do not attach the very highest importance to either of them. I hope I am guilty of no disrespect to the potentates and powers that be in saying that, because I have always observed that men in public life who have points to carry will usually find arguments by which to carry them, and that their position is not very different from that of counsel, not before this tribunal, but counsel in court, strictly speaking, who have a point to maintain, and who have a verdict to get, because, woe to the statesman whose argument results in a majority of negatives, because he and his whole party, under the Dominion system, go out of power. It is not so with us. Our members of Congress speak with less responsibility. They do not represent the Government in the House, nor do they represent the Opposition in such a sense that they are bound to take charge of the government the moment those in charge fail of retaining public approval. Our politicians, even in Congress, are a kind of "free-swimming fish." They are rather more like a horse in a pasture than like those horses that are carrying the old family coach behind them. They feel more at liberty. When we consider that the Dominion Parliamentarians speak under this great responsibility, and meet an opposition face to face, who speak under equal responsibilities, when we consider that fact, and the number of them, and the strength of their declarations, all to the effect that the Provinces could not survive our duties any longer, and that in giving up to us the right to fish within the three miles, much was not surrendered, I think your Honours, without reading it all over, or comparing these arguments, argument for argument, may say at once that whatever weight is to be attached to them, far more weight is to be attached to the utterances of the British officers than to the few American politicians who may have lifted up their voices on this subject in their irresponsible way. Moreover—your Honours cannot have forgotten it—the fishermen of Provincetown and Gloucester remonstrated against this Treaty of 1871. They remonstrated against it as hostile to their interests. Be it so. They were good judges of their interests. They stated that taking off the duties would make the fish cheap. They thought so; and they did not consider that the right to fish (and they were fishermen, and knew their business) within the three miles was any compensation for that. And the remonstrance was made at the time, and it was earnest. The men went to Washington to enforce it. While men dealing in fish remonstrated against this concession, the officers of the British Crown, who were responsible, and whose constituents were fishermen and fish-owners, along a certain line of the Provinces, were contending earnestly for the Treaty as beneficial, absolutely, to the Provinces.

Well, it has been said that they knew all the time that there was money to be paid. They knew no such thing. They knew there might or might not be money to be paid, because this Tribunal does not sit here to determine only the *quantum* that the United States shall pay, but first and foremost to determine whether anything shall be paid, and as to that these officers of the British Crown could not pass any judgment. It certainly has abundantly appeared in this case that the exportation of fish into the United States, and the value of the fish here, has risen and fallen steadily, and almost uniformly with the right of free trade, or the obligation to pay the duty. From 1854 to 1866, when there was free trade in fish, and we had the right to fish where we pleased, and they had free trade, and sent their fish to the American markets, immediately their mackerel fishery increased in value. Their boat-fishing, instead of being a matter of daily supply for the neighbourhood, developed into a large business. The boats were owned by merchants, large quantities were shipped from them, and the business increased twofold, threefold, tenfold, as one of their own witnesses has stated, stimulated by the free American markets. I am reminded that the witness said it had increased an hundredfold. Your honours will perceive my

moderation in all things. The witness to whom I refer is the fellow-citizen of our friend the Premier of the Island, Mr. John F. Campion, and I think he recognized him immediately upon his appearance on the stand.

"Q. You say that the number of boats and men engaged in the shore fishery have increased; has the catch increased to any appreciable extent?—A. It has increased in the same ratio as the boats.

"Q. In quite the same ratio?—A. Yes.

"Q. To what extent did you say the number of boats had increased—100 per cent?—A. I would say that this has been the case within the last ten years."

"*One hundred per cent.*," says Mr. Campion, from Prince Edward Island. He says this increase has taken place within the last ten years, but he does not undertake to define how far that increase began before 1866, whether it continued in the interval between 1866 and 1871, and how far it was resumed afterwards. But we find that five years after the conclusion of the Washington Treaty, the boat-fishing had increased 100 per cent., and we know that it is the freedom of trade in fish that has made the boat-fishing of those islands, that has brought about their increase in size, which every witness has testified to who has been asked the question. I do not know whether my learned friends have asked the question or not, but we have asked it; and it having been testified to by two residents there, Mr. Hall and Mr. Myrick, and the Government of Great Britain having had ten days allowed them to bring rebutting testimony, brought none, we may, therefore, consider that matter as settled, that their growth has been largely in boat-fishing, in the number of boats, the number of men employed, the quantity of the catch, and the amount of capital invested, and that an examination will show that it is to the freedom of trade in fish that they owe it entirely.

I will read a few words to your Honours from Mr. Hall's testimony, who has very large experience, living, or if not living doing business, on the northern part of the bend of Prince Edward Island:—

"Q. The boat fisheries of Prince Edward Island have increased and flourished very much for the last few years?—A. Yes, very much. They have good reasons for it.

"Q. What reasons?—A. A better class of fishermen. When we first started business we had, of course, to work with green hands. Like every other business, it has to be learned, and men have to be prepared for it. Then when the duties were put on the best fishermen left us and went aboard American vessels. They could ship from the island or go to Gloucester and get good vessels and have their fish go into the United States and sell for their whole value. We had no market and had inferior men. Now, since we have a free market, these men have been coming back. The character of the men and their ability to fish have increased very much. So much so that I honestly think you can calculate the catch of the same number of men now at 25 or 33 per cent. more than it was formerly.

"Q. To what do you attribute this greater supply of boat fishermen and better quality?—A. These men find they can fish here. This is their home in many cases. A great many get boats and find they can do very well here now fishing, and they stock at home and fish from the shore.

"Q. Now, if the island were cut off from the United States' market what would become of this boat-fishing, and what would become of the fishermen?—A. Well, these fishermen would probably go back to their old business. I would not want to fish if I had to pay the duty on mackerel."—*American Evidence, p.* 483.

Then we have the testimony of Mr. James R. McLean, of Souris, Prince Edward Island, called by the other side, and coming from the strongest point in favour of compensation, that is, the bend of the Island:—

"We had to pay 2 dollars a barrel duty on the mackerel we sent to the United States, and the men would not stay in the island vessels when they saw that the Americans were allowed to come and fish side by side with the British vessels, and catch an equal share of fish; of course this was the result. The fishermen consequently went on the American vessels; our best men did so, and some of the best fishermen and smartest captains among the Americans are from Prince Edward Island and Nova Scotia."

There has been put into my hands what may be called an "account stated" on this subject of the balance between what is gained by the Provinces by the removal of the duties, and what we gain by the extension of our right to fish. The principle on which it is made up is most unfavourable to us; I do not think it is a sound one, but some persons may. At all events, it is the most unfavourable to us.

"GREAT BRITAIN, TO UNITED STATES.

	Dols.	c.
Debtor—		
"To saving of duties on fish and fish-oil for twelve years, averaged from the returns of 1874, 1875, and 1876 from Appendix (O)...	4,340,700	00
"Creditor—		
"By value of mackerel caught within three miles of coast for twelve years, at 3 dol. 75 c. per barrel, allowing one-third to have been taken within three miles of the shore, and assuming the catch for each year as equal to that given in the Port Mulgrave returns for 1874 (63,078½ bbls.)	946,177	50
"Balance due United States	3,394,522	50"

We were obliged to take Port Mulgrave returns for the year 1874, because, as your Honours will recollect, nothing could extract the returns for 1875 and 1876 from the hands of the British counsel. No words of advice, no supplication, no bended knees, nothing could get from them those returns, so favourable to the United States, and we took the returns of 1874.

But, supposing it to be true that the exporter does not pay all the duties—of course nobody believes that he pays nothing; but, give him the fairest possible chance, supposing he pays one quarter, and the consumer pays three-quarters, the result then is, that against the 946,177 dol. 50 c. credited to Great Britain, we put one-quarter of the United States' duties remitted, 1,085,175 dollars, and it leaves a balance a 138,997 dol. 50 c. in favour of the United States.

So that, bringing this matter as far as statistics can bring it, getting the value of the fish in Prince Edward Island, irrespective of the labour put upon it afterwards, assuming one-third of the fish to be caught within the three miles, and to be of equal value with those caught outside, which certainly is not true; and, supposing that, of the duty of 2 dollars a barrel, only one-quarter is paid by the exporter, still the balance remains in favour of the United States. If, gentlemen of the Commission, such is to be the mode of treating this subject, by taking values and balancing one against the other, that is the result.

I do not suppose, myself, it is possible to arrive at any satisfactory result by any such close use of statistics, on the other side or on ours. But a few general principles, a few general rules for our guidance, certainly are to be found in all this testimony, and in all this reasoning. You have the United States able to put on what duties it pleased. You have its actual duties at 2 dollars per barrel, substantially prohibitory, which everybody said was prohibitory, except those deeply instructed political economists who came here with the impression that some good friend paid the duties for them, to enable them to get into market on equal terms with everybody else. That you have with certainty. Against that, you have the most speculative opinion in the world, and that is as to the value to us of a franchise or a faculty, or a privilege, or a liberty, to pursue the free-swimming fish of the ocean a little further than we ordinarily pursue him, with every vessel of ours coming into competition with fishermen from boats, who have every advantage over us, and to ascertain the value of that franchise, privilege, faculty, or whatever you may call it, irrespective of all the capital or industry that must be employed in its exercise.

Will your Honours, before I take my seat, allow me to recapitulate, at the risk of tediousness, so that there may finally be no misapprehension, the points upon which the United States expects a favourable decision from this Tribunal? I mean, not merely a decision in favour of peace, which we all hope for; but, technically, I mean a decision of this sort: that, having before you a matter of clear money, and of the absolute right to lay duties without restriction, and a duty always laid of 2 dollars a barrel, from which the Dominion is now protected, and free admission to a market, which is their only market, you cannot find in the value of this faculty or privilege—taken in its historic view, taken with all its circumstances, its uncertainties, its expenses, the perils of exercising it, and all—that you cannot find in that an amount of money value which equals the money value which the Dominion certainly does receive.

Bringing it down, then, to a very few points, our position is this: We had, from the beginning down to 1818, a right to fish all over this region, without any geographical limitation; we held it as a common heritage with all British subjects; we helped to conquer it, to bring it into the possession of Great Britain; we always regarded it as common. When we had the war of the Revolution, we put that and everything else at stake. I concede it. The war did not destroy it. War never does. It is not the declaration of war that transfers a city from you to your enemy; it is the result of the war. Every war puts at stake the whole territory. During the wars the boundaries of

the two nations are the line of bayonets, and nothing more nor less. But when the war ends, if it is a conquest, the conquered party has no territory to bound; he depends on the will of the conqueror. If there is no conquest, and the Treaty is made upon the principle of *uti possidetis,* then the line of bayonets, when the war closed, is the boundary. If peace is made upon a special arrangement, or on the principle of *in statu quo ante bellum,* then the Powers are restored to their old rights. The peace which followed our revolution was upon the latter principle. There was no conquest—certainly none by Great Britain over us, and peace was made upon the principle *in statu quo ante bellum,* except that we arranged for convenience the boundary line a little different from what it was before the war. Everything else stood as it stood before, on the principle *in statu quo ante bellum.* And so stood the fisheries, which were just as much our possession, our property, and always had been, as anything else that we held. We held them under our charters, and we held them by right to the last, and the Treaty was careful to say so, as pointed out by Lord Loughborough in the House of Lords, and by Lord North in the House of Commons, who was the instrument in the hands of the King in bringing about the unhappy war (no one, I think, considers it was "unhappy" now, on either side). They said this Treaty does not *concede* the right to the Americans to fish within three miles; it *acknowledges* it as an existing right, as one that they always had and it makes the usage to fish by the Americans as the final proof, in all disputed questions of geography, political or natural. And so it rested, down to 1818. When the Treaty of Ghent was made, in December, 1814, at the close of our war, the parties came together. The Americans utterly refused to hear a word calling in question their right in common to the fisheries, or of geographical limits. Mr. Adams had his famous controversy with Earl Bathurst, in which that question was so fully argued, summarized in one portion of Mr. Wheaton's work on international law, which has been the study of statesmen ever since, and still more fully, perhaps, in Mr. Adams' book, which has been alluded to.

But, in 1818, when Great Britain was at peace with all the world, and when the two nations stood face to face over this subject, Great Britain claiming largely, we did not know what—fifty miles, sixty miles, unlimited King's chambers, when vessels were arrested sixty miles from the shore, on the ground that they were in the King's chambers, when they claimed that the Gulf of St. Lawrence was the King's chamber, where we had no right to fish, when the three-mile line was a new thing in international law; when each nation found it could not compel the other, and both were desirous of peace, both had seen enough of fighting to desire that there should be no more fighting between brethren, that they should not shed brothers' blood over any contestation in a mere matter of money or interest, and not so much a matter of honour, of sentiment, as it might have been at any moment, if any blood had been shed; then the two Great Powers came to a compromise, and Great Britain agreed by implication that she would not assert any claim of exclusion anywhere beyond the ordinary lines. Not a word was said on that subject. She never surrendered those extreme claims in terms, any more than she abandoned in terms the claim to board our ships, and take from them, at the discretion of the commander, any man whom the officer thought spoke the English tongue as an Englishman, and not as an American. The latter claim was never abandoned in terms, although we fought a war upon it, but no one believed it would ever be attempted again to be put in force. But, as to what was specifically done, it was a compromise. Great Britain was not to exclude us from the Magdalen Islands, within the three-mile line, or any geographical limit of the Magdalen Islands, or from Labrador, from Mount Joly northward indefinitely, or from certain large portions of the coast of Newfoundland; and, on the other hand, we agreed that England might exclude us—it was a Treaty agreement—during the continuance of the Treaty, from the rest of the Gulf of St. Lawrence, within three miles of the shore. Unquestionably, as the letters of Mr. Gallatin and Mr. Rush, who made the Treaty, show, we thought we had gained all that was of value at that time. It was not until about the year 1830 that this great change in the fisheries themselves came in; when they ceased to be exclusively cod fisheries, and became mainly mackerel fisheries. Then the importance of landing upon the shores to dry our nets and cure our fish was reduced to nothing—I mean, practically nothing. We put it in the Treaty of 1871, but it has never been proved that we made any use of that liberty or power since the Treaty.

The advent of the mackerel—one of those strange mutations which seem to govern those mysterious creatures of the sea—the advent of the mackerel to this region, and to Massachusetts Bay, put a new countenance upon all this matter. It undoubtedly gave an advantage to the British side, and put us at once to somewhat of a disadvantage. Then came the demand of the islanders, and of the people of the Dominion, and others,

to carry into effect this exclusive system, to drive our fishermen off, not only from the three-mile line, as we understand it, but from the three-mile line as any captain of a cruizer chose to understand it. Nobody knew what the three-mile line was. Was it to be drawn from headland to headland? They so claimed. They made maps and marked out a line, running the whole length of Prince Edward Island, within three miles of which we must not go. They made other lines, so that the Bay of St. Lawrence, instead of being an open bay, an international bay, for the use of all, was cut up into preserves for fish, for the sole use of the inhabitants of the Dominion, by these arbitrary lines, drawn upon no international authority; and we never could know where we were, whether we were liable to seizure or not; and we could not predict what decisions the Courts might make against us in case we were seized. It was a dangerous, a most unjust and unhappy state of things, the attempt to carry out the claim of exclusion at all, and nobody felt it more than Great Britain. She felt that it was, as one of the captains of the Royal Navy said upon the stand the other day, immensely expensive to Great Britain to keep up this armament and this watch along the coast by British ships, and more particularly by the small Provincial cruizers. It was perilous to confide to these men, the new-born officers of the Provincial cruizers, the right to decide questions of international law, questions of the construction of the Treaty, at their discretion, upon the quarter-deck, with a deep interest to secure what they were in search of, that is vessels that could be seized. Then there was a guard of police to be maintained along the shore, and information to be conveyed from point to point. The result was irritation, collison, honest difference of opinion; the American fishermen saying, "I am more than three miles from that coast, I know," and the British Commander saying, with perhaps equal honesty, "You are less," and neither able to determine it, and the vessel is seized and carried into port, and nobody ever can determine where that vessel was when she was seized. And then we had pretty burdensome duties laid upon us by the Legislatures of these Provinces. The burden of proof was thrown upon every ship to prove that she was not subject to conviction, and she was liable to threefold costs if she failed; she could not litigate the question without bonds for costs, and it seems to have been left to the discretion of the captor when he should bring his captured ship into port, until we hear at last a Judge in one of the Provinces calling for an explanation why it was that an American ship, unjustly seized and discharged by him, had not been brought before him for months, until the voyage was destroyed, the men scattered, the cargo ruined, and the vessel greatly deteriorated, and no answer was given, nor did their majesties, the commanders of the cutters, think it necessary to give any, and I do not suppose it was. The whole subject became a matter of most serious diplomatic correspondence, and, as I had the honour to suggest (and it was too painful a suggestion to repeat), a very little change in the line of a shot might have brought these two nations into war, because, when passion is roused, when pride is hurt, when sympathies are excited, it is hard to keep peace between even the best Governments and most highly educated peoples. They feel the point of honour, they feel the sentiment, that the flag has been insulted, that blood has been shed. The whole subject became too perilous to allow it to stand any longer. Great Britain was also led into difficulties with her Provinces, by reason of their efforts to make the most of their three-mile exclusion, to which she was utterly indifferent. The Provinces saw fit to make their lines as they pleased, and when they could not bring their great capes or headlands of the bays near enough together to exclude us, then they increased the line of separation, which the law established. If "the mountain would not go to Mahomet, Mahomet must go to the mountain." If the bay persisted in being more than six miles wide, then the provincials met it by a Statute that it would do if it was ten miles wide; and they were telegraphed instantly from England, "That will not do, you must not treat the American people in that way. Go back to your six-mile line," and they obeyed at once. Then they attempted to reconcile the whole matter by the aid of a suggestion from Great Britain to give us licences to fish within the three miles upon a nominal rent. "They have always fished there," she said. "We cannot have peace unless they do. We have tried to exclude them, and it is in vain. We must give up this exclusion; but we do not want to give it up and surrender it for nothing. We do not care for their money, but let them pay us a nominal licence fee as a recognition of our right to exclude." Very well; they put the fee at 50 cents a ton, and many Americans paid it; not, they said, because they considered the right to fish further than they had fished to be worth that amount, but peace was worth it, security was worth it. To escape the claws of the cutters and local police, to avoid the uncertainty of a conflict of judicial opinions, such as I have had the honour to lay before you, they did pay, to some extent, the charge for the licence.

Then, as I have said, in that unaccountable and unaccounted-for manner, the licence

fee was increased from 50 cents to a dollar a ton, and from a dollar a ton to 2 dollars a ton, with the certain knowledge that as only a portion had paid the 50 cents, and a much smaller portion had paid the 1 dollar, probably none would pay the 2 dollars, and so substantially it turned out. Now, why did they do it? I do not know, as I said before. I charge nothing upon them. I only know the result was, that we could not afford to pay the licence. It was no longer what the British Government intended it should be, a licence fee of a merely nominal sum, as an acknowledgment of the right, but it put us, unlicensed, entirely in their power. Then they let loose upon us their cutters, and their marine police. Well, the two nations saw it would not do, that the thing must be given up, and we came first to the Treaty of 1854, and for twelve years we had the free scope of all these shores to fish where we liked, and there was peace, and certainly the Dominion people had free trade, and there was a profit to them, and I hope profit to us; and then we terminated that Treaty, because we thought it operated unequally against us. We got very little from the extended right to fish, while they got almost everything from the extended free trade. Then came back the old difficulties again. We returned to our duties, 2 dollars a barrel on mackerel, and 1 dollar a barrel on herring, and they returned to their system of exclusion, and their cutters, and their police, and their arrests, and their trials. It became more and more manifest that they could not use their inshore fisheries by their boats to profit, and we could not use them by our vessels to profit, and all things working together, also the great difficulty that lay between us and Great Britain with reference to the "Alabama" cases, led to this great triumph, gentlemen, because, I do not care which party got the best of it at this or that point, it was a triumph of humanity. It was a triumph of the doctrine of peace over the doctrines of war. It was a substitution of a tribunal like this for what is absurdly called the "arbitration of war."

And now, gentlemen, that being the history of the proceedings, we have laid before you, on behalf of the United States, the evidence of what Great Britain has gained in money value by our tying our hands from laying any duties whatever, and she has laid before you the benefits she thinks we have gained by the right to extend our fisheries along certain islands and coasts, and you are to determine whether the latter exceeds the former. Great Britain, I suppose, stimulated solely by the Dominion, called for a money equivalent, and we have agreed to submit that question, therefore we have nothing further to say against it. We stand ready to pay it if you find it, and I hope with as little remark, with as little objection, as Great Britain paid the debt which was cast upon her by another tribunal. The opinion of counsel, sitting here for seventy days in conducting the trial, and in making an argument on the side of his own country, is extremely liable to be biassed, and I therefore do not think that my opinion upon the subject ought to be laid before this tribunal as evidence, or as possessing any kind of authority. I came here with a belief much more favourable to the English cause—I mean, as to what amount, if any, Great Britain should receive—from that with which I leave the case. The state of things that was developed was a surprise to many; the small value of the extension of the geographical line of fishing to our vessels—I mean, to vessels such as we have to use—to the people of the United States, and the certain value that attaches to the Provinces in getting rid of duties, has given this subject an entirely new aspect, and has brought my mind very decidedly to a certain opinion; and I am not instructed by my Government to present any case that I do not believe in, or to ask anything that we do not think is perfectly right, and the counsel for the United States are of one opinion, that when we ask this Commission to decide that there is no balance due to Great Britain, in our judgment, whatever that judgment may be worth, it is what justice requires the Commission should do.

I have finished what is my argument, within the time which I intended last night; but, Mr. President and gentlemen, I cannot take leave of this occasion, and within a few days, as I must, of this tribunal, without a word more. We have been fortunate, as I have had the pleasure to say already, in all our circumstances. A vulgar and prejudiced mind might say that the Americans came down into the enemy's camp to try their case. Why, gentlemen, it could not have been tried more free from outside influence in favour of Great Britain had it been tried in Switzerland or in Germany. This city and all its neighbourhood opened their arms, their hearts, to the Americans, and they have not, to our knowledge, uttered a word which could have any effect against the free, and full, and fair decision of our case. We have had the utmost freedom. We have felt the utmost kindliness everywhere. The counsel on the other side have met us with a cordiality which has begun friendships that, I trust, will continue to the last. I can say, in respect to my associates in this case (leaving myself out), that America has no cause to complain that her case has not been thoroughly investigated by her

Agent and counsel, and fully and with great ability presented to the Court; and I am certain that Great Britain and the Dominion, represented here by an Agent from the Foreign Office, devoted to the work before him, assisted by the constant presence of a member of the Dominion Government largely acquainted with this whole subject, and with five counsel, one from each Province of the Dominion, all capable, all indefatigable, with knowledge and skill, cannot complain that they have not been fully and ably represented. But, after all, the decision, the result, depends upon you three gentlemen, who have undertaken, two of you at the request of your respective countries, and his Excellency at the request of both countries, to decide this question between us.

It has been said, I have heard it, that your decision will be made upon some general notion of what, on the whole, would be best for the interests of the two countries, without much reference to the evidence or to the reasoning. Mr. President and gentlemen, we repudiate any such aspersion upon the character of the Court. We know, and we say it in advance, not that we *hope* this tribunal will proceed judicially, and decide in accordance with the evidence and the weight of reasoning, but we cannot allow ourselves to doubt it. We may venture to congratulate your Honours and your Excellency in advance, that when this decision shall have gone out, whether it give pleasure or pain to the one side or the other, the question will have been decided upon those principles which it is manifest the Treaty determined it should be decided upon, not from some local or national view of policy for the present or future, not for the sake of what some persons hope may by-and-by result in something better than the present Treaty, but that you will have confined yourselves to exactly what the Treaty asks and empowers you to do, to determine what is now the pecuniary result of the contrasted Articles of the Treaty. On such a determination of the controversy, whatever may hereafter follow from it, each of your Honours will know that you have been governed by principle, and by that strict rule of conduct which alone can give a man peace at the last.

No. VII.

Final Arguments on behalf of Her Britannic Majesty, by the Hon. Mr. Whiteway, Q.C.

Thursday, November 15, 1877.

The Conference met.

Mr. Whiteway addressed the Commission as follows:—

May it please your Excellency and your Honours—

The duty devolves upon me in taking my part in closing this case, which has now engaged your most earnest attention for a period of over five months, of addressing you, first, on behalf of Her Majesty's Government, and in the discharge of that duty it has not been assigned to me, nor is it incumbent upon me, to refer to the various Treaties which, from time to time, have existed between Great Britain and the United States relating to those important fisheries which are the subject under consideration. I apprehend that it is of little import, in respect to this case, whether the Reciprocity Treaty abrogated the Treaty of 1818, as contended for by the learned counsel on the opposite side; relegating our position to the status existing under the Treaty of 1783; or what effect the war of 1812 had upon the then existing Treaties. These are questions outside the matters now under discussion, and I shall not deal with them. It is sufficient for me to take the Washington Treaty of 1871, which has been correctly termed "the charter of your authority," the bond under which you are acting, and make it the foundation of my argument. No one who had the privilege of being present, and had the opportunity of listening to the able exposition of my learned friend, the Honourable Mr. Foster, the racy, humorous, and slashing speech of my friend Mr. Trescot, and the classical and philosophical composition of my friend Mr. Dana, could fail to admit that

the United States had been represented by able and efficient men, possessing all the ability and earnestness which could possibly be conceived to be necessary in order that the case of the United States might be presented before this Commission in the best possible light; and I heartily believe that there is existing between the agents and the counsel engaged in the conduct of this most important cause, an unanimous desire and an earnest zeal that justice may be meted out, and that your verdict may be such as will be satisfactory to each High Contracting Power, and have a material and lasting effect in the promotion of peace and harmony between Her Majesty's subjects on the one part, and the citizens of the United States on the other. Reviewing, however, the speeches of the learned gentlemen to whom I have referred, it appears to me that there has been a vast deal of irrelevant matter introduced; and that the real issues involved have been, in a manner, ignored and cast into the shade. Substantially no defence has been offered on behalf of the United States which materially affects the issue—is there a claim of Great Britain or not? It seems generally admitted that there is a right to receive something, and that the question for you now to decide is not as to whether any sum is to be awarded to Great Britain, but what is the amount at which her claim shall be assessed.

I now propose to discuss briefly the main issues involved, namely, the advantages derived, respectively, by each of the High Contracting Parties under the Treaty of Washington, and the value of those advantages. The arguments which I desire to advance in support of the claim of Her Majesty's Government, I may here observe, will be confined entirely to that branch of the inquiry which has reference to Newfoundland; and I shall limit my observations to a consideration of such facts as have a direct practical bearing on the substantial advantages for which compensation is claimed. It has not been assigned to me to treat in any manner of the historic or diplomatic features of the case; these subjects, as far as it may appear requisite, will be, I do not doubt, ably and powerfully dealt with by my learned friends who will follow me on the British side. By Articles XVIII, XIX, XXI, and XXII, it is provided as follows:—

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

"It is understood that the above-mentioned liberty applies solely to the sea fishery, and that the salmon and shad fisheries, and all other fisheries in rivers and the mouths of rivers, are hereby reserved exclusively for British fishermen.

"Art. XIX. It is agreed by the High Contracting Parties that British subjects shall have, in common with the citizens of the United States, the liberty, for the term of years mentioned in Article XXXIII of this Treaty, to take fish of every kind, except shell-fish, on the eastern sea coasts and shores of the United States north of the 39th parallel of north latitude, and on the shores of the several islands thereunto adjacent, and in the bays, harbours, and creeks of the said sea coasts and shores of the United States, and of the said islands, without being restricted to any distance from the shore, with permission to land upon the said coasts of the United States and of the islands aforesaid, for the purpose of drying their nets and curing their fish; provided that, in so doing, they do not interfere with the rights of private property, or with the fishermen of the United States, in the peaceable use of any part of the said coasts in their occupancy for the same purpose.

"It is understood that the above-mentioned liberty applies solely to the sea fishery, and that salmon and shad fisheries, and all other fisheries in rivers and mouths of rivers are hereby reserved exclusively for fishermen of the United States.

"Art. XXI. It is agreed that, for the term of years mentioned in Article XXXIII of this Treaty, fish-oil and fish of all kinds (except fish of the inland lakes, and of the rivers falling into them, and except fish preserved in oil), being the produce of the fisheries of the United States, or of the Dominion of Canada, or of Prince Edward Island, shall be admitted into each country, respectively, free of duty.

"Art. XXII. Inasmuch as it is asserted by the Government of Her Britannic Majesty, that the privileges accorded to the citizens of the United States under Article XVIII of this Treaty are of greater value than those accorded by Articles XIX and XXI of this Treaty to the subjects of Her Britannic Majesty, and this assertion is not admitted by the Government of the United States, it is further agreed that Commissioners shall be appointed to determine, having regard to the privileges accorded by the United States to the subjects of Her Britannic Majesty, as stated in Articles XIX and XXI of this Treaty, the amount of any compensation which, in their opinion, ought to be paid by the

Government of the United States to the Government of Her Britannic Majesty in return for the privileges accorded to the citizens of the United States under Article XVIII of this Treaty; and that any sum of money which the said Commissioners may so award shall be paid by the United States' Government, in a gross sum, within twelve months after such award shall have been given."

It would be an unwarranted occupation of the time of this Commission for me now to revert to the interlocutory judgment which was delivered on the 6th September last, by which it was decided that, "it is not within the competence of this tribunal to award compensation for commercial intercourse between the two countries, nor for the purchasing bait, ice, supplies, &c., &c., nor for the permission to transship cargoes in British waters." I may safely leave it to the consideration of your Excellency and your Honours to determine to what extent this decision shall weigh with you in arriving at the award which will be given by you. Narrowed and limited, however, as the subject of this investigation now is, as compared with what we supposed it would be at the outset, I must confess that I was not prepared for the summary disposal by my learned friend Mr. Foster of the claim made on behalf of Newfoundland. As I understand his speech, he asserts that that claim is presented, not for the privilege of fishing in the territorial waters of that island, but for the privilege of enjoying commercial intercourse with the people; and that the latter has been eliminated from this controversy by the decision of the 6th September. Further, he says, that there has been no fishing by United States' citizens in the waters of Newfoundland, except the catching of a small quantity of halibut, and the "jigging of a few squid after dark." Were such in reality the nature of the claim, it would be difficult to conceive how such could be seriously preferred in an international inquiry of such importance; but surely my learned friend must have neglected to peruse the case presented, and to attend to the evidence adduced in support of it (which I cannot conceive him to have done), or he must have felt his inability to meet that case and evidence with direct facts or arguments, and deemed it a wiser course to keep the claim conveniently in the background by dismissing it with a few depreciatory remarks. Much testimony is, however, before you, proving that United States' citizens have prosecuted what are to them most valuable fisheries in the insbore waters of Newfoundland, to which evidence I shall presently draw your attention; but even supposing there had been up to the present time no such fishing, I cannot conceive, nor do I believe you will be of opinion, that Article XXII of the Treaty will admit of the construction that a claim for compensation should be ignored for a privilege conferred upon the United States for a term of years, even if that privilege had not been availed of for a portion of the time. It does not follow but that, immediately your award is given, the privilege would be exercised to the greatest possible extent for the residue of the term, when we should be left utterly without remedy.

I propose then, first, to consider what has been conceded to the United States as concerns Newfoundland, and what is the value of that concession; and, secondly, what has been conceded by the United States to Newfoundland, and the value thereof.

The fisheries of Newfoundland are of historic celebrity, and have been so since the day when Cabot, with his five vessels, steering north-west, on June 24th, 1497, caught the first glimpse of Terra Nova, and rejoicing in his success, named the high projecting promontory which now bears the name of "Bona Vista." It is recorded that in such abundance were the codfish then seen, that Sebastian Cabot called the country *Baccalaos*, in allusion to the circumstance; a name which which still designates an island upon the coast. Of that period, which embraces the first century after the discovery of Newfoundland, we learn that by degrees there came to be attached to the codfisheries on the banks and around the coast more and more importance; and that in 1578, according to Hackluyt, no less than 400 vessels were annually engaged in their prosecution. From that date until the Treaty of Utrecht, 1713, the French, always discerning the enormous value of these fisheries, availed themselves of every opportunity and pretext for further and further acquisitions, and for securing a foothold in the island as a basis for fishing operations. By that Treaty Great Britain was solemnly confirmed in the exclusive sovereignty of the entire territory, but the French were recognized as having the right of fishing concurrently with the English along certain portions of the shore, and in the use of the shore for certain purposes connected with the fisheries.

It is needless for me here to refer to the various Treaties respecting the fisheries which have been from time to time concluded between Great Britain and the United States, and between Great Britain and France, since that date; suffice it to say that, prior to 1871, the United States enjoyed a liberty to fish between Quirpon and Cape Ray on the west coast, and between Cape Ray and the Rameau Islands on the south coast. By the Treaty of Washington, of the 8th May, 1871, United States' citizens

acquired the right to take fish of every kind between Rameau Islands and Cape Race on the south coast, and between Cape Race and the Quirpon Islands on the east coast, comprising a large area of the most valuable inshore fisheries of the world.

We find from the evidence that there has been a steady increase in the products of the Newfoundland fisheries, from 590,460 quintals of codfish exported in 1805, to 1,609,724 quintals exported in 1874. That the exports of herring have also increased, from 36,259 barrels in 1851, to 291,751 barrels in 1876, and the value of exports of fish and products of fish, from 4,466,925 dollars in 1851, to 8,511,710 dollars in 1874. These figures afford proof of the enormous annual product of the British fisheries of Newfoundland, almost the sole support and sustenance of about 160,000 people inhabiting every harbour, inlet, and cove, along the coast. And this, be it remembered, is exclusive of the fish taken on the coast of that island, at St. Pierre and Miquelon, on the coast of Labrador, and on the Grand Bank and other Banks by the French and by the Americans, as to the value of which we have no exact evidence before us; and it is also exclusive of the large quantity of bait fishes exported from Newfoundland to supply the French at St. Pierre. This result is the product of the labours of the Newfoundland fishermen, taken wholly from waters within three miles of the shore, except, for I wish to be particularly correct, the trifling quantity of about 8,000 or 10,000 quintals of codfish, which Mr. Kelligrew and Judge Bennett say may possibly be taken outside that limit. I wish particularly to impress upon this Commission the fact of the codfish being so taken close inshore, because it has been repeatedly asserted, both in the United States' answer and in the arguments of my learned friends on the other side, that the codfishery is a deep-sea fishery, and not carried on within territorial waters. Add to this, then, the large catch of fish by the French vessels upon the coast, and by the French and United States' vessels upon the Banks, the former, according to the statistics handed in by Professor Hind, averaging, for a period of eight years, 217 vessels with 8,729 men; the latter forming a very large portion of the entire fishing fleet of the United States, and some approximate idea may be arrived at of the great wealth extracted from the Newfoundland fisheries. It will no longer, therefore, be a matter of surprise that this well-named Eldorado should have excited the cupidity of the French and of the United States.

The above includes the whole fishery of Newfoundland, Labrador, and the Banks; it will be seen what proportion of it is exclusively taken within the inshore limits thrown open to United States' citizens by the Treaty of Washington, by the statements of Judge Bennett and Mr. Fraser, whose evidence will be found on pages 134 and 169, and who testify that it amounts, according to the statistical returns of the island, to 6,000,000 dollars per annum, taken by 15,000 men, excepting as I before mentioned, about 8,000 or 10,000 quintals, which may possibly be taken outside the three-mile limit, and in some cases, as Judge Bennett tells us, the fish are caught within hailing distance of the fishermen's homes.

I have so far given concisely the progressive results of these fisheries in the past, and their present annual product, from which may be formed an estimate of their probable yield in the future, and these annual results are derived from the evidence of witnesses whose testimony is incontrovertible—which no attempt has been made to assail. I would now draw attention to the evidence of scientists who have been examined before this Commission. Professor Baird, called on the part of the United States, says that "he, with a force of experts, naturalists, and gentlemen interested in the biology of fishes, has been engaged for five years in the prosecution of inquiries into the condition of the fisheries, and that his principal object has been to ascertain what natural, physical, or moral causes influenced fish." "I think," says he, "the cod at the head of fish at the present day. There is no fish that furnishes food to so many people, the production of which is of so much importance, or which is applied to such a variety of purposes. The commercial yield is very great, and its capture is the main occupation of a large portion of the inhabitants of the sea-coast region of the northern hemisphere." As far as he can ascertain, "there is a partial migration of the cod-fish; the cod is a cold water fish; they change their situation in search of food, or in consequence of the variation of temperature, the percentage of salt in the water, or some other cause; and at the south of Cape Cod the fishery is largely off-shore; that is, the fish are off the shore in the cooler waters in the summer, and as the temperature falls towards autumn, they come in and are taken within a few miles of the coast. The fish generally go off-shore in the winter, *but on the south coast of Newfoundland they maintain their stay inshore*, or else come in in large abundance;" and the Professor refers to the coast of Labrador and Newfoundland *as specially favoured localities—as places inshore* where, among others the largest catches of cod are taken; and, says the Professor (page 478 of

United States' evidence), "it is certainly a notorious fact that herring are much more abundant on the coast of Newfoundland than they are on the coast of the United States; though whether the herring that are wanted on the United States' coast could or could not be had in the United States I cannot say, but I do think that herring are vastly more abundant in Newfoundland and the Bay of Fundy than they are farther south."

Professor Hind, upon the same subject, says that he has given his attention especially to ocean physics, the habits of fish, and has made a particular study of the action of the Arctic current and the effect of the Gulf Stream for a number of years; agreeing with Professor Baird, he gives the cod a primary position among fishes, and that it requires water of low temperature. It always seeks the coldest water wherever ice is not present (page 3, Appendix Q). He says also, "it is only where extreme cold water exists that cod is found throughout the year; and upon the American coast it is only where the Arctic current strikes that cod is found through the year."

A close study of history and authentic fishery records has enabled him to pronounce with authority that there are certain localities where the cod-fisheries are inexhaustible, as the Straits of Belle Isle, the Grand Bank of Newfoundland, and, to use the Professor's words, "*that amazing fishing ground on the south coast of Newfoundland.*" "*There is no portion of the world,*" he says, "*where there is such an amazing supply of cod. It has been so for 300 years and upwards. Compared with European fisheries, the Newfoundland and Labrador are far superior in every respect.*" That the Newfoundland coast fishery is, on an average, compared with the Norwegian fisheries, including the Lofoden Islands (which Professor Baird speaks of as being one of the most important and productive fishing grounds), as five is to three, or where five quintals of fish are taken at Newfoundland, three are only taken on the coast of Norway, including the Lofoden Islands. He says the bays and all along the coast of Newfoundland, and also part of the Grand Bank, may be considered as the great spawning grounds of the cod, *and the great cod-fishery of the world;* the conformation of the coast, the depth of water, the deep bays and inlets, and the numerous islands surrounding Newfoundland, are peculiarly adapted to constitute that coast "*as the home of the cod-fish.*" (Hind, page 6, Appendix Q.)—"I think there is no part of the world where, owing to the orographic features of the coast-line, all the conditions of life for the cod are developed to such an extent as on the north-east coast of Newfoundland, the northern portion of the Grand Banks, and the southern part of the island."

The diagram carefully prepared by Professor Hind, showing the progress of the Newfoundland fisheries from 1804 to 1876, is conclusive evidence of their continuously increasing value and importance. I do not wish to delay the Commission by referring to that most interesting evidence of Professor Hind, where he graphically describes the myriads of diatoms in the Arctic seas, and traces, link by link, the chain of connection between the lowest minute forms of life, and the food of all fish inhabiting the cool temperature of the Arctic current, including the invaluable cod-fish, following the course of that current along the shores and banks of British North America, teeming with cod and other cold water fishes; but let us proceed, and see what practical men—*captains of United States' Bankers—say upon the subject of the Bank Fishery.* (Captain Molloy, British Affidavits, page 50, No. 53)—"From my experience and observation, I am of opinion that the Bank fishery off the coast of Newfoundland is capable of vast expansion and development, towards which the privilege of baiting and refitting in the harbours of Newfoundland is indispensable."

And Captain Joseph P. Deneef (British Affidavits, No. 52, page 50, Appendix G), confirms this statement in every particular.

Thus the scientific researches and study of these learned professors, and the practical experience of these United States' masters of vessels, combine to prove the vast source of wealth now existing in the Newfoundland waters, and the probability, nay, almost certainty, of there being still a richer mine of fishery-wealth as yet undeveloped. My learned friend, Mr. Dana, admits the cod-fishery to be the great fishery of his countrymen, and, quoting the late Mr. Howe, he alleges the impossibility of its depletion. By the Washington Treaty vast areas are thrown open to United States' fishermen to prosecute the great fishery of their country.

I now come to the question of bait fishes, and the taking of them by Americans on the coast of Newfoundland. It was attempted to be shown by my learned friends on the other side that salt bait is better and less expensive than fresh. In the establishment of either of these positions a very short review of the evidence of their own witnesses will show that they have utterly failed. Major Low, put forth as an important witness upon this subject, had been one year fishing in the Gulf, three years fitting vessels for the fishery, two years a warrior, then a town clerk in Gloucester, and now an official in the

Post-office. Such a variety of occupations, no doubt, gave him knowledge to speak with authority! He produces from the books of Mr. Steele an account of a cod-fishing voyage in the "Pharsalia," in 1875 (page 360, Appendix L), fishing with fresh bait; and another account of a vessel, the "Madame Roland" (page 363, *ibid.*), fishing with salt bait; and because the result of the "Madame Roland's" voyage in 1873 realized more than that of the "Pharsalia" in 1875, this, in the Major's opinion, is clear, conclusive evidence that salt bait is better than fresh. But did it never occur to him that the cod-fishery in one year might be very prosperous, and in another unsuccessful? That two vessels in the same year might fish very near each other, even with the same appliances, and that one might be fortunate, the other not so. But the gallant Major then makes a great discovery, that in the fresh bait voyage there are some damaged fish, and he at once jumps at the conclusion that it is because fresh bait is used. Here is the evidence in answer to my learned friend, Mr. Dana (page 362) :—

"Q. Before you leave that, I want to ask you in reference to an item there—'damaged codfish?'—A. 13,150 lbs. of damaged cod at 1 cent., 131 dol. 50 c.

"Q. Why should there be this damaged codfish? What is the cause of it? [Here the gallant Major desires to make a favourable impression, but he evidently does not desire to ruin our case entirely, and he answers reluctantly.]—A. Well, I have my own opinion of the cause."

But he is pressed by my learned friend (and as if conscious of the crushing effect of his purposed answer, he calmly surveys the Commission and replies) :—

"A. I believe the cause is going in so much for fresh bait."

(This in his opinion has settled that point.)
My learned friend, Mr. Dana, proceeds :—

"Q. How should that damage the codfish?—A. My opinion is that the salters salted it with the idea that they would not go in so much, and didn't put so much salt on it. When she went into port so much going into the warm water it heated."

But upon my cross-examination, however, he says, pages 394 and 395, *ibid.* :—

"Q. Now, look at the trip of the "Pharsalia," at which you were looking just now?—A. I have it before me.

"Q. You see there is an item headed 'damaged fish at 1 cent a pound.' You see that?—A. Yes.

"Q. Will you find in the trip book, which you presented here, another case of a Grand Bank fishing vessel fishing with fresh bait, where there has been any damaged fish for these three years, 1874 to 1876?—A. The schooner "Knight Templar" [reads items of outfit, among others an item showing she was on a salt bait trip].

"Q. Then there is damaged fish on a salt bait trip?—A. Yes.

"Q. Now find another case on a fresh bait trip? [Witness refers to book].

"Q. I don't think you will find any. You see, fish may be damaged on board a salt bait vessel fishing on the Banks, as well as on a fresh bait trip?—A. I see it.

"Q. Now, you find there are damaged fish as well with salt bait fishing as with fresh?—A. I do find it.

"Q. And it is upon that one case of damaged fish with fresh bait that you arrive at this conclusion?—A. I could not account for it in any other way.

"Q. But it is this one case that you draw the conclusion from?—A. Yes.

"Q. And you would lead the Commission to believe, then, that fish was liable to be damaged because of vessels going in for fresh bait, because of this one vessel on this one cruise?—A. No, I don't now I have seen that other case.

"Q. You withdraw what you said before?—A. I withdraw as far as that is concerned."

The gallant Major has at last collapsed.

Mr. Atwood is also a great authority upon this point. He evidently belongs to the old school, being 70 years of age. He had not fished on the Banks for five-and-twenty years, his last voyage was November 1851, and he was really incapable of expressing an opinion from experience, having never used fresh bait. He endeavoured to lead you, gentlemen, to believe that it was the opinion of all vessel owners, and agents of vessels in Provincetown, that the going in for fresh bait was of no advantage, and that they purposed to discontinue it. He said that he had interviewed the agent of every vessel in Provincetown, but upon cross-examination, it really appears, that out of twenty-three or twenty-four agents of vessels he had held communication with four only —Cook, Waugh, Paine, and Joseph (page 58, *ibid.*), and it would seem that Mr. Atwood had certain theories, one of which is that salt bait is superior to fresh, and that he tried to enforce his opinion upon others as to this question of fresh bait. But what say practical witnesses, who have been called on the part of the United States and examined by my learned friends upon this subject. Edward Stapleton has been using fresh bait,

obtained on the coast of Newfoundland, for the last three years—and carrying on the Bank fishery—and says at page 12: "If a vessel alongside of you has fresh bait, you are not going to catch your share of fish with salt bait." And at page 18:—

"Q. You consider salt bait superior to fresh bait, I believe?—A. Oh, no, I think fresh bait is the best.

"Q. You do admit, then, that fresh bait is the best?—A. Oh, certainly, when other vessels on the Bank have it.

"Q. When codfish see fresh bait they prefer it to salt bait?—A. Yes.

"Q. Consequently you admit that it is of some advantage to you to be able to go to the coast of Newfoundland, and get fresh bait?—A. Oh, yes, certainly it is."

Mr. Francis M. Freeman also says at page 80:—

"Q. Is salt bait just as good as fresh?—A. Fresh bait is the best.

"Q. Is it not more generally used?—A. When you can get it.

"Q. If you can it is much better than salt?—A. Yes.

"Q. Practically, the salt bait cannot compete with the fresh bait?—A. No, it is not as good as fresh.

"Q. Don't the vessels that run over here from the United States and get bait at Nova Scotia use fresh bait altogether?—A. Yes, the Cape Ann vessels do.

"Q. Don't they from Gloucester as well?—A. The Gloucester vessels use fresh bait altogether.

"Q. Then you consider salt bait preferable?—A. No, I never said so.

"Q. The fresh bait you consider preferable?—A. Certainly.

"Q. But surely you don't mean to say that fresh bait is better than salt bait?—A. Yes.

"Q. Do you mean to say that you can catch more fish with fresh bait?—A. Always.

"Q. You can catch them faster?—A. Yes.

"Q. You are certain of it?—A. Yes."

Mr. Lewis, at page 90, says, in answer to the query:—

"Q. It has been stated before us that trawls require fresh bait. Has that been your experience?—A. It is better to have fresh bait.

"Q. Witnesses have told us that with trawls the bait lies on the bottom, and if it is not fresh the fish will not take it?—A. They will not take it as well as fresh bait, but they will take it if they cannot get anything else, and if they cannot get fresh bait."

Mr. Orne (at page 131, United States' evidence), makes the following statement:—

"Q. You left Gloucester with salt bait?—A. No, I took enough fresh herring to bait my trawls once; this was in 1870. If I remember right, I went to the Grand Bank for halibut. I did not get a trip until after I had gone in for fresh bait."

Having thus referred to the opinions of some of the witnesses examined on behalf of the United States, and there are others who testify to the same effect, I will now call your attention to the evidence of those called on behalf of Her Majesty's Government.

Mr. John Stapleton (page 229, British evidence), stated that "there is only a certain season on the Grand Bank that the squid is there. When it is there they get it there, but when they cannot they come inshore and get it. They either buy herring or mackerel, or they catch squid. Whatever they can get by catching or buying, they put in ice and then go back." And in answer to the query, "Why cannot they prosecute the Bank fishery without this?" he answered, "Well, the fish won't bite without something."

"Q. Cannot they bring these from their own country?—A. Yes, that is all very true. It may be that the first trip, when they went from home, they had bait. But that will last for only one or two baitings. And if they cannot get bait on the Bank then they have to haul up anchor and get inshore.

"Q. Well, it is necessary for them, then, to buy bait from you?—A. Well, the salt bait will not catch the fish while there is other bait there.

"Q. For trawling it is absolutely necessary to have fresh fish?—A. Yes, if it was not necessary, they would not come."

Mr. William McDonald, at page 311, *ibid.*, says:—

"Fresh bait is absolutely necessary to take codfish. Bank fishing could not be successfully carried on without it; American captains say they have to get fresh bait or they can catch no fish.

"Q. How did you catch the cod?—A. We caught them with trawls.

"Q. What kind of bait did you use?—A. Fresh bait—herring.

"Q. Cannot you catch cod equally well with salt bait?—A. No.

"Q. How do you know?—A. I have tried it.

"Q. Tell us the result of your experience?—A. I have been on the Banks with nothing but porgies for bait—we generally took a few barrels with us to start upon—and run out our trawls, having the salt bait, and there appeared to be not one fish around, for we could not feel a bite or get a fish. I have then ran to land, got herring and gone out to the same ground as near as possible, and put out the trawls and had an abundance of fish, where previously with salt bait we got not a fish. Even if you bait your hook with a piece of salt porgie, and put a small piece of fresh herring on the point of the hook, you will have a fish on it.

"Q. Your evidence amounts to this, that fresh bait is absolutely necessary to catch codfish?—A. Most undoubtedly.

"Q. And without fresh bait Bank cod-fishing cannot be successfully carried on?—A. I am quite sure of it.

"Q. You are quite sure of it?—A. I am quite certain of it from practical experience. I have tried it.

"Q. For how many years?—A. Four or five years. It is some time ago, but I believe, from what American captains say, that it is worse now. They have to get fresh bait or they cannot catch any fish, they say.

"Q. If the American vessels were not allowed to enter Newfoundland, Nova Scotia, and Cape Breton for fresh bait, they could not carry on the cod-fishery?—A. No; it would be impossible. Any man with common sense knows that. They might carry it on to a certain extent, but not successfully.

"Q. Have you ever conversed with American captains? Do you know whether that is their opinion?—A. Yes.

"Q. They have so expressed themselves to you?—A. Yes, a number of times. There is not a year goes by but what I talk with fifty of them.

"Q. That is the general opinion of those acquainted with the fisheries?—A. Yes, it is the general opinion.

"Q. Did you ever hear a man hold a different opinion?—A. I don't think I ever knew any man who held a different opinion.

"Q. If witnesses came here and told a different story, what would you say?—A. I don't know how they could."

Mr. William Ross, Collector of Customs in this city, says, at page 349:—

"I think for the successful prosecution of the cod-fishery fresh bait is absolutely necessary. I should think a vessel using fresh bait would catch at least double the quantity of fish."

And, not to weary the Commission, I will merely add, that numerous other witnesses have spoken to the same effect.

Now, as to the comparative cost of salt and fresh bait, I cannot do better than instance the case of the "Pharsalia," as Major Low has selected her as the most expensive trip, with fresh bait, made by any of Steele's vessels during three years, 1874 to 1876. His evidence, at page 394, United States' evidence, is as follows:—

"Q. Well, now, what induced you to make the selection of this trip as an illustration of the cost of a vessel using fresh bait and going to the Grand Banks?—A. Because it covered so many ports which she entered, and the different rates charged for ice and bait.

"Q. Is it not the most expensive trip that is in that book?—A. I think not.

"Q. Turn up the other that is more expensive. See if you can find a more expensive trip than that. What years does that book cover?—A. 1874, 1875, and a portion of 1876.

"Q. Now, is not this the most expensive trip made by any vessel using fresh bait during these years?—A. After referring to the book—it may be. From what examination I have made, I think it may be.

"Q. As far as you have gone, you find it to be the most expensive trip?—A. Yes."

The "Pharsalia's" trip, therefore, appears to have been the most costly one he could find in the books for three years of the large business of Mr. Steele as regards fresh bait.

At page 360 of the United States' evidence, it will be seen that the whole cost of fresh bait, for one voyage, according to Major Low's account of the "Pharsalia," is 251 dol. 97 c., including ice, port charges, commission to agents, &c. This is certainly much above the average. Now, then, let us see the cost of supplying a Grand Bank cod-fishing vessel with salt bait. At page 362, United States' evidence, the same witness, quoting from Mr. Steele's books, puts the price of slivers at 8 dollars per barrel, and of salt clams at 11 dollars per barrel. Francis Freeman, at page 80, who has had several vessels upon the Grand Bank fishing, says at page 82, that the average quantity of salt bait taken by a vessel of from 65 to 80 tons, would be 50 barrels. Joshua Payne, another United States' witness, who also fitted out vessels for the Grand Bank, says that one of his vessels took 40, another 60, and another 75 barrels. Assuming this average given by the United States' witnesses themselves to be correct, and accepting the valuation given by Major Low, and the fact stated by him in his account

of the "Madame Roland," that one-half was slivers and one-half clams, we get the following result:—

	dollars.
For a trip with 50 barrels of salt bait.	
25 at 8 dollars	200
25 „ 11 „	275
	475
	dollars.
For a trip with 40 barrels of salt bait	380
„ „ 60 „ „ „	570
„ „ 75 „ „ „	739

These, then, according to the statements made by United States' witnesses themselves, are the costs incurred by vessels for their supply of salted bait, as against 251 dol. 97 c. as shown before, for fresh bait.

I have, then, clearly established, out of the mouths of their own witnesses, that fresh bait is superior to salt, and costs far less money. But it is quite unnecessary for me to argue as to the comparative value of fresh and salt bait. We have, in evidence from the American witnesses, the plain, simple fact, that the obtaining of bait from the coast of Newfoundland was adopted as a practice about four years ago; that it has increased annually, until in the present year nearly all the American vessels have gone to the coast for that purpose. The practice has become all but universal, and business men are not likely to do that which is inimical to their interests; what further evidence or proof can be required on this question?

I will now proceed to consider the position taken by my learned friend, Mr. Foster, when he asserts that the United States' fishermen do not proceed to the coast of Newfoundland to fish for bait, but to buy it. I entirely join issue with my learned friend on this point. Apart from the bait actually caught by them, the arrangement under which the Americans obtain the bait, which they allege that they buy, is to all intents and purposes, and in law, a *taking* or fishing for it themselves, within the words of the Treaty. It has been asserted by a United States' witness that nearly one-half of the crews of American vessels fishing upon the Banks consist of men from the Provinces and from Newfoundland; if, then, a master of a vessel so manned proceeded to Fortune Bay with his herring seine on board, or hiring a herring seine there, then and there with his crew caught the bait he required—would it be contended, that because British fishermen were engaged in the hauling of that bait, that therefore it was not taken by the American masters? Surely such a position would be absurd.

Now, in reality, what is the difference between this mode of proceeding and that practised by the Americans for procuring bait? Let us see what is done according to the evidence. In some cases (and these are few), the American proceeds to St. Pierre, and there meeting a Newfoundland fisherman, owner of a herring seine, and who possesses a thorough knowledge of the localities where the herring are to be taken, he agrees with him for a certain sum for his services, and it may be, for one or two men besides and for the use of his seine, to proceed to the herring ground, and there to secure the necessary quantity of bait required by the Banker. Or, in other and the large majority of cases, the American vessel proceeds to the residence of such fishermen on the coast of Newfoundland, and there makes a similar arrangement. Having arrived at the herring ground, the owner of the seine with his one or two men, and the assistance of some of the American crew, haul and put on board the American vessel all the bait required, and sometimes receives his payment according to the number of barrels required for baiting a vessel, and sometimes in a lump sum. Again, in other cases where squid is required and caplin, he goes to a harbour, states that he requires so much bait, and then and there enters into a contract with a man to go and catch it for him, for which he is paid according to the quantity caught. It would be a subtle distinction to draw between the man thus hired in Newfoundland, outside the crew of the vessel, to catch bait, and the British subject who was hired in Gloucester to proceed to Newfoundland and do the very same work. How very different this contract is from a contract of sale and purchase. If the herring or other bait had been previously caught, barrelled, and in his store ready to be sold to the first purchaser who would give him his price, then it would be a simple commercial transaction, but here the article required is a fish freely swimming in the sea. It cannot be taken and held to await a purchaser, but must be taken fresh from the water and immediately put in ice or it is useless. The American desires to capture it, and whether he captures it through the instrumentality of a British subject or other person, and reduces it into his own possession for his own use, it is immaterial. The case is one clearly within the maxim of law, *qui*

facit per alium facit per se. But this is not the only way in which bait is taken by the Americans on the Newfoundland coast. They have of late taken seines on board their own vessels, proceeded to Fortune Bay, and there not only have they taken bait for their own purposes, but they have taken it and proceeded to St. Pierre, have sold it to the French fishermen, thereby directly competing with the Newfoundlanders in a trade formerly entirely their own, and doubtless, as it is a lucrative business, the Americans will more and more practise it. They also catch bait fishes to a large extent.

Mr. Killigrew, at page 158 of the British evidence, says upon being questioned as follows:—

"How do they obtain caplin and squid? Do they take this bait themselves or purchase it from the people?—A. It is in this way: they generally hire a man who owns a seine and the crew of the American vessel goes with him. This man receives so much for the use of his seine and for his services.

"Q. This has reference to caplin?—A. Yes.

"Q. How do they obtain squid?—A. They purchase it if they can; otherwise they catch it themselves."

Mr. Bennett, at page 140 of the British evidence:—

"Q. I want to understand whether in those localities American fishermen have been constantly coming in during the summer for bait?—A. Yes; every day during the season.

"Q. The bait was sometimes purchased from the people and sometimes caught by themselves?—A. I think they always combine the two together. When taking the herring themselves with seines, their crew would haul in the herring with the assistance of the seining master, and when jigging for squid the crew jig what they can and the skipper buys what he can. When seeking caplin they assist in the same way; some vessels bring their own seines for the purpose of taking caplin.

"Q. What are the habits of squid?—A. Squid are never taken around Newfoundland except near the shore, on ledges, generally in a harbour or entrance to a harbour."

Mr. John F. Taylor, page 296 of the British evidence:—

"At Newfoundland Americans sometimes fish for bait inshore."

Mr. Patrick Leary, page 66, British Affidavits:—

"I supplied him (James Dunphy) with bait. In 1870 and 1875 I gave him forty barrels of caplin each year. He found the crew, and I found the seine and gear. He paid me 8 dollars each year for my services."

John McInnis, a witness called on behalf of the United States, pages 192 and 195, says:—

"Q. How many barrels of bait do you take each time?—A. Sometimes fifty barrels and sometimes forty barrels. Some vessels take sixty barrels.

"Q. Do you pay so much a barrel or employ a man and pay him so much in a lump?—A. We will employ a man that has a seine, and he will go catching herring for so much; it may be 30 dollars, 40 dollars, or 50 dollars, for all we want. If we want forty barrels, we will give, say 40 dollars; if they are scarce, perhaps more. He will take a seine, and perhaps be two or three days looking after them.

"Q. You say, 'I will you 30 or 40 dollars (as the case may be) to go and catch me so many barrels?'—A. Yes; that is the way it is done, and then sometimes we give 10 dollars for ice.

"Q. Do you give any assistance in catching them?—A. Sometimes we do.

"Q. You were asked as to the mode of getting bait, whether you employed those men that went for herring. Do you pay them wages, or pay them after the fish are caught?—A. We employ them before they go.

"Q. But you don't pay them wages?—A. Yes, we have to pay them. If he goes and loses two or three days we have to pay him.

"Q. You don't pay them whether they catch or not?—A. Yes. Sometimes if I employ a man to go and catch them, if he loses three or four days sometimes I pay him."

Philip Pine, Planter, residing at Burin Bay, Newfoundland, says, page 61, British Affidavits:—

"I am acquainted with the fisheries of Newfoundland by following the same and supplying therefor since I was seventeen years of age.

"I have observed a great number of United States' fishing vessels in this neighbourhood, there being as many as forty sail here at one time. These vessels came here for bait and for ice."

Richard McGarth, Sub-Collector, Her Majesty's Customs, residing at Oderin, Newfoundland, page 64, *ibid.*:—

"I have seen United States' vessels in this neighbourhood. In 1874, four or five of these vessels called in at the back of Oderin Island, having procured ice in Burin, and twelve miles from here hauled caplin for bait."

Robert Morey, Supplying Merchant and Planter, residing at Caplin Bay, Newfoundland, page 67, *ibid.* :—

"I have become acquainted with the fisheries of Newfoundland from being connected therewith since I was a boy. I have during the last two years seen a number of United States' fishing vessels in this neighbourhood. Last season I can safely say I saw upwards of a hundred of such vessels either in this harbour or passing close by; there were five or six of these vessels in this harbour last year—they came for bait—for caplin during the 'caplin school,' and squids afterwards. This bait they hauled themselves in part, and jigged squids. I saw six Doreys belonging to one of their vessels on the 'jigging ground' busily employed jigging for squids. They also purchase bait from our people, being always in a hurry to get their bait as quickly as possible to proceed again to the Banks. Caplin they regularly haul for themselves when caplin is abundant, which it always is until the season advances. Each vessel takes about eighty barrels fresh caplin which they preserve in ice purchased from our people. The bait hauled and jigged by these United States' fishermen was taken in the harbour close to shore."

Peter Winser, Planter, residing at Aquaforte, Newfoundland, page 68, *ibid.* :—

"I have been connected with the fisheries of Newfoundland by either prosecuting the same or supplying therefor since I was fourteen years of age.

"I have seen United States' fishing vessels in this harbour the past season as well as the year previous, getting bait; they jigged squids themselves in part, and what they were short of catching they purchased from our fishermen. Caplin they hauled themselves, using a seine belonging to a person residing in this harbour, which was worked by American fishermen, except one young man, the son of the seine owner. Four of these vessels have been in this harbour at one time catching bait; as many as fifteen have been at one time in Cape Broyle; I saw ten there one day whose crews were all engaged catching squids. In this immediate vicinity there were last summer not fewer than seventy of these United States' vessels in our harbours during the caplin school; and I am well informed that between St. John's and Trepassy not fewer than 200 have frequented the harbours for the supply of fresh bait, which they procured partly by catching for themselves and partly by purchasing. I am led to believe that it is the intention of the United States' vessels to come in upon our shores and into our harbours to catch bait to convey to their schooners on the Banks, so that they may prosecute the cod-fishery uninterruptedly. The supply of bait by each United States' vessel per trip is about as follows:—Forty barrels caplin during the caplin school, and as I was told by one of the captains, fifty barrels squids. United States' vessels make two and three trips for bait."

There is much evidence from others to the same purport; but I will only further call your especial attention to the affidavits read at the end of the rebuttal testimony, on behalf of Her Majesty's Government (Nos. 1 to 8, Appendix Q), which amply prove the position I contend for, and that United States' vessels have this year been engaged in Fortune Bay, hauling bait with very large seines, barring coves, and supplying the French.

I will add with reference to the evidence of Mr. Joseph Tierney, quoted by Mr. Foster in his speech, in support of his contention that United States' masters of Bankers, purchase their bait and do not catch it, that immediately after the answer with which Mr. Foster concludes his extract, the following question and answer occurs in cross-examination:—

"Q. You employ them and they go and catch so much bait for you? A. Yes, that is the custom; that is, out of Gloucester."

So Tierney also sustains my position.

We have it also in evidence from witnesses of the United States, that when vessels proceed to prosecute the cod-fishery in the Gulf of St. Lawrence, they take herring nets with them, and by that means themselves catch the bait they require. This is a practice which has existed for a number of years, and it must not be forgotten that the right to obtain bait on the coast of Newfoundland is an entirely new privilege, and is it to be supposed for a moment that the same mode of operation which they have adopted with regard to the cod-fishery in the Gulf will not be that which the Bankers will practise on the coast of Newfoundland? I cannot conceive it possible that my learned friend, Mr. Foster, will seriously contend, under the circumstances set forth in the above quoted evidence, that the Americans obtaining in this manner that which is indispensable for their efficient prosecution of the cod-fishery, should, by a subtlety of reasoning which I contend is utterly unsustainable, be permitted to enjoy that which is of such infinite advantage to them, without yielding any equivalent whatsoever. Would this be in accordance with the simplest principles of right, equity, or justice?

But apart from the aspect of the case to which I have just alluded, there is another feature to which I must draw your most serious attention. Prior to your decision of the 6th September, it was assumed alike by the Newfoundlanders and Americans, that the right of traffic, transshipment, &c., was conceded by the Treaty of Washington to

American fishing vessels. But as by that decision it has been ruled that this has not been conceded, and that according to the construction of that decision by the learned Agent for the United States, there has been granted "no right to do *anything* except water-borne on our vessels, to go within the limits which had been previously forbidden." I must ask you to assume that hereafter there will be no breach of the Treaty in this sense by American citizens. What would be the effect of this according to the strict letter of the bond? American fishermen must have the fresh bait, as I have shown, and the only way in which they will be able to obtain it will be by catching it for themselves. I must then claim from you an assessment of the value of this privilege on the basis that during the ensuing years of the operation of the Washington Treaty, United States' citizens will be under the necessity of catching for themselves the bait which they have not the legal right to buy. Surely, my learned friends do not ask this Commission to assume that American citizens will hereafter surreptitiously avail themselves of privileges which do not of right belong to them, and that on this account the compensation now fairly and justly claimed on behalf of Newfoundland should be in any way reduced by reason thereof.

And now, one word with regard to the winter herring fishery in Fortune Bay. It appears that from forty to fifty United States' vessels proceed there between the months of November and February, taking from thence cargoes of frozen herring, of from 500 to 800 or 1,000 barrels. On this point, I would refer you to the affidavits by Mr. Hickman, Mr. Giovanninni, Mr. Hubert, and others—pages 53, 57, and 59, of British affidavits. According to the evidence, these herring have hitherto generally been obtained by purchase. The trade is evidently increasing, as it seems that during the present year one vessel loaded 6,500 barrels. Mr. Pattillo, a United States' witness, many years since appreciated the right to catch so highly that he risked the confiscation of his vessel, rather than abandon his determination to catch a cargo for himself. It is hardly possible, then, to conceive that the Americans will continue to buy, possessing as they now do the right to catch.

I desire next to pass on and consider the question as to the Americans exercising the privilege which has been conferred upon them, of prosecuting those prolific cod-fisheries which I have shown to exist in the inshore waters of Newfoundland, where they have now the liberty to fish.

The number of United States' vessels engaged in the cod-fishery on the Grand Bank, and frequenting the coast of Newfoundland for bait, according to the evidence, would appear to be from 400 to 500 at the present time. Mr. Fraser, at page 173, British evidence, estimates the number at 500. The demands of a population of over forty millions necessarily call for an extensive area for the fishing industry of the United States, and wherever they can pursue their labours with success, there will the United States' fishermen be found. The inshore fisheries of Newfoundland, containing an area of upwards of 11,000 square miles, is a valuable addition to their present fields of operation. The French enjoy a similar liberty on the north-east and west coasts of the island to that which the United States now have upon the east and south coasts. The latter are more productive fishing grounds, and are in closer proximity to the Grand Bank and other banks. By the evidence before you it appears, and the fact is, that the French can, and do carry on an extensive fishing business on the coasts where they have a right to fish. They send their vessels of from 200 to 300 tons from France, which anchor and lay up in the harbours, fishing in their boats in the neighbourhood, close inshore during the summer, and returning to France with their cargoes in the fall of the year. Again, other smaller French vessels pursue the cod-fishing all around the west coast; and as to the values set upon these fisheries by the French, some approximate idea may be arrived at from the jealousy with which their right has been guarded by their Government throughout the long and frequent negotiations which have from time to time taken place between France and Great Britain upon the subject. It is true, that heretofore the cod and halibut fishery has not been prosecuted by United States' fishermen to any considerable extent on most parts of the coast of Newfoundland, but still there is evidence of their having fished successfully on the southern coast. William N. Mulloy, of Gloucester, Master Mariner, states in his affidavit, page 51, British Affidavits:

"I know of two United States' vessels that fished for codfish inside the Keys, St. Mary's, that is on the inshore ground. I fished there myself."

Philip Snook swears, page 57, British Affidavits:—

"United States' fishing vessels have fished on the inshore fishing ground, but I cannot give

particulars further than that I have seen them so fishing off Danzig Cove, near south point of Fortune Bay."

George Simms, page 133, British Affidavits, says :—

"I have seen United States' fishing vessels and crews catching codfish on the Newfoundland inshore fishing grounds, but cannot state the number, having made no records."

George Bishop, of Burin, page 131, British Affidavits, also states :—

"American vessels have fished for codfish on our grounds off Cape St. Mary's. American masters partially refit their vessels occasionally at this port, but have not here transshipped their cargoes."

William Collins, page 62, British Affidavits, says :—

"American fishermen do sometimes fish on the 'inshore fishing ground' off Cape St. Mary's. I have seen as many as three of these vessels fishing there."

Samuel George Hickman, residing at Grand Bank, Newfoundland, page 58, says :—

"I have seen our shore surrounded by American fishermen fishing for halibut and codfish, but cannot say that all these vessels were inside three miles of a line from headland to headland; I have frequently seen United States' vessels fishing between Pass Island and Brunette Island, in some instances these vessels have been fishing up the bay among the skiffs. I cannot speak of the quantity or value of their catches, but I do know that they destroyed the halibut fishery about Pass Island, and largely damaged the cod-fishery of Fortune Bay; one of their captains told me 'it was no use for our fishermen to go fishing after United States' fishermen.'"

George Rose, of Little Bay, Fortune Bay, page 54, says :—

"United States' fishing vessels have fished about Pass Island, and formerly made good catches there. Captain Jacobs, of schooner————, is said to have been offered 9,000 dollars for his load taken about Pass Island. American fishing vessels fishing off and about Pass Island, fished for halibut and codfish, but chiefly for halibut. My estimate of the value of their catch is at least equal to 10,000 dollars per annum, and such fishery was conducted exclusively within three miles of our shores."

There is no reason for supposing that the United States will not exercise the privilege which they have, to an equal, or even greater degree than the French use theirs. The prospects for lucrative results are more promising to the United States than to France. The fishing grounds are better and more convenient. During the years 1871 to 1873, when the United States first had the privileges granted by the Washington Treaty, there was but an occasional United States' vessel which went to Newfoundland for bait. From 1873 to 1876, the number increased every year; and in 1877, the present season, it is stated in evidence that an immense number—one witness, I believe, says nearly all the Grand Bank vessels—have supplied themselves there with fresh bait; and some have been employed in catching herring and conveying them to St. Pierre and Miquelon, for the purpose of sale to the French. They then enter into direct competition with our people. This, probably, is only a prelude to that competition in the Brazilian, West Indian, and European markets which we shall have to contend against. The Americans have, by virtue of the right to land and cure their fish, the same advantages which we possess for supplying those markets, which now are the outlet of our products. This business, by Americans, is evidently a growing one, and as they acquire more and more intimate knowledge of the coast, its harbours and fishing grounds, and their extent and productiveness, as they find out, which they will do, that they can obtain their fish close upon the coast, with all the conveniences which our inshore fishery affords, including the ready facilities for obtaning bait close at hand, with excellent harbours available for the security of their property, is it possible to conceive that there are not those who will prefer this investment of their capital, rather than incur the risk of life and property and those expensive equipments which are incident to vessels engaged on the Bank fishery?

Mr. Foster, in an early portion of his speech, undertakes to show "why the fishermen and people of the United States have always manifested such a feverish anxiety," to gain access to the inshore fisheries. His explanation is, that at the time the various Treaties which contain provisions respecting the fisheries were concluded, the mackerel fishery in the Gulf of St. Lawrence, as an industry was unknown, and that their efforts were directed to maintain their claim to the deep-sea fisheries. As a matter of fact, the mackerel fishing by United States' vessels in Canadian waters sprang up at a period subsequent to the Convention of 1818. With the circumstances under which this branch of the fishing business was commenced, there is no evidence, but doubtless a

more intimate knowledge of the value of the inshore fisheries acquired by constant resort under the privileges accorded by the Convention to the coasts of British North America, coupled with the requisite knowledge of the localities, harbours, and fishing grounds, led those fishermen who had previously confined their operations to the cod, halibut, and hake fisheries, to enter upon the new, and as it has subsequently proved, lucrative pursuit of the mackerel. This development of the American mackerel fishery in the Gulf of St. Lawrence affords a fair illustration of that which will take place with regard to the Newfoundland inshore fisheries. Unquestionably the proceedings of this Commission, and the testimony which has been taken of the most successful and enterprising fishermen, will be studied by those engaged in the fishing business. New ideas will be suggested to them, and wherever there appears to be a profitable field for the investment of capital, it will find its way in that direction, and to those places which may hitherto have been unknown or unappreciated by them.

I have only now to deal with the privileges conferred upon Newfoundland by the United States, and their value. As to the value of the United States' fishing to us, that question has been summarily disposed of by my learned friend, Mr. Dana, "as of not much account." It has not been deemed worthy of consideration by any of the learned counsel on the opposite side, nor has it been attempted to set it forth as of any worth to us. Therefore it is unnecessary that I should further comment upon it, beyond calling your attention to the mass of unanimous testimony that Newfoundland vessels never have or can make profitable use of it.

The question of free-market in the United States for fish and fish-oil I may also dispose of in a short space. It will be fully dealt with by my learned friend, Mr. Thomson. I will merely draw attention to certain facts in evidence, in order that his arguments hereafter may be more easily applied to the Newfoundland branch of this case. The principal markets for Newfoundland cured codfish are the Brazils, West Indies, and Europe. The American market is very limited. By a return filed in this case (Appendix I) headed, "Return showing the value of fish and products of fish imported from the United States of America, and exported to the United States and other countries from the colony of Newfoundland, during each year from 1851 to 1876, inclusive," it appears that during these twenty-six years, which of course include twelve years under the Reciprocity Treaty, the average annual export from Newfoundland to the United States amounted to 323,728 dollars, as against 6,043,961 dollars, exports to other countries. It appears also that the United States' market is decreasing; for the average annual export to that country for the seven years between the Reciprocity Treaty and the Washington Treaty was 348,281 dollars, as against 6,876,080 dollars to other countries, whilst the average annual export for the three years under the Treaty of Washington, viz., 1874, 1875, and 1876, was 222,112 dollars to the United States, as against 7,792,859 dollars to other countries; and further that there has been a steady falling off in the exports to the United States from 285,250 dollars in 1874, to 155,447 dollars in 1876. To what cause this is attributable it is difficult to say; but it may be to some extent accounted for by the increased facilities which the United States now possess and use under the Treaty of Washington, and by means of which they are enabled to supply their own wants in codfish. On the other hand, it has been proved that a very considerable market for small codfish has been opened up in Newfoundland to United Stases' Banking vessels. That fish which was heretofore thrown overboard as unsuitable for the American market is now carried to Newfoundland and sold at remunerative prices. Captain Mulloy (a master of a United States' Banker), Mr. Charles Barnes, and others state as follows: The former at page 51, British Affidavits, says: —

"The quantity of small codfish caught by each Banker during the season will be fully 250 quintals upon an average of every two loads of codfish caught upon the Banks. The number of United States' vessels prosecuting the cod-fishery on the Banks of Newfoundland each season from the port of Gloucester is about 300. There are vessels fitted out from other ports in the United States besides Gloucester, but not to so large an extent. The average catch per vessel on the Banks will be 2,500 quintals codfish, the value of which will be about 12,000 dollars to the owner.

"Prior to 1874, United States' Bankers threw away all fish less than 22 inches split, or 28 inches as caught; now the small fish is brought into Newfoundland ports, and there sold, slightly salted, to advantage. I, last year, sold 150 quintals of such fish at 9*s.* 6*d.* per quintal. The privilege of selling oil in Newfoundland ports is of importance also as providing necessary funds for the purchase of bait, and for refitting.

And the latter at page 81:—

"Deponent bought small codfish and cod-oil from United States' fishermen last year in payment of bait, ice, and cost of refitting their vessels; in some instances, Deponent purchased small codfish, for which he paid in cash. The total quantity of small codfish purchased by Deponent last year from

United States' fishermen was upwards of 300 quintals, for which he paid prices ranging from 8*s.* to 11*s.* per quintal of 112 lbs., green fish.

"Deponent also purchased a considerable quantity of cod-oil from United States' fishermen, particulars of which he has not at hand."

Also Richard Cashin, page 69, British Affidavits:—

"United States' fishermen have sold small codfish and cod-oil in this neighbourhood. I have purchased codfish and cod-oil from them. The prices paid have been 8*s.* and 9*s.* per cwt. for green codfish, and 2*s.* 6*d.* per gallon for cod-oil. Eighty quintals of fish, and two and one-half tuns of oil, is what I purchased."

And Richard Paul, page 63, British Affidavits:—

"American fishermen have sold fish and oil in this neighbourhood. I only know of their selling 37 quintals at 7*s.* per quintal, and 70 gallons of oil at ½-dollar. I understand from their statements the past season, that hereafter, they intend to sell to our people all the codfish they catch under 22 inches in length."

Philip Hubert, Sub-Collector of Customs, Harbour Briton, Fortune Bay, page 54:—

"American fishermen have sold small codfish in this bay; some vessels sold 100 quintals, the price ranging from 7*s.* to 10*s.* per cwt., green."

In addition to which there are numerous affidavits in support of the same fact as regards the general sale of small codfish.

Previously to the Washington Treaty there had been a duty of 1 dol. 30 c. per quintal on fish imported into Newfoundland, which of course is now removed as far as concerns the United States. The utilization of this small fish is unquestionably an important item of gain to them. If there is a benefit to Newfoundland in a free market with the United States, it has been reduced to its very minimum by the United States' Government taxing the tins in which salmon is put up, and by the refusal to admit seal-oil, an article of extensive export from Newfoundland, as a fish-oil, although in their own commercial language it is placed under that category. This, however, I presume, is a matter over which you have no jurisdiction; neither have you over the question of 128,185 dollars duties paid in the United States on fish and fish products imported from Newfoundland, between 1871 and 1874 (referred to on page 173, British evidence) when the United States were allowed to enjoy the benefits of the Washington Treaty on the distinct understanding that the enjoyment should be reciprocal, but which understanding was subsequently repudiated by the United States, and the above-mentioned amount of duties levied during those years remains unrefunded to the present day.

There is a ground of defence relied upon by my learned friends opposite, as to which I wish to offer one or two remarks. They contend, as I understand them, that the fishermen of Newfoundland are benefited by Americans coming to the coast and trading with the people; that that trading breaks down a system of business which they allege to exist between the merchant and the fisherman, by which the latter is held in bondage to the former; and as a proof of the existence of such a system, they put in evidence a memorial from the people of Placentia, dated August 19th, 1800, praying for the establishment of certain fishery regulations which then existed in St. John's. The memorial will be found at page 167, British evidence. I will not detain you by reading it. It is a singular mode of proving a present condition of affairs in 1877, to produce what may or may not be a statement in facts in 1800. I should not have considered the point worthy of notice, had not my learned friends brought it forward on more than one occasion, in terms which I conceive to be unwarranted. I will therefore only remark, that these assertions are amply disproved by the statement of Judge Bennett, Mr. Fraser, and Mr. Kelligrew, who have sufficiently proved the business operations of the country. But when I hear, on the one hand, my learned friend, Mr. Dana, loud in his assertions and professions as to all the good which Americans have done, and all that they are going to do, visiting our coast with money in their hands, and with the best of intentions, as he says, to improve the moral condition of our fishermen, and when I see on the other hand what they have really done, and what they are attempting to do—to take our fisheries without an equivalent—I am forcibly reminded of that line in the old Latin poet, "*Timeo Danaos et dona ferentes!*"

But I have up to the present treated this subject from a commercial standpoint only. This is presenting it in its narrowest and most contracted aspect. I claim from this Commission a consideration of the privileges conceded by Article XVIII of the Treaty of Washington, from a broad and national point of view. The United States, with its enormous population, ever increasing, demands extended resources from whence

to draw those supplies of fish food which she needs. She requires to build up and maintain her position as a great maritime and naval power—the largest and most extended field for the training of her seafaring poople. The fisheries have ever been the nurseries for seamen. The extension of the fishing limits of the United States affords an investment for additional capital, and occupation for an energetic and enterprising people. The acquisition she has made under the Treaty of Washington adds to her national greatness. She has expanded beyond her former limits; her ships now float freely and unrestricted over the whole North Atlantic coastal waters. These considerations cannot fail to have weight with you. I asked whether, having now secured the privileges which she thus enjoys, would she yield them up for nought? or would she not rather brave every contingency for their preservation? If you believe such to be the case, it affords some additional basis upon which you may calculate what she should now pay for the sterling advantages she has acquired.

I have thus endeavoured to state concisely the ground on which Her Majesty's Government sustains the claim perferred on behalf of Newfoundland. The particulars of that claim, amounting to 2,880,000 dollars, are set forth in the case of Her Majesty's Government. I have proved to you the enormous value of those fisheries, heretofore the exclusive property of 160,000 people, which fisheries are now thrown open to a great and enterprising nation. I have proved that from 25 to 33 per cent. of the 6,000,000 dollars annually produced is profit. (See evidence of Mr. Fraser, Mr. Kelligrew, and Judge Bennett, British evidence, and of Mr. Munn, British Affidavits, page 48). You have the clear proof that from 400 to 500 United States' vessels take from the Newfoundland coast that bait which is absolutely necessary in order to a successful prosecution of the cod-fishery on the Banks. Every United States' witness produced and examined upon this point has told you of the importance attached to the cod-fishery, and the profitable results accruing from its prosecution. It is for you, Sirs, to say what is a fair equivalent for the United States to pay for the privilege of fishing in common with us in these profitable waters, and obtaining from our shores that bait which is indispensable to enable them to carry on and develop that Bank fishery which a master of one of their own vessels refers to as "being capable of *unlimited* expansion and development."

I have shown you how the citizens of the United States have used these fisheries in the past, how they are using them in the present, and the fair and legitimate conclusion that they will draw from them in the future, all that capital and energy can bring forth.

The "Case filed by Her Majesty's Government," the "Answer of the United States," and the "Reply," with the evidence, is before you. By that evidence your award will be governed. I ask neither for liberality nor generosity, but I ask for a fair equivalent for the privileges conceded. I have only to add that when I have seen around me, during this inquiry the array of eminent Counsel and Attachés, as well on the part of the United States as of Canada, when I have felt that no one amongst them had but a general knowledge of that most ancient colony of the British Crown which I have the privilege of representing at this Commission, and that I alone of those around me am intimately acquainted with her resources, and that a fair and true representation of her interest and claim depended solely upon my exertions, I must confess that I have felt a grave responsibility resting upon me; but I cannot sever my connection with this Commission without acknowledging how much that burden has been lightened by the courtesy which you have extended, and by the anxious solicitude which you have evinced to obtain all the information necessary to enable you to arrive at a just and equitable award. I have implicit confidence that you will conscientiously discharge the important duty devolving upon you, and I heartily join in the hope that your labours will result in harmonizing any present discordant feelings which may exist among those more immediately concerned, and the establishment of a lasting peace and goodwill.

Mr. Dana.—Will your Honours allow me one word in order to set right a matter of fact to which my learned friend referred, on a matter relating not to testimony or law, but to the Counsel of the United States. I understood him to say, it was generally admitted by the Counsel of the United States here, that Great Britain has a claim for something to be paid, and that the only question was as to the amount. Was I correct in understanding you so?

Mr. Whiteway.—Yes.

Mr. Dana.— Then I wish to correct that as a matter of fact.

Mr. Whiteway.—It seems to be generally admitted, I say. The language used by yourself and brother Counsel led me to that conclusion.

Mr. Dana.—The Counsel for the United States, Mr. Foster, Mr. Trescot, and myself, all supposed we had said—certainly that was our opinion, and what we intended

to say,—That we believed that what Great Britain or the Provinces received by a guarantee on the part of the United States that no duty shall be laid on fish or fish-oil coming from the Provinces into the United States for the period in question exceeded in value what we received by a guarantee from Great Britain that we might fish within the limits in these British waters ; that is all I wish to set right. There is nothing in the argument of the learned Counsel which gives us the least right to claim a reply. I think that he has confined himself strictly and honourably within the limits of the pleadings.

No. VIII.

Final Arguments on behalf of Her Britannic Majesty, by Mr. Doutre.

Friday, November 16, 1877.

The Conference met.

Mr. *Doutre* addressed the Commission as follows :—

With the permission of your Excellency and your Honours, I will lay before this Tribunal, in support of Her Majesty's claim some observations, which I will make as brief as the nature of the case admits, and in order that these remarks may be intelligible, without reference to many voluminous documents, I solicit your indulgence while going once more over grounds familiar to the Commission.

As soon as the war, resulting in the independence of the confederated colonies, came to an end, the United States sought for a recognition of their new existence from Great Britain, and the Treaty of Paris of 1783 was agreed to. As an incident to the main object of that Treaty, Article III states :—" 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 other banks of Newfoundland; also in the Gulf of St. Lawrence, and at all other places in the sea, where the inhabitants of both countries used at any time heretofore to fish ; and also 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 coast, bays and creeks of all other of His Britannic Majesty's Dominions in America ; and the American fishermen shall have the 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."

We have heard from counsel representing the United States very extraordinary assumptions, both historical and political, concerning the circumstances under which this Treaty was adopted. At the distance of nearly a century, fancy can suggest much to literary or romantic speakers, especially when it concerns a subject on which they are not called upon to give any evidence—on which they can build an interesting record of their own opinions, before this Commission. We had to deal with a very complex matter of business—one which probably has never engaged the research of a judicial tribunal—and we thought this was enough for the efforts of humble men of business, such as we claim to be. Our friends on the American side treated us with a poetical account of the capture of the Golden Fleece at Louisburg, by Massachusetts heroes, in order to show how their statesmen of a previous generation had misconceived the nature of their primitive, conquered and indisputable right to our fisheries, without indemnity in any shape. British historians, statesmen or orators would probably have little weight with our friends in their estimate of Treaty negotiations. With the hope of obtaining a hearing from our opponents let us speak through the mouth of American diplomatists or statesmen.

It will strike every one that in the concessions contained in our Treaty of 1783, Great Britain did not extend to American fishermen all the rights belonging to her own subjects in these fisheries—a fact sufficient in itself to preserve to Great Britain her sovereignty in that part of her dominions.

When the war of 1812 was brought to an end, the United States had not lived long enough, as an independent nation, to create that pleiad of eminent jurists, publicists and Secretaries of State, who have since brought them up to the standard of the oldest constituted States of Europe. The characteristic elation of the nation who had but

recently conquered their national existence, marked the conduct of the United States' Government during the negotiations of the Treaty of Ghent in 1814. They persistently refused to recognize a rule of international law, which no one would now dispute, and which was, however, fully admitted by some of the United States' representatives at Ghent, that war abrogates all treaties between belligerents.

Henry Clay, one of those representatives, at Ghent, answered in the following manner, the proposition of the British Plenipotentiaries, who desired to include the fisheries in that Treaty as appears in the duplicate letters: The Fisheries and the Mississippi. By J. Q. Adams. P. 14 *in fine*:—

"In answer to the declaration made by the British Plenipotentiaries respecting the fisheries, the undersigned (United States' Representatives) referring to what passed in the Conference of the 9th of August can only state that they are not authorized to bring into discussion any of the rights or liberties which the United States have heretofore enjoyed in relation thereto. From their nature and from the peculiar character of the Treaty of 1783, by which they were recognized, no further stipulation has been deemed necessary by the Government of the United States, to entitle them to the full enjoyment of all of them."

In order to fully understand the views entertained by the British and American plenipotentiaries, a few extracts from the correspondence between American diplomatists, published from 1814 to 1822, and contained in the book of Mr. Adams, will show the course adopted at Ghent by himself and his colleagues.

(Extract from Protocol of Conference held 1st December, 1814, at Ghent, page 45.)

"The American Plenipotentiaries also proposed the following amendment to Article VIII, viz.: 'The inhabitants of the United States shall continue to enjoy the liberty to take, dry, and cure fish, in places *within the exclusive jurisdiction of Great Britain*, as secured by the former Treaty of Peace; and the navigation of the River Mississippi, within the exclusive jurisdiction of the United States, shall remain free and open to the subjects of Great Britain, in the manner secured by the said Treaty."

The following is the answer made by the British Plenipotentiaries:—
(Extract from Protocol of Conference, 10th December, 1814, Ghent, page 46.)

"His Britannic Majesty agrees to enter into negotiation with the United States of America respecting the terms, conditions, and regulations, under which the inhabitants of the said United States shall have the liberty of taking fish on certain parts of the coast of Newfoundland, and other His Britannic Majesty's dominions in North America, and of drying and curing fish in the unsettled bays, harbours, and creeks, of Nova Scotia, Magdalen Islands, and Labrador, as stipulated in the latter part of the IIIrd Article of the Treaty of 1783, in consideration of a fair equivalent, to be agreed upon between His Majesty and the said United States, and granted by the said United States for such liberty as aforesaid."

The American Plenipotentiaries replied as follows:—
(Extract from American Note after Conference, of 12th December, 1814, page 49.)

"For the purpose of meeting what they believed to be the wishes of the British Government, they proposed the insertion of an Article which should recognize the right of Great Britain to the navigation of that river, and that of the United States to a liberty in certain fisheries, which the British Government considered as abrogated by the war. To such an Article, which they viewed as merely declaratory the undersigned had no objection, and have offered to accede. They do not, however, want any new article on either of those subjects; they have offered to be silent with regard to both."

The British note of the 22nd of December contained the following declaration:—
(Extract from British Note of 22nd December, page 50.)

"[So far as regards the substitution proposed by the undersigned, for the last clause of the VIIIth Article, as it was offered solely with the hope of attaining the object of the amendment tendered by the American Plenipotentiaries at the Conference of the 1st instant, no difficulty will be made in withdrawing it. The undersigned, referring to the declaration made by them at the Conference of the 5th of August, that the privileges of fishing within the limits of the British Sovereignty, and of using the British territories for purposes connected with the fisheries, were that Great Britain did not intend to grant without equivalent are not desirous of introducing any article upon the subject.]"

And the Americans thus replied:—
(Extract from the American Note, 25th December, 1814, pages 54, 55.)

"At the first Conference on the 8th of August, the British Plenipotentiaries had notified to us that the British Government did not intend, henceforth, to allow to the people of the United States, without an equivalent, the liberty to fish, dry and cure fish, within the exclusive British jurisdiction, stipulated in their favour, by the latter part of the IIIrd Article of the Treaty of Peace of 1783. And, in their note of the 19th of August, the British Plenipotentiaries had demanded a new stipulation to secure to British subjects the right of navigating the Mississippi: a demand which, unless warranted

by another article of that same Treaty of 1783, we could not perceive that Great Britain had any colourable pretence for making. Our instructions had forbidden us to suffer our right to the fisheries to be brought into discussion, and had not authorized us to make any distinction in the several provisions of the IIIrd Article of the Treaty of 1783, or between that Article or any other of the same Treaty. We had no equivalent to offer for a new recognition of our right to any part of the fisheries, and we had no power to grant any equivalent which might be asked for it by the British Government. We contended that the whole Treaty of 1783 must be considered as one entire and permanent compact, not liable, *like ordinary treaties*, to be abrogated by a subsequent war between the parties to it; as an instrument recognizing the rights and liberties enjoyed by the people of the United States as an independent nation, and containing the terms and conditions on which the two parts of one empire had mutually agreed thenceforth to constitute two distinct and separate nations. In consenting, by that Treaty, that a part of the North American Continent should remain subject to the British jurisdiction, the people of the United States had reserved to themselves the liberty, which they had ever before enjoyed, of fishing upon that part of the coasts, and of drying and curing fish upon the shores; and this reservation had been agreed to by the other contracting party. We saw not why this liberty, then no new grant, but a mere recognition of a prior right always enjoyed, should be forfeited by a war, any more than any other of the rights of our national independence, or why we should need a new stipulation for its enjoyment more than we needed a new article to declare that the King of Great Britain, treated with us as free sovereign and independent States. We stated this principle, in general terms, to the British Plenipotentiaries, in the note which we sent to them with our project of the Treaty; and we alleged it as the ground upon which no new stipulation was deemed by our Government necessary to secure to the people of the United States all the rights and liberties stipulated in their favour by the Treaty of 1783. No reply to that part of our note was given by the British Plenipotentiaries; but, in returning our project of a treaty, they added a clause to one of the articles, stipulating a right for British subjects to navigate the Mississippi. Without adverting to the ground of prior and immemorial usage, if the principle were just that the Treaty of 1783, from its peculiar character, remained in force in all its parts, notwithstanding the war, no new stipulation was necessary to secure to the subjects of Great Britain the right to navigating the Mississippi, as far as that right was secured by the Treaty of 1783; as, on the other hand, no stipulation was necessary to secure to the people of the United States the liberty to fish, and to dry and cure fish, within the exclusive jurisdiction of Great Britain. If they asked the navigation of the Mississippi as a new claim, they could not expect we should grant it without an equivalent; if they asked it because it had been granted in 1783, they must recognize the claim of the people of the United States to the liberty to fish, and to dry and cure fish, in question. To place both points beyond all future controversy, a majority of us determined to offer to admit an article confirming both rights; or, we offered at the same time to be silent in the Treaty upon both, and to leave out altogether the Article defining the boundary from the Lake of the Woods westward. They finally agreed to this last proposal, but not until they had proposed an Article stipulating for a future negotiation for an equivalent to be given by Great Britain for the navigation of the Mississippi, and by the United States for the liberty as to the fisheries within the British jurisdiction. This Article was unnecessary, with respect to its professed object, since both Governments had it in their power, without it, to negotiate upon these subjects if they pleased. We rejected it, although its adoption would have secured the boundary of the 49th degree of latitude west of the Lake of the Woods, because it would have been a formal abandonment on our part, of our claim to the liberty as to the fisheries recognized by the Treaty of 1783."

Mr. Gallatin wrote to the Secretary of State on the 25th December, the day following the signature of the Treaty, as follows:—

(Extract from Letter of Mr. Gallatin to Secretary of State, 25th December, 1814, page 58.)

"On the subject of the fisheries within the jurisdiction of Great Britain, we have certainly done all that could be done. If, according to the construction of the Treaty of 1783, which we assumed the right was not abrogated by the war, it remains entire, since we most explicitly refused to renounce it either directly or indirectly. In that case it is only an unsettled subject of difference between the two countries. If the right must be considered as abrogated by the war, we cannot regain it without an equivalent. We had none to give but the recognition of their right to navigate the Mississippi, and we offered it. On this last supposition, this right is also lost to them; and in a general point of view we have certainly lost nothing."

Mr. Russell, who gave rise to all this correspondence, wrote from Paris on the 11th February, 1815, in the following terms to the Secretary of State:—

(Extract from Letter of Mr. Russell to the Secretary of State, 11th February, 1815, page 66.)

"I could not believe that the independence of the United States was derived from the Treaty of 1783; that the recognition of that independence by Great Britain gave to this Treaty any peculiar character, or that such character, supposing it existed, would necessarily render this Treaty absolutely inseparable in its provisions, and make it one entire and indivisible whole, equally imperishable in all its parts, by any chance which might occur in the relations between the contracting parties.

"The independence of the United States rests upon those fundamental principles set forth and acted on by the American Congress in the declaration of July, 1776, and not on any British grant in the Treaty of 1783, and its era is dated accordingly.

"The Treaty of 1783 was merely a Treaty of Peace, and therefore subject to the same rules of

construction as other compacts of this nature. The recognition of the independence of the United States could not well have given it a peculiar character, and excepted it from the operation of these rules. Such a recognition expressed or implied, is always indispensable on the part of every nation with whom we form a Treaty whatsoever."

(Idem, p. 69.)

"It is from this view of the subject that I have been constrained to believe that there was nothing in the Treaty of 1783 which could not essentially distinguish it from ordinary treaties, or rescue it on account of any peculiarity of character from the *jura belli*, or from the operation of those events on which the continuance or termination of such treaties depends."

"I know not indeed, any treaty, nor any article of any treaty, whatever may have been the subject to which it related, of the terms in which it was expressed, that has survived a war between the parties without being specially renewed, by reference or recital in the succeeding Treaty of Peace. I cannot, indeed, conceive the possibility of such a Treaty, or of such an Article; for, however clear and strong the stipulations for perpetuity might be, these stipulations themselves would follow the fate of ordinary unexecuted engagements, and require, after a war, the declared assent of the parties for their revival."

(Idem, p. 75.)

"I have in this view of the subject been led to conclude that the Treaty of 1783, in relation to the fishing liberty, is abrogated by the war, and that this liberty is totally destitute of support from prescription, and consequently, that we are left without any title to it whatsoever."

(Idem, p. 77.)

"Considering, therefore, the fishing liberty to be entirely at an end, without a new stipulation for its revival; and believing that we are entirely free to discuss the terms and conditions of such a stipulation, I did not object to the article proposed by us, because any article on the subject was unnecessary, or contrary to our instructions, but I objected specially to that article, because by conceding in it, to Great Britain, the free navigation of the Mississippi, we not only directly violated our instructions, but we offered, in my estimation, a price much above its value, and which could not justly be given."

(Idem, p. 87.)

"I have always been willing to make any sacrifice for the fishing privilege, which its nature or comparative importance could justify, but I conscientiously believe that the free navigation of the Mssissippi, and the access to it, which we expressly offered, were pregnant with too much mischief to be offered, directly, under our construction of the Treaty; or, indirectly, as they were in fact offered, as a new equivalent for the liberty of taking and drying fish within British jurisdiction."

Mr. Russell was supported by Henry Clay in these views.

Our learned friend, Dr. Dana, mentioned the circumstances under which England was carrying on the negotiations at Ghent. She was engaged in a continental war, with the most illustrious warrior of modern times, and the Americans were more or less exacting according to her embarrassments. We have this described at p. 233 of Mr. J. Q. Adams' correspondence, as follows:—

"Subsequently, however, the overthrow of Napoleon having left us to contend single-handed with the undivided power of Great Britain, our Government thought proper to change the terms offered to the British Government, and accordingly sent additional instructions to Ghent, directing our Commissioners to make a peace, if practicable, upon the simple condition, that each party should be placed in the same situation in which the war found them.

"At the commencement of the war, the British had a right by Treaty, not only to navigate the Mississippi, but to trade with all our Western Indians. Of course our Commissioners were instructed to consent to the continuance of this right, if no better terms could be procured. Under these instructions a proposition relative to the Mississippi and the fisheries, similar to that which had been rejected, was again presented, adopted, and sent to the British Commissioners. But it did not restore the right to navigate the Mississippi, in as full a manner as the British Government desired, and on that account, we presume, was rejected."

The following dates will explain the meaning of the paragraph referring to Napoleon. The mission to Ghent had met before the disasters to French arms which resulted in the abdication of Napoleon on the 4th April, 1814. Napoleon was conveyed to Elba in May following. With the slow communications of the time, the Americans learned only in June of the victories of England, which seemed to have given a certain tone of firmness to her negotiations at Ghent. The Treaty was signed on the 24th December, 1814. On the 1st March, 1815, Napoleon escaped from Elba and landed at Frejus. Americans regretted having precipitated their negotiations, and not being in a position to avail themselves of the renewal of war on the Continent to insist on better terms, many expressed their grief in unmeasured tones: but it was too late.

Each of the contracting parties persisting in their views, the subject of the fisheries was excluded from the Treaty of Ghent; but the United States soon learned that England was right, and they had to resort to the *ultima ratio* of another war to enforce their opinions, not only against Great Britain, but also against the universal sense of other nations. We read in the same book, page 240, that in the summer of 1815, British armed cruisers warned off all American fishing vessels on the Coast of Nova Scotia, to a distance of sixty miles from the shores, and thereby, says our writer, the British Government proved significantly what they had meant by their side of the argument. On this, the Americans solicited and obtained the Convention of 1818. The first Article of that Treaty explains the circumstances under which it was come to:—

"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 shore of 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 Isles, and thence northwardly indefinitely along the coast, without prejudice however, to any of the exclusive rights of the Hudson Bay Company; and that the American fishermen shall also have liberty, for ever, to dry and cure fish in any of the unsettled bays, harbours, and creeks of the southern coast of Newfoundland, hereabove described, and of the coast of Labrador; but so soon as the same or any portion thereof shall be settled, it shall not be lawful for the said fishermen to dry or cure fish at such portion so settled without previous agreement for such purpose with the inhabitants, proprietors, or possessors of the ground. And the United States hereby renounce for ever, any liberty heretefore enjoyed or claimed by the inhabitants thereof, to take, dry or cure fish on or within three marine miles of any of the coasts, bays, creeks, or harbours, of His Britannic Majesty's dominions in America not included within the above-mentioned limits. Provided, however, that the American fishermen shall be admitted to enter such bays or harbours for the purpose of shelter and of repairing damages therein, of purchasing wood and of obtaining water, and for no other purpose whatever. But they shall be under such restrictions as shall be necessary to prevent their taking, drying, or curing fish therein, or in any other manner whatever abusing the privileges hereby reserved to them."

The difference between this Convention and the Treaty of 1783 consists in the exclusion of the Americans from the shore and bay fisheries which they enjoy under the Treaty of 1873. This was more than sufficient to mark the abandonment by the Americans of the position assumed at Ghent, that war had not abrogated their fishing liberties under that Treaty. It is, in fact, owing to that important difference that I have at this moment the honour of addressing myself to this distinguished tribunal.

Six years after the adoption of this Convention, in 1824, differences grew out of the three miles' limit, though it does not appear to have arisen from the headland question, or fishing in bays.

Mr. Brent (as quoted at page 8 of United States' Brief) speaks of American citizens who have been interrupted "during the present season, in their accustomed and lawful employment of *taking and curing fish* in the Bay of Fundy and upon the Grand Banks, by the British armed brig 'Dotterel,'" &c.

Mr. Addington awswers (page 8 and page 9 of United States' Brief), that the complainants are not entitled to reparation for the loss they have sustained, having rendered themselves obnoxious, having been taken some *flagrante delicto*, and others under such circumstances that they could have no other intention than that of pursuing their avocations as fishermen within the lines laid down by Treaty as forming boundaries within which pursuit was interdicted to them.

The United States' Brief, which is now confessed to have been inspired by a misapprehension of the facts, stated (page 9) that the claim to exclude the American fishermen from the great bays, such as Fundy and Chaleurs, and also from a distance of three miles, determined by a line drawn from headland to headland across their mouths, was not attempted to be enforced until the years 1838 and 1839, when several of the American fishing vessels were seized by the British cruisers for fishing in the large bays.

This admission coupled with the complaint of 1824, makes it evident that indisputable portions of the Convention had been violated, since American vessels had been seized in Two-Islands Harbour, Grand Manan. This was, even with the present American interpretation of the Convention of 1818, as to headlands, an evident trespass on prohibited grounds; and the rescue of the vessels seized by the fishermen of Eastport, and other similar instances, should not be mentioned otherwise than as acts of piracy, which a powerful nation may disregard for peace sake, but will resent when treasured injury explodes on other occasions.

It has been the policy of certain American Statesmen to lay the blame of most of their fisheries difficulties on the shoulders of colonists, in order to obtain their easy settlement, at the hands of a distant, and (*quoad lucrum*) disinterested, imperial and supreme Power. From a natural connection between causes and effects, our maritime provinces most in proximity to the United States, had to bear the brunt of a triangular duel, the chief part of which fell to Nova Scotia, who showed herself equal to the occasion. It can be shown that what was styled as almost barbarian legislation on the part of the Nova Scota Parliament, exists at this very hour in the legislation of the United States. And it is not a reproach that I am casting here against the United States. They have done like other nations, who made effectual provisions against the violators of their customs, trade or navigation laws, and they could not do less or otherwise than the legislature of Nova Scotia.

The Customs Statute of the Dominion, 31 Vict. cap. VI (1867) contains similar provisions to those of the Fishing Act of the same session, cap. 61, sects. 10, 12, 15, and lays upon the owner and claimant of goods seized by Custom Officers, the burden of proving the illegality of the seizure; it obliges the claimant of any vessel, goods or things seized, in pursuance of any law relating to the customs, or to trade or navigation, to give security to answer for costs. Other parts provide for all the things contained in the Nova Scotia Statute, so much animadverted upon, as being contrary to common law principles, but which are applicable to British subjects as well as to foreigners. The Imperial Act, 3 & 4 Wm. IV. cap 59, secs. 67, 69, 70, 71, consolidated former Acts, dating as far back as when the 13 revolted colonies were part of the Empire, contains similar provisions as our Dominion Acts concerning customs and fisheries, and as the Nova Scotia Statute of 1836. I had intended to cite some words of the American law on the subject, but the volume is not at hand. I supplement the omission by— 1. Gallison, page 191; 2. Gallison, page 505; 3. Greenleaf, sec. 404, and note 2, page 360; 5. Wheaton, sec. 407, page 461, and sec. 411, page 463.

Mr. Dana.—Mr. Doutre, do you not consider that to the same effect as if the judge says that the Government must make out a *primâ facie* case?

Mr. Doutre.—I have only read a small portion of the decision; but the seizure constitues a *primâ facie* case.

Mr. Dana.—Oh no.

Mr. Doutre.—Seizure was made for open violation of the law, and it is for the claimant to show that he did not violate the law.

Mr. Dana.—The decision is that the Government must make out a *primâ facie* case.

Mr. Doutre.—It is impossible for me to satisfy your mind on that point; the report is very long, and if you read it you will be convinced that I am right.

Mr. Dana.—It says the Government are obliged by statute to prove a *primâ facie* case.

Mr. Doutre.—These cases are all of a similar character. I admit that the ordinary rules of evidence are here reversed. The reason is that the maintenance of the ordinary rules, concerning evidence, would work great mischief, if applied to such matters as these.

Mr Foster.—This is a judgment based on suspicion, in the opinion of the Court, and not on the opinion of the boarding officer.

Mr. Doutre.—The boarding officer makes the seizure, and reports that he has made it, and unless the defendant comes and shows that the seizure has been illegally made; the Court ratifies the seizure, and condemns the goods or ships seized.

Mr. Dana.—Are you speaking of war, now?

Mr. Doutre.—No, of profound peace.

Mr. Dana.—This was in time of war, and in the very case you cite, it is said that the acts must be established by the Government, which has to make out a *primâ facie* case.

Mr Doutre.—I will take the law of the United States on this point as establishing my view. I will now give the reason why such legislation has been adopted in England, in the United States, and in Canada, in an extract taken from a judgment rendered by the distinguished Chief Justice of Nova Scotia, Sir William Young, in December, 1870, *in re* Schooner *Minnie*, Court of Vice Admiralty:—

"It must be recollected that Custom House Laws are framed to defeat the infinitely varied, unscrupulous and ingenious devices to defraud the revenue of the country. In no other system is the party accused obliged to prove his innocence—the weight of proof is on him, reversing one of the first principles of criminal law. Why have the Legislatures of Great Britain, and of the United States, and of the Dominion alike, sanctioned this departure from the more humane, and, as it would seem at the first blush, the more reasonable rule? From a necessity, demonstrated by experience—the necessity of protecting the fair trader and counter-working and punishing the smuggler."

Mr. Dana.—That is a British decision which you have read?

Mr. Doutre.—Yes; a British Colonial one.

The provisions of the Nova Scotia Statute were intended to apply to a class of cases belonging to something similar to customs regulations, and are inseparable from them, and if ever our American friends desire to enforce on their coasts the three-miles' limit, which their answer and brief recognize as resting on the unwritten law of nations, they will have to extend to this matter their customs law above cited, as did the Legislature of Nova Scotia.

The learned Agent of the United States went very far from any disputed point to gain sympathy, by a reference to what, in the United States' answer to the case, is called an inhospitable statute. He says:—

"A Nova Scotia Statute of 1836, after providing for the forfeiture of the vessel found fishing, or preparing to fish, or to have been fishing within three miles of the coast, bays, creeks, or harbours, and providing that the master, or person in command, should not truly answer the questions put to him in such examination by the boarding officer, he should forfeit the sum of one hundred pounds, goes on to provide that if any goods shipped on the vessel were seized for any cause of forfeiture under this Act, and any dispute arises whether they have been lawfully seized, the proof touching the illegality of the seizure shall be on the owner or claimant of the goods, ship, or vessel, but not on the officer or person who shall seize and stop the same."

These are the very expressions which the learned Agent for the United States employed when he animadverted on that statute. He also states that he is not aware whether a statute similar to this one, which existed in Nova Scotia in 1868, has been repealed. In 1867, however, Nova Scotia, New Brunswick and the two Canadas were confederated together, and the matters relating to the fisheries and customs were then transferred to the Dominion of Canada, which has ever since exercised the sole power of legislation over those subjects. The best answer that can be given to Mr. Foster and his colleagues on this point may be quoted from high authority. The Agent for the United States, about the period of his arrival here to attend to his duties before this Commission, published in the "American Law Review," a journal which speaks with quasi-judicial authority in Massachusetts, an article on the *Franconia*, having a prominent bearing on this case now before the Commission. I only mention this fact in order to show the high character of the "Review." This journal, alarmed at the views proclaimed by President Grant, published a very able article on the subject, the writer being an eminent and able lawyer; and this article deals with the question of preparing to fish, as well as with the question of trade, both of which have been discussed by my learned friend the Agent for the United States. In dealing with the claim of the right, on the part of American fishermen, to lie at anchor, clean and pack fish and purchase bait, prepare to fish and transship cargoes, the writer says:—

Mr. Dana.—Will you have the kindness to state by whom these views are set forth?

Mr. Doutre.—I am not quite sure of the name.

Mr. Dana.—It is not Mr. Foster?

Mr. Doutre.—No.

Mr. Dana.—You do not know the author?

Mr. Doutre.—I think I do.

Mr. Foster.—Unless that is Professor Pomeroy's argument, it is something I have never before heard of.

Mr. Doutre.—It is his argument, I am informed.

Mr. Dana.—I wish also to say that this "Review" has no quasi-judicial authority. It is private property, and edited by private persons.

Mr. Doutre.—I thus consider all publications of this nature.

"All these acts are plainly unlawful, and would be good grounds for the confiscation of the offending vessel, or the infliction of pecuniary penalties. The Treaty stipulates that 'American fishermen shall be admitted to enter such bays and harbours for the purpose of shelter, of repairing damages therein, of purchasing wood, and obtaining water, and for no other purpose whatever.' Even assuming, as has sometimes been urged, that the words 'For no purpose whatever,' refer exclusively to matters connected with the business and process of fishing, the prohibition still covers all the acts enumerated. To use the bays and harbours as places of convenience in which to clean and pack fish, to procure bait, to prepare to fish, or to land cargoes of fish, would be an invasion of the exclusive fishing rights within the territorial waters secured to British subjects and denied to American citizens. 'Preparing to fish,' if permitted, would render it almost impossible to prevent actual fishing. When, from considerations of policy statutes are made to declare some final result illegal, the Legislature uniformly forbids the preliminary steps which are directly connected with that result, lead up to it, and facilitate its accomplishment. Thus if Congress should absolutely prohibit the landing of certain goods in our ports, the United States' Government would doubtless listen with amazement to a complaint from foreign importers that

'preparing to land' was also prohibited. All customs and revenue regulations are framed upon this theory. The provisions of the Imperial and Canadian Statutes making it a penal offence for American vessels 'to prepare to fish' while lying in territorial waters seems, therefore, to be a 'restriction necessary to prevent' their taking fish therein, and for that reason to be lawful and proper."

The claim of right to sell goods and buy supplies, the traffic in which the Nova Scotia Act was intended to prevent, is thus commented on :—

"This particular claim has not yet been made the subject of diplomatic correspondence between the two Governments, but amongst the documents laid before Congress at its present session, is a consular letter, from which we quote :—

"It (the Treaty of 1818) made no reference to and did not attempt to regulate the deep sea fisheries which were open to all the world. * * * * It is obvious that the words 'for no other purpose whatever,' must be construed to apply solely to such purposes as are in contravention to the Treaty, namely : to purposes connected with the taking, drying, or curing fish within 3 marine miles of certain coasts, and not in any manner to supplies intended for the ocean fisheries, with which the Treaty had no connection.

"All this is clearly a mistake, and if the claims of American fishermen, partially sanctioned by the United States' executive, rest upon no better foundation, they must be abandoned. In fact, the stipulation of the Treaty in which the clause occurs, has reference alone to vessels employed in deep-sea fishing. It did not require any grant to enable our citizens to engage in their occupation outside the territorial limits, that is upon the open sea ; but they were forbidden to take, dry, or cure fish in the bays and harbours. They were permitted, however, to come into those inshore waters for shelter, repairs, wood, and water, 'and for no other purpose whatever.' To what American vessels is this privilege given ? Plainly to those that fish in the open sea. To say that the clause 'for no other purpose whatever' applies only to acts connected with taking, drying, or curing fish within the 3 miles' limit, which acts are in terms expressly prohibited, is simply absurd. It would be much more reasonable to say that, applying the maxim *noscitur a sociis*, the words, 'for no other purpose whatever' are to be construed as having reference solely to matters connected with regular fishing voyages, necessary, convenient, or customary in the business of fishing, and are not to be extended to other acts of an entirely different and purely commercial nature.

"President Grant declares that so far as the Canadian claim is founded upon an alleged construction of the Convention of 1818, it cannot be acquiesced in by the United States. He states that during the Conference which preceded the signing of this Treaty, the British Commissioners proposed a clause expressly prohibiting American fishermen from carrying on any trade with British subjects, and from having on board goods except such as might be necessary for the prosecution of their voyages. He adds :—

"This proposition which is identical with the construction now put upon the language of the Convention, was emphatically rejected by the American Commissioners, and thereupon was abandoned by the British Plenipotentiaries, and Article I as it stands in the Convention was substituted."

"The President has been misinformed. The proposition alluded to had no connection with the privilege given in the latter part of Article I, to enter bays and harbours for shelter and other similar purposes ; but referred expressly and exclusively to the grant contained in the former part of the Article of a right to take, dry and cure fish on the coasts and in the bays of Labrador and Newfoundland. This is apparent from a reference to the negotiations themselves. On September 17th, 1818, the American Commissioners submitted their first *projet* of a treaty. The proposed Article relating to the fisheries was nearly the same as the one finally adopted, including a renunciation of the liberty to fish within three miles of other coasts and bays. The proviso was as follows :—

"Provided, however, that American fishermen shall be permitted to enter such bays and harbours for the purpose *only* of obtaining shelter, wood, water and *bait*.

"The British counter *projet* granted a liberty to take, dry, and cure fish on the coasts of Newfoundland and Labrador within much narrower limits than those demanded by the American Plenipotentiaries. It admitted the fishing vessels of the United States into other bays and harbours, 'for the purpose of shelter, of repairing damages therein, of purchasing wood and obtaining water, and for no other purpose.' It also contained the following clause :—

"It is further understood that the liberty of taking, drying, and curing fish granted in the preceding part of this Article shall not be construed to extend the privilege of carrying on trade with any of His Britannic Majesty's subjects residing *within the limits hereinbefore assigned to the use of fishermen of the United States*. And in order the more effectually to guard against smuggling, it shall not be lawful for the vessels of the United States *engaged in the said fishery* to have on board any goods, wares, and merchandise, except such as may be necessary for the prosecution of the fishery."

"Messrs. Gallatin and Rush replied, insisting upon a privilege to take, dry and cure fish on the coasts of Newfoundland and Labrador within the limits first demanded by them, and added as the last sentence of their letter : The clauses making vessels liable to confiscation in case any articles not wanted for carrying on the fishery should be found on board, would expose the fishermen to endless vexations. On the 13th October, the British Commissioners proposed Article I as it now stands, which was accepted at once. There was no discussion of an alleged right of American fishermen to engage in trade, and no further allusion on the subject. Indeed, throughout all these conferences the American Commissioners were labouring to obtain as extensive a district of territory as possible on Newfoundland, Labrador, and the Magdalen Islands for inshore fishing, and paid little attention to the privilege—then apparently of small value, but now important—of using other bays and harbours for shelter and kindred purposes. The British agents, on the other hand, endeavoured to confine the former grant within narrow bounds, and to load it with restrictions. The rejected clause concerning trade and carrying goods, was one of these restrictions, and in its very terms referred alone to the vessels taking,

curing fish on the portion of the Newfoundland and Labrador coasts made free to our citizens. It should be noticed that the proviso finally adopted omitted the right originally demanded by the Americans of entering other bays and harbours for bait, and is identical with the one at first submitted by the British Plenipotentiaries, strengthened by the addition of the word 'whatever' after the clause 'for no other purpose.' It is evident, therefore, that the British Government is not estopped from opposing the claim now set up by American fishermen and sustained by the President, and anything that occurred during the negotiations preliminary to the Treaty.

"We must fall back, then, upon the accepted doctrines of international law. Every nation has the undoubted right to prescribe such regulations of commerce carried on its waters and with its citizens as it deems expedient, even to the extent of excluding entirely some or all foreign vessels and merchandize. Such measures may be harsh, and under some circumstances a violation of inter-state comity, but they are not illegal. At all events, it does not become a Government to complain, which now maintains a tariff prohibitory as to many articles, and which at one time *passed a general embargo and non-intercourse Act.* There seem to be special reasons why the Dominion Authorities may inhibit general commerce by Americans engaged in fishing. Their vessels clear for no particular port; they are accustomed to enter one bay or harbour after another, as their needs demand; they might thus carry on a coasting trade; they would certainly have every opportunity for successful smuggling. Indeed, this would legitimately belong to the local customs and revenue system, and not to the fisheries. *We are thus forced to the conclusion that American fishermen have no right to enter the bays and harbours in question and sell goods or purchase supplies other than wood and water.*"

It is not necessary to add a word to the able and impartial language quoted, except to suggest that if the author had been now writing, he might have found a more forcible example of inhospitable legislation than the "general embargo and non-intercourse Act," namely, the attempt to evade the plighted promise of the nation, to remove the taxation from fish, by taxing the cans—useless for any other purpose—in which the fish are sent to market.

While restoring to the legislation of Nova Scotia its true character, this article shows also which of the two decisions rendered, one by Mr. Justice Hazen, the other by the distinguished and learned Chief Justice, Sir William Young, must be held to be the correct one, on *preparing to fish.* The latter's judgment receives from this impartial source an authority which it did not require to carry conviction to all unprejudiced minds.

The necessity for the Nova Scotia Statute of 1836, so much complained of, became apparent within a pretty short period.

In 1838, as mentioned in the United States' Brief, page 9, several American vessels were seized by British cruisers, for fishing in large bays. Between the dates of the Nova Scotia Statute and these seizures, the American Secretary of State had issued circulars enjoining American fishermen to observe the limits of the Treaty, but without saying what these limits were. Why did he abstain from giving his countrymen the text of the Convention of 1818, Article I? They could have read in it that the United States had renounced for ever the liberty of taking, drying or curing fish within three marine miles of any coast, bay, creek or harbour, and that they could not be admitted *to enter such bays or harbours,* except for shelter, or repairing damages, or obtaining wood and water, *and for no other purpose whatever.* Every fisherman would have understood such clear language. Statesmen only could imagine that "bays" meant large bays, more than six miles wide at their entrance.

It was the privilege of eminent politicians, but not of the fishermen, to handle that extraordinary logic which involves the contention—1st. That for the purpose of fishing, the territorial waters of every country along the sea-coast extend three miles from low-water mark. 2nd, That "in the case of bays and gulfs, such only are territorial waters as do not exceed six miles in width at the mouth upon a straight line measured from headland to headland. 3rd, That "all larger bodies of water connected with the open sea, form a part of it." These words are taken from the Answer to British Case (pages 2, 3). The framers of the Convention of 1818 must have meant those large bays, when they excluded American fishermen from *entering* into any bay, &c. The most that the fisherman could have said, after reading the text, would be that it must have been an *oversight*—and he would never have thought of taking the law in his own hand and disregarding a solemn contract entered into by his Government. But, with his common sense, he would have said:—The Convention could not mean the small bays, since I am told by American lawyers that it did not require a Treaty to protect the small bays against our interference. (See the answer to the Case at page 2.) The word bay could not mean anything but those large bays, which, in the absence of Treaty stipulations, might by some be considered as forming part of the open sea. And acting on this plain interpretation of the most clear terms, the fisherman would have abstained from entering into any bay except for the purposes mentioned in the Convention. Old fishermen would, in addition, have taught the younger ones that there was a paramount reason

why the American framers of the Convention of 1818 could have no desire to open the large bays to their fishermen, for the reason that, up to 1827 or 1828, that is, until ten years after the Convention, mackerel had not been found in large quantities in the Gulf of St. Lawrence.

If, then, the circulars of the Secretary of the Treasury to American fishermen failed to put the latter on their guard, when the Nova Scotia Legislature showed such firm determination to enforce the rights of her fishermen, and coerce the American to obedience to law and Treaties, the responsibility of any possible conflict fell upon the American and not upon the British authorities.

Our friend, Mr. Dana, expressed with vehemence of language, which impressed us all, the serious consequences which would have followed if a drop of American blood had been spilt in these conflicts. We have too good an opinion of our American cousins to think that they would have been much moved if one of their countrymen had been killed while in the act of violating the law in British territory. The United States have laws as well as other nations against trespass, piracy, and robbery, and it is not in the habit of nations to wage war in the protection of those of their countrymen who commit any of these crimes in a foreign land. The age of filibustering has gone by, and no eloquence can restore it to the standard of a virtue.

However, a state of things which is calculated to create temptations such as were offered to American fishermen in Canadian waters should be at all times most carefully avoided, and it was the desire of both British and American statesmen to remove such dangerous and inflammable causes of conflict, which brought us to the Reciprocity Treaty of 1854.

By that Treaty, British waters in North America were thrown open to United States' citizens, and United States' waters north of the 36th degree of north latitude were thrown open to British fishermen, excepting the salmon and shad fisheries, which were reserved on both sides. Certain articles of produce of the British Colonies and of the United States were admitted to each country respectively, free of duty.

That Treaty suspended the operation of the Convention of 1818, as long as it was in existence. On the 17th March, 1865, the United States' Government gave notice that, at the expiration of twelve months from that day, the Reciprocity Treaty was to terminate; and it did then terminate, and the Convention of 1818 revived, from the 17th March, 1866.

However, American fishermen were admitted without interruption to fish in British American waters, on payment of a license, which was collected at the Gut of Canso, a very narrow, and the nearest, entrance to portions of these waters. Some American vessels took licenses the first year, but many did not. The license fee having been raised afterwards, few vessels took a license, and finally almost all vessels fished without taking any. Everyone will understand the impossibility of enforcing that system. All American vessels having the right to fish in British American waters under the Convention of 1818, those who wanted or professed to limit themselves to fishing outside of the three-miles limit had the right to enter on the northern side of Cape Breton without taking a license. As long as that license was purely nominal, many took it in order to go everywhere without fear of cruizers or molestation. When our license-fee was doubled and afterwards trebled, the number of those who took it gradually dwindled to nothing. The old troubles and irritation were renewed, and many fishermen have explained before the Commission how embarrassing it was in many instances to know, from the deck of a vessel, how far from the shore that vessel stood. Three miles have to be measured with the eye, not from the visible shore, but from low water-mark. There are coasts which are left dry for several miles by the receding tide. When the tide is up, landmarks may be familiar to the inhabitants of the shore or frequent visitors of its water; but, for the fisherman who comes there for the first or second time, or perhaps for the tenth time, but after intervals of years, it may be a difficult task to determine where he can fish with safety. And what can be more tempting—I should say tantalizing—than to follow a school of mackerel which promises a full fare in one day and a speedy return home, with the mirage of a family to embrace, and of profits to pocket? Should men be exposed to such temptations, when commercial intercourse and money, as an *ultima ratio* present so many modes of removing restrictions? Is there any one of these varied modes of settlement which is worth the life of a man?

Great Britain and the United States owed it to their noble common ancestry and to their close relationship, not to listen to the evil advice of passion, and to show to the world a new battlefield, where cool judgment and good will are the most successful arms.

With the termination of the Reciprocity Treaty, reappeared the cruizers and

cutters among the fishermen, and irritation seemed to have acquired vigor and intensity during the suspension. Other international differences had grown up, from the beginning of the civil war, and had accumulated during the whole of that war, to such an extent that a spark might start a serious conflict. Fortunately cool heads were predominant in the two Governments; the Joint High Commission was appointed, and the Washington Treaty reduced to a money question, what in former times would have cost the lives of thousands of men, and would have, besides, entailed on both sides an expenditure of money ten times more considerable than the compensatory indemnities resulting from that Treaty. Ten Articles of that Treaty concern the fisheries, from the XVIIIth to the XXVth, both inclusive, and the XXXIInd and XXXIIIrd. In addition to the liberties granted to them by the Convention of 1818, Americans are admitted, by Article XVIII, to fish everywhere, in common with British subjects, without being restricted to any distance from the coast, with permission to land for the purpose of drying their nets and curing their fish, provided they do not interfere with the rights of private property.

On the other hand, British subjects are admitted, by Article XIX, to the same liberties on the eastern sea coasts and shores of the United States, north of the 39th parallel of north latitude.

Article XXI declares that as long as the Treaty shall subsist, fish oil and fish of all kinds (except fish of the inland lakes and of the rivers falling into them, and except fish preserved in oil) being the produce of the fisheries of the United States or of the Dominion of Canada, shall be admitted into each country respectively free of duty.

By Article XXII it is agreed that Commissioners shall be appointed to determine, having regard to the privileges accorded by the United States to the subjects of Her Majesty, the amount of any compensation which ought to be paid in return for the privileges accorded to the citizens of the United States, under Article XVIII, and that any sum of money which the Commissioners may so award shall be paid in a gross sum within twelve months after the award given.

Article XXXIII stipulates that the fisheries articles shall remain in force for the period of ten years from the date at which they may come in operation, by the passing of the requisite laws on both sides, and further, until the expiration of two years after notice given by either of the parties of its wish to terminate the same.

The Treaty came into operation on the 1st July, 1873. Great Britain claims from the United States a sum of 14,880,000 dollars for the concession of the privileges granted to the citizens of the United States for the period of twelve years.

On the part of the United States it is contended that the liberty of fishing in their waters and the admission of Canadian fish and fish oil, duty free, in the markets of the United States is equivalent to what Great Britain obtains by the Treaty.

The questions now to be inquired into are:—1st. Is the British claim proved, and to what extent? 2nd. Have the United States rebutted the evidence adduced on behalf of Her Majesty, and have they proved a set-off to any and what extent.

Wherever Americans have expressed a disinterested opinion about the Gulf and other Canadian fisheries, they have never underrated their value, as they have in this case, where they are called upon to pay for using them.

At a time when no diplomatist had conceived the idea of laying the claim of the United States to these fisheries, on the heroic accomplishments of our army and navy from the old British colony of Massachusetts, as we have heard from the eloquent and distinguished United States counsel before this Commission:—at a time when, emerging from war, fit occasions offered themselves for reminding Great Britain of what she owed to the bravery of Massachusetts boys, who had planted her flag in the place of the French colours over this Dominion; in these times the right of fishing in those waters had accrued to the American people from no other origin than a concession by treaty, and no other basis than the *uti possidetis*. When another Commission is appointed by England and France to settle the differences which exist between them in reference to the Newfoundland Fisheries, I doubt much if the political oratory of our American friends could not, with a little change of tableaux and scenery, be turned to some account, such as the French reminding the English people of the miseries endured by Jacques Cartier during the winter he spent at Sable Island on his way to Newfoundland, Louisburg, and Quebec, to bring European civilization among the aboriginal tribes.

Although it is hard to vouch for anything in such matters of fancy, I doubt much whether France will recall the heroic deeds of her Cartiers and Champlains to make

herself a title to these fisheries. She will not make such light work of her Treaties as our friends have done.

In the line of historical titles adopted by our learned friends, the Scandinavians would wipe out even the claim of Columbus, for three or four centuries before the discoveries of the great Genoese navigator, some of their fishermen had visited profitably the banks of Newfoundland. My learned friends should be as much alarmed at the consequences of their fiction, as Mr. Seward was when dealing with the Headland question in the Senate—p. 9 of the British Brief—he pointed out that the construction put upon the word bay, by those who confined them to bodies of water six miles wide at their mouth, would surrender all the great bays of the United States.

While listening with pleasure to the narration of the great achievements of the Massachusetts boys, we could not understand why they shed their blood for those poor and unproductive fisheries. We looked a little at history, we searched for a confirmation of the pretensions of our friends, and we found a very different account, in the writings of their great statesmen, both as to the basis of their claim and as to the value of the fisheries.

John Quincy Adams, who represented with others, as has already been mentioned, the United States at the Treaty of Ghent, in 1814, collected information. He applied to Mr. James Lloyd, and this gentleman, writing from Boston on the 8th March, 1815, communicated to him what will be found from page 211 to page 218 of his "Duplicate Letters." A few citations will not be out of place here:—

"The shores, the creeks, the inlets of the Bay of Fundy, the Bay of Chaleurs, and the Gulf of St. Lawrence, the Straits of Belleisle, and the coast of Labrador, appear to have been designed by the God of Nature as the great ovarium of fish;—the inexhaustible repository of this species of food, not only for the supply of the American, but of the European continent. At the proper season to catch them in endless abundance, little more of effort is needed than to bait the hook and pull the line, and occasionally even this is not necessary. In clear weather, near the shores, myriads are visible, and the strand is at times almost literally paved with them."

"The Provincials had become highly alarmed at the expansion of this fishery and trade; jealous of its progress and clamorous at its endurance, they, therefore, of late years, have repeatedly memorialized the Government in England, respecting the fisheries carried on by the Americans, while the whole body of Scottish adventurers, whose trade both in imports and exports, and control over the inhabitants, it curtailed, have turned out in full cry and joined the chorus of the Colonial Governments in a crusade against the encroachments of the infidels, the disbelievers in the divine authority of kings, or the rights of the provinces, and have pursued their objects so assiduously that, at their own expense, as I am informed from a respectable source, in the year 1807 or 1808, *they stationed a watchman in some favourable position near the Straits of Canso, to count the number of American vessels which passed those straits on this employment, who returned 938 as the number actually ascertained by him to have passed, and doubtless many others, during the night or in stormy or thick weather escaped his observation*, and some of these aggressors have distinctly looked forward with gratification to a state of war, as a desirable occurrence, which would, by its existence, annul existing Treaty stipulations, so injurious, as they contend, to their interest and those of the nation.

"The Coast and Labrador Fisheries are prosecuted in vessels of from 40 to 120 tons burthen, carrying a number of men, according to their respective sizes, in about the same proportion as the vessels on the Bank Fishery. They commence their voyages in May, and get on the fishing ground about the 1st June, before which time bait cannot be obtained. This bait is furnished by a small species of fish called *capling*, which strike inshore at that time, and are followed by *immense shoals of codfish which feed upon them. Each vessel selects her own fishing ground along the coast of the Bay of Chaleurs, the Gulf of St. Lawrence, the Straits of Belleisle, the Coast of Labrador, even as far as Cumberland Island*, and the entrance of Hudson's Bay, thus improving a fishing ground reaching in extent from the 45th to the 68th degree of north latitude.

"In choosing their situation, the fishermen generally seek some sheltered and safe harbour, or cove, where they anchor in about *six or seven fathoms water*, unbend their sails, stow them below, and literally making themselves at home, dismantle and convert their vessels into habitations at least as durable as those of the ancient Scythians. They then cast a net over the stern of the vessel, in which a sufficient number of capling are soon caught to supply them with bait from day to day. Each vessel is furnished with *four or five light boats*, according to their size and number of men, each boat requiring two men. They leave the vessel early in the morning, and seek the best or sufficiently good spot for fishing, which is frequently found within a few rods of their vessels, and very rarely more than *one or two miles distant from them*, where they haul the fish as fast as they can pull their lines, and sometimes it is said the fish have been so abundant as to be gaft or scooped into the boats, without even a hook or line; and the fishermen also say that the codfish have been known to pursue the capling in such quantities, and with such voracity, as to run in large numbers quite out of water, on to the shores. The boats return to the vessels about nine o'clock in the morning, at breakfast, put their fish on board, salt and split them, and after having fished several days, by which time the salt has been sufficiently struck in the fish first caught, they carry them on shore and spread and dry them on the rocks or temporary flakes. This routine is followed every day, with the addition of attending to such as have been spread, and carrying on board and stowing away those that have become sufficiently cured, until the vessel is filled with dry fish, fit for an immediate market, which is generally the case by the *middle* or *last of*

August, and with which she then proceeds immediately to Europe, or returns to the United States; and this fish, thus caught and cured, is esteemed the best that is brought to market, and for several years previous to that of 1808, was computed to furnish *three fourth parts* of all the dried fish exported from the United States."

The following statements to be found on page 219 of the work were furnished to Mr. Adams by a person, whom he qualifies as a very respectable merchant, who dates his letter Boston, May 20th 1815 :—

"My calculation is, that there were employed in the Bank, Labrador and Bay fisheries, the years above mentioned, 1,232 vessels *yearly*, viz., 584 to the Banks, and 648 to the Bay and Labrador. I think the 584 Bankers may be put down 36,540 tons, navigated by 4,627 men and boys (each vessel carrying one boy), they take and cure annually, 510,700 quintals of fish; they average about three fares a year, consume annually 81,170 hhds. of salt, the average cost of these vessels is about 2,000 dollars each; the average price of these fish at foreign markets is 6 dollars per quintal; these vessels also make from their fish, annually, 17,520 barrels of oil, which commands about 10 dollars per barrel, their equipments cost about 900 dollars annually, exclusive of salt.

"The 648 vessels that fish at the Labrador and Bay, I put down 48,600 tons, navigated by 5,832 men and boys; they take and cure annually, 648,000 quintals of fish; they go but one fare a year; consume annually 97,200 hhds. of salt. The average cost of these vessels is about 1,600 dollars; the cost of their equipments, provisions, &c., is 1,050 dollars; those descriptions of vessels are not so valuable as the bankers, more particularly those that go from the district of Maine, Connecticut, and Rhode Island, as they are mostly sloops of no very great value; most of these vessels cure a part of their fish where they catch them, on the beach, rocks, &c., and the rest after they return home; several cargoes of dry fish are shipped yearly from the Labrador direct for Europe. The usual markets for those fish are in the Mediterranean, say Alicant, Leghorn, Naples, Marseilles, &c., as those markets prefer small fish, and the *greatest* past of the fish caught up the Bay and Labrador are *very* small. The average price of these fish at the market they are disposed of is 5 dollars; these vessels also make from their fish about 20,000 bbls. of oil, which always meets a ready sale and at handsome prices, say from 8 dollars to 12 dollars per barrel, the most of it is consumed in the United States.

1,232 vessels employed in the Bank, Bay, and Labrador fisheries, measuring	tons	85,140
Number of men they are navigated by	...	10,459
Number of hhds. salt they consume	...	178,370 hhds.
Quantity of fish they take and cure	...	1,158,700 quintals.
Barrels of oil they make	...	37,520 barrels.

"There are also a description of vessels called jiggers or small schooners of about 30 to 45 tons that fish in the South Channel, on the Shoals and Cape Sables, their number 300, they carry about four or five hands, say 1,200 men, and take about 75,000 quintals of fish annually; consume 12,000 hhds. of salt, and make about 4,000 barrels of oil; their fish is generally sold for the West Indies and home consumption.

"There are another description of fishing vessels commonly called Chebacco Boats or Pink Sterns, their number 600; they are from 10 to 23 tons, and carry two men and one boy each, say 1,800 hands; they consume 15,000 hhds. of salt, and take and cure 120,000 quintals of fish annually. These fish also are wholly used for home and West India market, except the very first they take early in the spring, which are very nice indeed, and are sent to the Bilbao market, in Spain, where they always bring a great price; they make 9,000 barrels of oil; these vessels measure about 10,300 tons.

"There are also about 200 schooners employed in the mackerel fishery, measuring 8,000 tons, they carry 1,600 men and boys, they take 50,000 barrels annually, and consume 6,000 hhds. salt.

"The alewive, shad, salmon, aud herring fishery is also immense, and consumes a great quantity of salt.

Whole number of fishing vessels of all descriptions ...	...	2,332
Measuring	tons	115,940
Number of men navigated by	...	11,059
Salt they consume	...	265,370 hhds.
Quantity of fish they take and cure	...	1,353,700 quintals.
Number of barrels of oil	...	50,520 barrels.
Number of barrels of mackerel	...	50,000 barrels.

"There are many gentlemen who assert, and *roundly* too, that one year there were at the Labrador and Bay, over 1,700 sail beside the bankers, but I feel very confident they are *much* mistaken, it is impossible it can be correct."

Then Mr. Adams gives the authority of his approbation at page 233 to the following statements from "Colquhoun's Treaties on the Wealth, Power, and Resources of the British Empire," 2nd Edition, 1815.

"The *value* of these fisheries, in table No. 8, page 36, is estimated at £7,550,000 sterling.

"'New Brunswick and Nova Scotia, from being both watered by the Bay of Fundy, enjoy advantages over Canada, which more than compensate a greater sterility of soil. These are to be traced to the valuable and extensive fisheries, in the Bay of Fundy, which, in point of abundance and variety of the finest fish, exceed all calculation, and may be considered as a mine of gold—a treasure which

cannot be estimated too high, since with a little labour, comparatively speaking, enough could be obtained to feed all Europe.' Pages 312, 313.

"Since the trade with the United States has been so greatly obstructed, the produce of the fisheries in the British colonies thus encouraged by the removal of all competition, has been greatly augmented; and nothing but a more extended population is required to carry this valuable branch of trade almost to any given extent.

"It will be seen by a reference to the notes in the table annexed to this chapter, that *the inhabitants of the United States* derive incalcuable advantages, and employ a vast number of men and vessels in the fisheries in the River St. Lawrence, and on the coast of Nova Scotia, *which exclusively belong to Great Britain.* The dense population of the Northern States, and their local situation in the vicinity of the most prolific fishing stations, have enabled them to acquire vast wealth by the indulgence of this country.' Page 313.

"'If ought ever to be kept in view, that (with the exception of the small islands of St. Pierre and Miquelon, restored to France by the Treaty of Paris, in May, 1814) the whole of the most valuable fisheries of North America *exclusively belong at this present time to the British Crown,* which gives to this country a monoply in all the markets in Europe and the West Indies, or a right to a certain valuable consideration from all foreign nations to whom the British Government may concede the privilege of carrying on a fishery in these seas.' Page 314.

"'Private fisheries are a source of great profit to the individuals, in this and other countries, who have acquired a right to such fisheries. Why, therefore, should not the United Kingdom derive a similar advantage from the fisheries it possesses within the range of its extensive territories in North America (perhaps the richest and most prolific in the world), by declaring every ship and vessel liable to confiscation which should presume to fish in those seas without previously paying a tonnage duty, and receiving a license limited to a certain period when fish may be caught, with the privilege of curing such fish in the British territories? All nations to have an equal claim to such licences, limited to certain stations, but to permit none to supply the British West Indies, except His Majesty's subjects, whether resident in the colonies or in the parent State.' Page 315.

St. John's or Prince Edward's Island.

"'FISHERIES.—This island is of the highest importance to the United Kingdom. Whether the possession of it be considered in relation to the Americans, or as an acquisition of a great maritime power, it is worthy of the most particular attention of Government. Mr. Stewart has justly remarked, in his account of that island (page 296), that the fishery carried on, from the American States, in the Gulf of St. Lawrence, for some years past, is very extensive, and is known to be one of the greatest resources of the wealth of the Eastern States, from which about 2,000 schooners, of from 70 to 100 tons are annually sent into the gulf; of these about 1,400 make their fish in the Straits of Bellisle and on the Labrador shore, from whence what is intended for the European market is shipped off, without being sent to their own ports. About 600 American schooners make their fares on the north side of the island, and often make two trips in a season, returning with full cargoes to their own ports, where the fish are dried. The number of men employed in this fishery is estimated at between 15,000 and 20,000, and the profits on it are known to be very great. To see such a source of wealth and naval power on our own coasts, and in our very harbours, abandoned to the Americans, is much to be regretted, and would be distressing, where it not that the means of re-occupying the whole, with such advantages as must soon preclude all competition, is afforded in the cultivation and settlement of Prince Edward's Island." Pages 318, 319.

It must be remembered that these statements were for the last ten years of the last, and the first ten years of the present century.

We are not informed where the 50,000 barrels of mackerel were then caught, but we have the opinion of Senator Tuck, cited at pages 9 and 10 of British Brief, who says: "Perhaps I should be thought to charge the Commissioners of 1818 with overlooking our interests. They did so in the important renunciation which I have quoted, but they are obnoxious to no complaint for so doing. In 1818, we took no mackerel on the coasts of British possessions, and there was no reason to anticipate that we should ever have occasion to do so. Mackerel were then found as abundant on the coast of New England as anywhere in the world, and it was not until years after that this beautiful fish, in a great degree, left our waters. The mackerel fishery on the provincial coast has principally grown up since 1828, and no vessel was ever licensed for that business in the United States till 1838. The Commissioners in 1818 had no other business but to protect the codfish, and this they did in a manner generally satisfactory to those most interested."

From the assertions of seemingly well-informed Gloucester officials, accepted as such by the American Counsel, the state of things described by these Boston gentlemen in 1815, would have undergone a complete change, not progressively and in accordance with the laws of nature; but on the contrary, the species and quantity of fish caught in our waters, and the number of vessels and men engaged in that business, have gradually become more and more insignificant. The magnates of cod and mackerel from Gloucester and other ports, who had draped themselves in lofty statistics for the Centennial, have come here to explain once more that all is not gold that glitters. They took off their Centennial costumes, as people do after a fancy ball, they humbled themselves

to the last degree of mortification, contending that the Gulf fisheries had reduced them to beggary, they having lost some 325 dollars, others only 128 dollars, on every trip they had made there during scores of years in succession. People who do not know those hardy and courageous fishermen of Gloucester, would hardly believe that some of them have gone through 170 trips consecutively, without ever flinching in their Spartan stoicism, under an average loss of 225 dollars each trip! Who should wonder, if, in their disgust of such an ungrateful acknowledgement, mackerel should have gone to distant zones, where they could be better appreciated.

Cool philosophers thought they were bound to reduce to nine the wonders of the world. They were mistaken. Here is that wonderful town of Gloucester, State of Massachusetts, in the United States of America, which has been built, and has grown up rich and prosperous, by accumulating losses and ruins upon former losses and ruins. The painful history of its disasters should be inscribed as the tenth wonder.

Fishing, no doubt, like all other industries, has its fluctuations of success and partial failure; but as it rests upon an inexhaustible supply to be found somewhere, it never can be said to be an absolute failure. It was only within a few years that experimental science was applied to fish. Science is diffident, as shown by Professor Baird; in fact, science teaches uncertainty and unbelief, because the more a man learns, the more he finds himself ignorant, the more he labours to know if what he thought to be one thing, is not another thing. The witnesses from Gloucester are foremost in that school of philosophers, who doubt of their own existence. Their town is already a myth; their families would have soon been the same; and alas! themselves, if they had been too long before this Commission, would have to kick each other to know whether they were myths or living beings.

I will have a more fitting occasion for reviewing the evidence brought on behalf of the United States generally. For the moment the contrast was rather tempting, between what Americans of our days thought of our fisheries, and what their ancestors thought almost a century ago. I proceed now to show that the British claim has been proved.

Mr. Dana.—That was as to the cod-fishery.

Mr. Doutre.—I think they have made very little difference.

Mr. Dana.—Cod-fishing is prosperous now.

Mr. Doutre.—It must not be forgotten, as one of our learned friends expressed himself in reference to other matters, they have now a point to carry. When Mr. Adams was collecting his information he had no point to carry, but simply to give a plain statement of facts. Those rich fisheries which were spoken of in such glowing terms in 1815 have, it is asserted, declined to nothing, because we ask for their value. I never heard the matter more plainly and squarely laid down than it was yesterday, by my learned friend, Mr. Whiteway, when he said, "Now, that you possess these fisheries, how much would you ask for their surrender?" If we were to turn the tables in this manner, we would see the Gloucester gentlemen coming here and describing the fisheries in Centennial colours.

Mr. Dana.—Our testimony was all to the effect that the cod-fishery is still profitable in Gloucester.

Mr. Doutre.—I think at this hour we must understand the bearing of the testimony or we will never do so. The fisheries in Maine have been completely destroyed and no longer exist. I will read from the testimony on that point in a few moments.

The number of American vessels frequenting the British-American waters could not be estimated with any degree of precision. Witnesses could only speak of what they had seen, and but very few of them could, within a short time, go over all the fishing grounds and make an estimate, even if they had gone round with that object in view. They had to trust to what they had heard from other parties, who about the same time had been in other portions of these waters, and by combining the knowledge acquired from others with their own, they were able to give a statement of the number of vessels frequenting those waters.

Captain Fortin, page 328 of British evidence, states that in the Province of Quebec only, the extent of the coast on which the fisheries of Canada are conducted is about 1,000 miles; and Professor Hind, page vii of his valuable paper, estimates the area of coastal waters conceded to the United States by the Treaty, to be about 11,900 square miles. Americans have been in the habit of fishing all around the Bay of Fundy, and on the south-east coast of Nova Scotia, without counting the Gulf; but the bulk of the American fleet entered the Gulf, principally by the Gut of Canso, and also by going round Cape Breton, or by the Strait of Belle Isle, coming from Newfoundland. We

have a mass of evidence that they were on all points at the same time, and in large numbers—

Babson, 20th	American	Affidavit,	estimates	the	American	fleet at 750 sail.
Plumer, 22nd	„	„	„	„	„	700 „
Pierce, 24th	„	„	„	says from	700 to	800 „
Gerring, 26th	„	„	„	„	says	700 „
Wonson, 30th	„	„	„	„	„	700 „
Embree, 167th	„	„	„	says	700 to	800 „
Grant, 168th	„	„	„	„	says	700 „

Bradley, the first American witness examined before the Commission, in answer to the American Counsel, page 2: *Q.* Give an approximate amount to the best of your judgment?—*A.* 600 or 700 certainly. I have been in the Bay with 900 sail of American vessels, but the number rather diminished along the last years I went there. Everything tended to drive them out of the Bay, cutters, and one thing and another, and finally I went fishing in our own waters and did a good deal better.

Graham, page 106 of American Evidence, undertakes to contradict Bradley—but finally he has no better data than Bradley to guide himself, and after all his efforts, he admits the number to have been 600 sail.

This was during the existence of the Reciprocity Treaty, and on this point, as well as on all others, it is to that period that we must refer, to find analogy of circumstances.

The average catch of these vessels presents naturally a great diversity of appreciation, and on this the causes which divided the witnesses are more numerous than those concerning the number of vessels. First the tonnage of the fishing vessels, varying from 30 tons to 200 tons, must have regulated the catch more or less. When a vessel had a full cargo, she had to go home, even if fish had continued to swarm around her. Then the most favoured spots could not admit of the whole fleet at the same time. They had to scatter over the whole fishing area with fluctuations of luck and mishap. We must add to this that many of the crews were composed of raw material, who had to obtain their education and could not bring very large fares. Some naturalists have expressed the opinion that fish are inexhaustible, and that no amount of fishing can ever affect the quantity in any manner. When it is thought that one single cod carries from 3,000,000 to 5,000,000 of eggs for reproduction, one mackerel 500,000, and one herring 30,000, as testified by Professor Baird, on pages 456 to 461 of the United States' evidence; there was some foundation for that opinion, but several causes have been admitted as diminishing and sometimes ruining altogether some species of fish. Predacious fish, such as shark, horse-mackerel, dogfish, bluefish, and probably many others have had both effects on some species. (See Professor Baird's evidence at pages 462, 476, and 477.) A more rapid mode of destruction has been universally recognized in the use of seines or purse-seines, by which immense quantities of fish of all kinds and sizes are taken at one time. By that means the mother fish is destroyed while loaded with eggs. Fish too young for consumption or for market are killed and thrown away. It is the universal opinion among fishermen that the inevitable effect of using purse-seines must eventually destroy the most abundant fisheries, and many American witnesses attribute the failure of the mackerel fishery on their own coast, in 1877, to that cause. It is true that this theory is not accepted by Professor Baird, who, however, has no decided opinion on the subject, and who has given the authority of a publication, which he controls, to the positive assertion that this mode of catching fish is not injurious. Pages 476, 477.

When a vessel of sufficient tonnage is employed, that is from forty tons upwards, the catch of mackerel has varied from 300 to 1,550 barrels in a season for each vessel.

Here is the evidence on the subject of mackerel:—

Chiverie, British evidence, p. 11, makes the average 450 barrels per vessel in a period of twenty-seven years. Some years, that average reached 700 barrels per vessel.

MacLean, p. 25, says the average has been 500 per vessel during the twenty years from 1854 to 1874.

Campion, pp. 32, 34, 38, average for 1863, 650 barrels; 1864, from 600 to 700; 1865, over 670; 1877, some caught 300 barrels with seines in one week. One vessel seined a school estimated at 1,000 barrels.

Poirier, p. 62,	average	catch	500 to 600	per vessel	in one season.
Harbour, p. 79,	„		500	„	„ „
Sinnett, p. 84,	„		500	„	„ „
Grenier, p. 87,	„		500 to 600	„	„ „
McLeod, p. 98,	„		500	„	„ „

Mackenzie, p. 129, average catch of mackerel 700 barrels per vessel.
Grant, p. 182, „ „ 600 to 700 „
Purcell, p. 197, „ 250 per trip.
McGuire, p. 210, average catch of mackerel, 600 per season.

Forty-four other witnesses examined, on behalf of the Crown, and cross-examined before the Commission, have stated the same fact. These statements are confirmed by the following American witnesses:—

Bradley,	American evidence,	p. 2,	600 barrels.		
Stapleton,	„	p. 10,	600 „		
Kemp,	„	p. 63,	600 to 700.		
Freeman,	„	p. 75,	600 to 750.		
Friend,	„	p. 119,	520		
Orne,	„	p. 127,	233 per trip	= 466	per season.
Leighton,	„	p. 140,	361 „	= 722	„
Riggs,	„	p. 156,	342 „	= 684	„
Rowe,	„	p. 161,	246 „	= 492	„
Ebitt,	„	p. 175,	375 „	= 650	„
Cook,	„	p. 181,	280 „	= 560	„
Smith,	„	p. 186,	274 „	= 548	„
McInnis,	„	p. 191,	457 „	= 914	„
Garder,	„	p. 209,	240 „	= 480	„
Martin,	„	p. 211,	273 „	= 546	„
Turner,	„	p. 226,	270 „	= 540	„
Rowe,	„	p. 235,	259 „	= 518	„
Lakeman,	„	p. 325,	443 „	= 886	„

In order that any one may verify the correctness of this estimate, for every witness, I may state that this is the process through which I arrived at it. I took the number of barrels caught in each trip, by every witness, and divided the total by the number of trips. Some witnesses have made more than that average, others have made less. I abstained from taking the larger and the smaller catches; and in this respect I have followed a mode of estimating the matter, which has been incorporated in our legislation. When, in 1854, Seignorial tenure was abolished in Lower Canada, indemnity was to be paid to the Seigniors who conceded for "lods-et-ventes," that is to say, a kind of penalty upon any sale or mutation of property which took place, consisting of one-twelfth of purchase money. There was no fine imposed on property being transmitted by inheritance, only in case of mutation by sale, or anything equivalent to a sale, such as exchange. Then to estimate the value of that right, which was so variable, because during some years there would be almost no mutations in a Seigniory, while during other years there would be many, a rule was adopted by which the income of the Seigniory, from that source, for 14 years, was taken, the two highest and two lowest years struck out, and the ten other years held to constitute an average, and the amount, capitalised at 6 per cent., was to be paid. In that matter they were dealing with facts which could be found in the books of the Seigniories; it was not based upon what my learned friend, Mr. Dana, has so well called the swimming basis; while here the calculation is certainly surrounded with much greater difficulty. Some of the fishermen have made only one trip in a-year, but it was their own fault, as they could have made two and three. I have calculated on two trips a-year only, although many have made three, and would have justified me in adding a third to the amount per season. I remained within that medium where the Latin proverb says that truth dwells. I have given the calculations for mackerel. Here is that for codfish:—

Purcell, p. 198. Has known of 1,000, but does not state whether quintals or barrels.
Bigelow, p. 221. Spring codfisheries on Western and La Have Banks, summer and autumn fisheries on the Grand Bank. They make from six to twenty trips in a year, with fresh cod. No quantity stated.
Stapleton, p. 226. Caught 600 quintals within $2\frac{1}{2}$ miles of Prince Edward Island.
Baker, p. 269. Has seen 200 American vessels codfishing in one part, between Cape Gaspe and Bay Chaleur, each vessel catching 700 quintals.
Flynn, p. 270. 700 quintals per vessel, caught on Miscou and Orphan Banks, all the bait for which is caught inshore, and consist in mackerel and herring.
Lebrun, p. 289. 700 to 800 quintals, from Cape Chatte to Gaspe, per vessel.
Roy, p. 293. Has seen 250 to 300 American vessels codfishing.
John McDonald, p. 374. 600 quintals.
Sinnett, p. 85. 300 draughts, or 600 quintals.

The following relates to herring:—

Fox, Customs Officer; Brit. Evid.. p. 114. 600,000 barrels entered outward since 1854; at least one-half of the vessels have failed to report. This is near Magdalens.

Purcell, p. 198. 50 vessels fishing, and catching each 1,000 barrels.

McLean, p. 235. In Bay of Fundy, 100 to 125 American vessels fishing for herring in winter, and catching 7,000,000 to 10,000,000 herrings, which went to Eastport.

Lord, p. 245. From 900,000 dollars to 1,000,000 dollars worth of herring caught annually, by Americans, from Point Lepreaux, including West Isles, Campobello and Grand Manan, Bay of Fundy.

McLaughlin, p. 254-255, estimates at 1,500,000 dollars the annual catch of herring by Americans around the Island and the mainland of Bay of Fundy.

Halibut, pollock, hake, haddock, were caught by Americans all over Canadian waters, but in smaller quantity, and their separate mention here would take more time and space than the matter is worth. However, we will see what is said concerning these different kinds in the summary of evidence concerning the inshore fisheries.

In the discharge of my duty to my Government, I have thought proper to go over grounds which laid at the threshold of the question at issue; first, because the representatives of the United States Government had selected them as a fair field for surrounding that question with artificial clouds of prejudice and fictitious combination of facts and fancy; and, in the second place, because I thought that the main question would be better understood if the path leading to it was paved with a substantial and truthful narration of the circumstances which had brought this Commission together.

The United States are bound to pay compensation, not for fishing generally in waters surrounded by British territory, but for being allowed to fish within a zone of three miles, to be measured, at low-water mark, from the coast or shores of that territory, and from the entrance of any of its bays, creeks, or harbours, always remembering that they had the right to fish all round Magdalen Islands and the coast of Labrador, without restriction as to distance. The functions of this Commission consist in determining the value of those inshore fisheries, as compared to a privilege of a similar character, granted by the United States to the subjects of Her Majesty, on some parts of the United States' coasts, and then to inquire what appreciable benefit may result to the Canadians from the admission of the produce of their fisheries in the United States, free of duty, in excess of a similar privilege granted to the United States' citizens in Canada; and if such excess should be ascertained, then to apply it as a set-off against the excess of the grant made to the United States over that made to the subjects of Her Majesty.

As the learned Agent and Counsel representing the United States have often criticised the acts of the Colonists, when they constrained the Americans to execute the Treaties and to obey the municipal laws, first of the separate Provinces, and then of the Dominion, probably with the object of contrasting the liberality of their Government with the illiberality of our own; I would like to ask which of the two Governments went more open-handed in the framing of the fishery clauses of the Treaty of Washington? Did we restrict the operations of the Americans to any latitude or geographical point over any part of our waters? Not at all. We admitted them everywhere; while on their part they marked the 39th parallel of north latitude on one of their coasts, to wit, the eastern sea-coast or shores, as the herculean column beyond which we could not be admitted. The immediate and practical consequence was that we granted the liberty to fish over 11,900 miles of sea-coasts, where the bulk of the fishing is located; and we were granted the right to fish over 3,500 miles of sea-coasts, where no fishing is done of any consequence by the American themselves, and where no British subject has ever been seen. (As to area, see Professor Hind's Paper, page VII.) In this instance the Americans cannot contrast the good will of the Imperial Government with the illiberality of the Colonists, because the latter were represented in the Joint High Commission by their first Minister, who assented to the Treaty, and the Dominion Parliament, and the Legislatures of Prince Edward Island, and of Newfoundland, equally assented, through solemn Parliamentary Acts.

In dealing with the value and extent of the North British-American coast fisheries, I think I may with all safety say that in the waters surrounding the three-mile limits there are no deep-sea fisheries at all. The assertion may appear hazardous to our American friends, but I am sure they will agree with me when I remind them of the whole bearing of their own evidence. No doubt their witnesses have made use of the words "deep-sea fisheries" in contradistinction to the shore fisheries proper; but is there one of their witnesses who has ever pretended to have caught fish in any place other than banks when it was not inshore?

The whole of the witnesses on both sides have testified that when they were not fishing inshore they were fishing around Magdalen Islands, which is another shore, on Orphan, Bradley or, Miscou, or other banks; but as regards a deep-sea fishery, in contradistinction to banks or shore fishery, there is no such thing in the whole evidence.

Sir Alexander Galt.—Are you now referring to the fisheries generally, or to the mackerel fishery in particular?

Mr. Doutre.—To the codfishery also. Codfish is taken on banks.

Mr. Dana.—It is a question of names—what you call a bank fishery.

Mr. Doutre.—Is not the result of the whole evidence on both sides that fish is to be found on the coast within a few miles, or on banks, and nowhere else? This is the practical experience of all fishermen. Now, science explains why it is so. That class of evidence is unanimous on this most important particular, namely, as to the temperature necessary to the existence of the cold-water fish in commercial abundance, such as the cod and its tribe, the mackerel, and the herring, which include all the fish valuable to our commerce. According to the evidence I shall quote, the increasing warmth of the coastal waters of the United States, as summer advances, drives the fish off the coast south of New England into the deep sea, and puts a stop to the summer fishing for these fish on those parts of the coast in the United States; a condition of things due to the shoreward swing of the Gulf Stream there. On the other hand, it is stated that on the coasts of British America, where the Arctic current prevails, the fish come inshore during the summer months, and retire to the deep sea in the winter months.

Professor Baird says, on page 455 of his evidence before the Commission, speaking of the codfish, in answer to the question put by Mr. Dana, "What do you say of their migrations?" Answer: "The cod is a fish the migrations of which cannot be followed readily, because it is a deep-sea fish, and does not show on the surface as the mackerel and herring; but, so far as we can ascertain, there is a partial migration; at least, some of the fish don't seem to remain in the same localities the year round. They change their situation in search of food, or in *consequence* of the *variations* in the *temperature*, the percentage of salt in the water, or some other cause. In the south of New England, south of Cape Cod, the fishing is largely off-shore. That is to say, the fish are off the coast in the cooler water in the summer, and as the temperature falls approaching autumn, and the shores are cooled down to a certain degree, they come in and are taken within a few miles of the coast. In the *northern waters*, as far as I can understand from the writings of Professor Hind, the fish generally go off-shore in the *winter time*, excepting on the south side of Newfoundland, where, I am informed, they maintain their stay, or else come in in large numbers; but in the Bay of Fundy, on the coast of Maine, and still further north, they don't remain as close to the shore in winter as in other seasons."

You will observe that Professor Baird limits his statement that the warm water in summer drives the fish off the coasts of the United States to the south of New England only. The water appears to be cold enough for them on the coast of Maine in summer to permit of their coming inshore. But now let us see what he says of the condition of the fisheries there. In his official Report for 1872 and 1873 the following remarkable statement is to be found:—

"Whatever may be the importance of increasing the supply of salmon, it is trifling compared with the restoration of our *exhausted* cod-fisheries, and should these be brought back to their original condition, we shall find within a short time, an increase of wealth on our shores, the amount of which it would be difficult to calculate. Not only would the general prosperity of the adjacent States be enhanced, but in the increased number of vessels built, in the larger number of men induced to devote themselves to maritime pursuits, and in the general stimulus to everything connected with the business of the seafaring profession, we should be recovering in a great measure from that loss which has been the source of so much lamentation to political economists and well-wishers of the country." Page 14. *Report of Commissioner of Fish and Fisheries*, 1872-73.

It thus appears from the testimony of Professor Baird that the cod are driven off the shores of the United States south of New England by the increase of temperature in the summer months, and on the New England and Maine shores the cod fisheries are exhausted. The only conclusions that can be drawn from these facts are that the sole dependance of the United States' fishermen for cod, which is the most important commercial sea-fish, is, with the single exception of George's shoals, altogether in waters off the British American coast line.

Professor Hind says, in relation to this subject and in answer to the questions—

"What about the cod? Is it a fish that requires a low temperature?—A. With regard to the spawning of cod, it always seeks the coldest water wherever ice is not present. In all the spawning grounds from the Straits of Belle Isle down to Massachusetts Bay—and they are very numerous indeed

—they spawn during almost all seasons of the year, and always in those localities where the water is coldest, verging on the freezing point. That is the freezing point of fresh water, not of salt, because there is a vast difference between the two."

The cause of the spawning of the cod and the mackerel at certain points on the United States' coasts is thus stated by the same witness:—

"Q. Now take the American coast, show the Commission where the cold water strikes.—A. According to Professor Baird's reports there are three notable points where the Arctic current impinges upon the banks and shoals within the limits of the United States' waters, and where the cod and mackerel spawning grounds are found. If you will bear in mind the large map we had a short time ago, there were four spots marked on that map as indicating spawning grounds for mackerel. If you will lay down upon the chart those points which Professor Verrill has established as localities where the Arctic current is brought up, you will find that they exactly coincide. One spot is the George's Shoals."

So dependent is the cod upon cold waters for its existence, that Professor Baird tells, in reply to the question put by Mr. Thomson, "Could cod, from your knowledge, live in the waters which are frequented by the mullet?" "No; neither could the mullet live in the waters which are frequented by the cod." (p. 471.) Now, in another portion of his evidence, Professor Baird says (p. 416) that "the mullet is quite abundant at some seasons on the south side of New England;" and thus we have, in a different manner, explained the reason why the cod cannot live in summer on the shores of the United States south of Cape Cod on account of the water being too warm, and the evidence of the witness is confirmed by the following evidence of Professor Hind:—

"Q. Are those three fishing localities on the American coast, Block Island, George's Bank, and Stellwagen's Bank, in Massachusetts Bay affected every year, and if so, in what way, by the action of the Gulf Stream?—A. The whole of the coast of the United States, south of Cape Cod, is affected by the Gulf Stream during the summer season. At Stonington the temperature is so warm even in June, that the cod and haddock cannot remain there. They are all driven off by this warm influx of the summer flow of the Gulf Stream. The same observation applies to certain portions of the New England coast." —*Rebuttal evidence*, page 3.

The testimony of these two scientific witnesses then agrees completely with reference to the important question of temperature. We all know of the enormous fleet annually sent by the Americans to the Grand Banks of Newfoundland, the Nova Scotia Banks, and the various Banks in the Gulf of St. Lawrence. With the exception of the comparatively small quantity of cod taken on the United States' coasts, in spring and fall, and on George's Shoals, the greater part of the 4,831,000 dollars' worth of the cod tribe, which the tables put in by Professor Baird show us to be the catch of last year of United States' fishermen, must necessarily have been taken in British American waters, or off British American coasts, for there are no other waters in which Americans take this fish.

Turning now to the mackerel, we shall find that the same prevailing influence, namely, that of temperature, actually defines the spawning area and limits the feeding grounds of this fish.

Colonel Benjamin F. Cook, Inspector of Customs, Gloucester, tells the Commission that this very year, "In the spring, out south, there was a large amount of mackerel, and late this fall, when we were coming from home recently, the mackerel had appeared in large quantities from Mount Desert down to Block Island; but during the middle of summer they seem to have sunk or disappeared." Page 182.

In the portion of Professor Hind's testimony, just quoted, the cause of the mackerel seeking three or four points only on the United States' coasts to spawn in the spring is given, which is, that there the Arctic current impinges on the coast-line. Cold water is then brought to the surface, and as both the eggs of the cod and of the mackerel float, the low condition of temperature required is produced there by this northern current. This question of the floating of the eggs of the cod and of the mackerel is very important, for when the time of spawning is considered, it shows from the testimony of both witnesses that the coldest months in the year are selected by the cod in United States' waters, and the mackerel spawn only when the Arctic current or its offset ensure the requisite degree of cold. The same peculiarity, according to Professor Baird, holds good with regard to the herring. This condition of extreme low temperature, necessary for the three commercial fishes, so limits the area of suitable waters off the coast of the United States, that the American fishermen are compelled to come to British American coasts for their supply of these fish, whether for food or for bait.

All the American witnesses concur in the statement that the cod-fishery is the most profitable, and there is an equal concurrence of statement that the cod-fishery is erroneously styled an off-shore, or so-called deep-sea fishery.

I call attention to the codfishery, as pursued by the great Jersey houses, wholly in small open boats, and almost always within three miles from the shore; to the codfishery pursued on the Labrador Coast, wholly inshore; on the whole extent of Newfoundand, except a small portion of the western coast also wholly inshore; to the codfisheries pursued in the deep bays and among the Islands of Nova Scotia, on the north shore of the St. Lawrence, on the northern coast of Cape Breton, quite close to the shore.

That leads me, by a natural connection, to banks and shoals, for it has been shown that these bring the cold water of the Arctic current to the surface, by obstructing its passage. The underlying cold current rises over the banks and pushes the warmer water on each side. All our testimony goes to prove that the mackerel are almost altogether taken on shores, banks, and shoals, where the water is cold. An off-shore bank is a submarine elevation—a hill top in the sea—and the temperature here is cold, because the Arctic current or cold underlying strata of water rises over the banks with the daily flow of the tides. (Professor Hind's paper, page 97.) This is the fisherman's ground, both for cod at some seasons and for mackerel at all seasons. But what of a shelving or sloping coast two or three miles out to sea, exposed to the full sweep of the tides? Is not that also practically one side of a bank, over which the flood tide brings the cold underlying waters, and mixes them with the warm surface waters, producing in such localities the required temperature? Looking at the Chart of Prince Edward Island, the Magdalen Islands, and the estuary of the St. Lawrence, there is no part of the Magdalen Islands, where the Americans fish within the three-mile limits, where water is so deep as within the three-mile limit on Prince Edward Island, east of Rustico, and covering fully one-half the mackerel ground there. The depth of water between two and three miles from the coast is shown on the Admiralty chart, to vary there from 9 to 13 fathoms within those limits, or 54 and 78 feet; enough to float the largest man-of-war, and leave 25 to 40 feet beneath her keel. It will be remembered that in one of the extracts I have read, the depth of water where fish are taken is given at from 5 to 8 fathoms. And yet we have been constantly assured that there is not water enough for inshore mackerel fishing in vessels drawing 13 feet of water at the utmost. Besides all this, we have the testimony so frequently advanced from fishermen on the shores of Prince Edward Island, that the American fishermen were a source of alarm and injury to them, on account of their lee-bowing their boats. This proves two important facts—first, that the American fishermen did and do constantly come within the three-mile limit to fish for mackerel, and they come in with their vessels, because the fish is there.

Having given the reason why these cold water species of fish, according to a law of nature, must be found quite close inshore, I will now proceed to show that the facts put in evidence fully sustain science.

I shall first direct the attention of your Honours to the special facts connected with the fishing operations pursued on the coasts of the estuary of the St. Lawrence and the Gulf of St. Lawrence, from Cape Chatte to Gaspe, and Cape Despair, on the south side, and from Point des Monts, on the north side of the estuary, to Seven Islands, thence to Mingan, thence to Natashquan, an immense stretch of coast line.

The witnesses from the Province of Quebec have more to say about cod, bait, halibut, and herring, than about mackerel.

Mr. P. T. Lamontaigne testifies in reply to Mr. Thomson, as follows:

"Q. Take from Cape Chatte to Gaspe, along the south shore, what is the average annual export each year of fish; I refer to the codfish and linefish?—A. From my place down to Cape Gaspe there will be 25,000 quintals at least of dried fish exported.

"Q. Taking the whole Gaspe shore, what would you say?—A. I should think not less than from 180,000 to 200,000 quintals of dried fish.

"Q. What is the value per quintal previous to exportation?—A. They should not be worth less than 5 dollars per quintal.

"Q. How are these fish taken, by vessels or by boats?—A. By boats.

"Q. Are they taken with hook and line?—A. Yes. What we take on our coast are all taken with boats and with hook and line.

"Q. Have you any halibut on your coast?—A. Not at present.

"Q. What is the reason?—A. We attribute it to the Americans fishing for halibut on our coast.

"Q. What time do they fish?—A. About August.

"Q. What years did they come there?—A. From 1856 to 1866 and 1870, as near as I can remember.

"Q. In 1866 the Reciprocity Treaty came to an end. Did the Americans fish for halibut there in 1870?—A. I could not say exactly the year, but I am sure they fished there.

"Q. Did they fish after the abrogation of the Reciprocity Treaty in 1866?—A. The Americans did fish there.

"Q. Was halibut taken within two miles of the shore?—A. Near the shore.

"Q. The Americans came in after the Reciprocity Treaty was abrogated did they?—A. I believe they did.

"Q. And they cleaned out the halibut?—A. Fishermen all agree in saying that they took away all the halibut on our coast."

While we are speaking of the halibut, I must remind the members of the Commission of the strenuous efforts made by the American counsel and witnesses to impress them with the notion that halibut was extinct all over the Bay of St. Lawrence, and that the Americans never fished for codfish in the Gulf anywhere. We are not left here to select between conflicting testimony. We have judicial authority to strengthen our assertions. I will extract from a report filed in the case, four seizures of vessels caught in the act of fishing halibut and cod within the three-mile limit.

"'Lizzie A. Tarr,' 63 tons, Messrs. Tarr Bros. owners, Gloucester, Mass., U.S., seized 27th August, 1870, by N. Lavoie, schooner 'La Canadienne,' about 350 yards from the shore in St. Margaret's Bay, north shore of Gulf of St Lawrence, Province of Quebec. Anchored at West Point of St. Margaret's Bay, near Seven Islands, St. Lawrence coast, west of Mount Joly, about 350 yards from the shore. Five fishing boats were alongside the vessel, crew having just returned from tending their lines, which were set between the vessel and the main land. Six halibuts were found on the lines. Master admitted that the owner of vessel had directed him to go and fish there, as the Government cutter was seldom seen in these places, and some of the crew stated that if they had good spy-glass they would not have been caught. Tried in Vice-Admiralty Court at Quebec. Vessel condemned. Defended. Sold for 2,801 dollars; money paid to credit of Receiver-General, after deducting costs and charges.

"'Samuel Gilbert,' 51 tons, Richard Hanan master, Gloucester, Mass., U.S., seized July 24th, 1871, by N. Lavoie, schooner 'La Canadienne,' about two miles N.W. by W. from Perroquet Island, near Mingan, on the north coast of the Gulf of St. Lawrence. At the time of capture schooner was taking fresh codfish on board from one of her flats alongside. Two of her boats were actively fishing at a distance of 450 yards from shore, and men on board were in the act of hauling in their lines with fish caught on their hooks. When seized boats were half-full of freshly caught codfish, and had also on board fishing gear used for cod fishing. Owner admitted having fished, but pleaded as an excuse that he was under the impression that the provisions of the Washington Treaty were in operation. Tried in the Admiralty Court at Quebec. Vessel condemned. Vessel released for costs.

"'Enola C.,' 66 tons, Richard Cunningham master, Gloucester, Mass., U.S., seized 29th May, 1872, by L. H. Lachance, schooner 'Stella Maria,' less than two miles from the shore in Trinity Bay, north shore of Gulf of St. Lawrence, Province of Quebec. Actively fishing at time of capture; had been fishing all day with trawl nets set from 50 to 600 yards from shore, and extending five or six miles along the coast, between Point des Monts and Trinity Bay. When captured, vessel was becalmed inside of 2 miles of Trinity Bay; had on deck two fresh caught halibuts, and two of her men were at the time engaged in raising trawls set close in Trinity Bay. On their coming alongside of vessel, it was ascertained they had two halibuts in their boat. Master admitted having committed the offence, but begged hard to be let off, on account of this being his first offence. Had been warned, before coming to Trinity Bay, not to fish within limits. At time of seizure vessel had on board a cargo of about 2,000 pounds of halibut and salt. Sureties discharged.

"'James Bliss,' 62 tons, Allan McIsaacs master, Gloucester, Mass., U.S., seized 18th June, 1872, by L. H. Lachance, schooner 'Stella Maria,' within one and a half miles of the east end of Anticosti Island, in the Gulf of St. Lawrence, Province of Quebec. At time of capture was anchored within one and a half miles from the shore, between Point Cormorant and the east end of Anticosti Island. Actually fishing for halibut with five trawl nets set around the vessel, between 50 yards and one and a half miles from the shore, and had been fishing there for three days previous. Master acknowledged the offence, and stated that he had been warned by his owners not to expose their vessel. Sureties discharged."

Dr. Pierre Fortin, M. P.P., testified before the Commission as to the large number of British establishments engaged in the codfisheries on the south shore of the River St. Lawrence, to the head of Baie des Chaleurs, and on the north shore of the River and Gulf of St. Lawrence. Dr. Fortin, examined by myself, testified as follows:—

"Q. All those establishments dealt exclusively in cod?—A. Yes, their principal business is codfish. Sometimes herring and mackerel are dealt in but not much. The principal is codfish.

"Q. Do any of those establishments resort to Newfoundland for cod?—No, not at all; never.

"Q. Well, where is all their cod caught?—A. *On the shore, and from boats.*

"Q. Is all the cod they deal in caught in Quebec waters?—A. Yes.

"Q. With boats?—A. Yes, and they fish from the shore.

"Q. What kind of boats? Open boats?—A. Fishing boats manned by two men.

"Q. Name the banks and their extent, which exist in these waters?—A. On the north shore I know of only two banks of small extent. St. John or Mingan and Natashquan.

"Q. St. John and Mingan are the same thing?—A. Yes, the same bank. Six or seven miles from the shore.

"Q. Of what length is it?—A. They lie six or seven miles from the shore, but they merge into the shoal fisheries. They are not distinct from the shoal fisheries. They are seven or eight miles in length.

"Q. What is the length of the Natashquan?—A. It is about 10 miles in length. These are all the banks on the north side.

"Q. Now on the south side?—A. Well, from Mantane to Cape Gaspe, is what is called the River St. Lawrence, there are no banks. The fishing is all carried on wtihin 3 miles, and sometimes within 2 miles.

Then there are two banks opposite the shore of Gaspe and Bay Chaleur. There is a bank called Point St. Peter's Bank, which is very small, 10 miles out. It is a very small bank, 3 or 4 miles in extent. Then there is Bank Miscou, or Orphan, a bank lying off the coast of Miscou; also off the coast of Gaspe or Bay Chaleur, a distance of about 20 miles—15 or 20 miles.

"Q. Now, taking into account these banks, could you state how far from the shore, or, rather, could you state what proportion of the whole quantity of cod taken is caught within these 3 miles?—A. Taking into account that only our people that are settled in St. John's River, and a place called Long Point, visit this Mingan or St. John Bank, also that but few fishermen from Natashquan go on the bank, that is of our own fishermen, and taking into account that our fishermen generally go on the bank only in two or three places, I should think that more than three-fourths—I should say 80 per cent. or up to 85 per cent. of the codfish taken by Canadian fishermen are taken inside of British waters."

As to bait for the halibut fishery, Mr. Fortin said—

"Q. What is the bait used for halibut?—A. Herring and codfish. Codfish is as good as any. It is firmer than herring, and holds well on the hook. They put a large bait on so that the small codfish cannot take the bait, because the object of the halibut fishers is to take nothing but halibut. When they take codfish they have to throw it overboard.

"Q. And as codfish as well as herring, are taken inshore, they have to come inshore?—A. Yes, they come in close to the shore for halibut."

And, with respect to codfish, Mr. Fortin continues—

"Q. Well, what bait is used for codfish?—A. The bait they use are caplin, launce, herring mackerel, smelt, squid, clam, trout, and chub.

"Q. Where do they generally keep?—A. Near the shore. The caplin and launce fish are on the shore rolling on the beach sometimes, and our fishermen catch many of those with dip-nets without using seines. Herring are caught also near the shore with nets.

"Q. Well, can the codfishery be carried on advantageously otherwise than with fresh bait?—A No, no. Salt bait is used sometimes, when no other can be had, but it cannot be used profitably.

"Q. Is there any means of keeping fresh bait for some time?—A. Well, some of our large establishments which have ice-houses have tried to keep the bait they use in a fresh state as long as they could, but they have not succeeded well. They may from half a day to a day in warm weather perhaps.

"Q. With ice?—A. Yes, because the herring, for instance, may be fit to eat, but not for bait.

"Q. Why?—A. Because the bait they use must be fresh enough to stick on the hook. If it is not very fresh it does not stick on, and it will not catch the codfish, because the codfish will take the bait off the hook, and leave the hook.

"Q. You say it can only be kept half a day or a day?—A. It may be kept perhaps a day or two It depends upon the weather.

"Q. Well, would it be possible for the Americans coming there to fish for cod to bring their bait with them in a frozen state?—A. No, it is impossible.

"Q. They could only bring salt bait, which is not much used?—A. That is all."

Mr. John Short, M.P. for Gaspe, examined by Mr. Davies, gave evidence as follows:—

"Q. Can you give the Commission an estimate of the quantity of fish taken by our fishermen annually along the coast?—A. From Mount Cape Chatte to New Richmond the catch would be about 100,000 quintals.

"Q. Where is new Richmond?—A. On Bay Chaleurs. There is Anticosti and the north shore of the St. Lawrence, from Joli north-westward, which will give 100,000 quintals, making together 200,000 quintals.

"Q. The north shore of the St. Lawrence and Anticosti will give 100,000 quintals?—A. Yes, with the Magdalen Islands.

"Q. What kind of fish is taken?—A. Codfish chiefly; herring is the next catch in quantity and importance.

"Q. You don't fish mackerel to any extent?—A. No.

"Q. You don't go into it for the purpose of trade?—A. No; we find the codfish more remunerative.

"Q. What is the value of those 200,000 quintals of fish?—A. The cost value is about 5 dollars per quintal, which would give a value of 1,000,000 dollars. The market value is higher; it ranges from 5 dollars to 8 dollars per quintal.

"Q. How far are those fish taken from shore by the fishermen, take the north shore?—A. Principally and nearly altogether inshore.

"Q. Now take the south shore?—A. From Cape Chatte to Cape Gaspe they are all taken inshore, and from Cape Gaspe to New Richmond the greater portion is taken inshore, some are taken on banks.

"Q. Where do the American cod-fishermen get their bait?—A. They get a great quantity from the inshore fishery.

"Q. Have you seen them catch bait?—A. I have seen them set nets, but not take them up.

"Q. Have you any doubt that they do catch bait?—A. I have not. They often draw seines to shore for caplin and small bait.

"Q. Could the Americans carry on the deep-sea cod-fishery without that bait?—A. Not with success.

"Q. You are quite sure about that?—A. Yes; I have no hesitation in saying it could not be carried on."

Mr. Josef O. Sirois tells the Commission, in his examination by myself:—

"I am a merchant at Grande Rivere, County of Gaspe. I have employed men to fish for me round my neighbourhood. I have fished on the south side of the River of St. Lawrence, from Paspebiac to Cape Gaspe, a distance of about ninety miles. My fishing was done with small boats, each having two men; I generally have six of such boats employed fishing. I have carried on this kind of business during the last twenty years. It is cod we take on that coast. Cod is slightly more abundant than it was twenty years ago; it may be that each boat takes less, but the number of boats has considerably increased during that period. Part of the cod is taken along the coast, and the remainder on Miscou Bank. Cod is taken from one to two miles from the coast. They take about half their catch on the coast within the distance mentioned, and the remaining half on Miscou Bank. They take cod with bait, consisting of caplin, herring, squid, smelt, and mackerel. The bait is obtained at from a quarter of a mile to two miles from the coast; it is very rare the fishermen would have to go out as far as three miles to take bait. American fishermen could not bring fresh bait from their homes. It cannot be kept with ice to be used advantageously for more than two days. The effect of placing bait on ice is to soften it so that it will not hold on the hooks. I have seen a number of American schooners fishing mackerel on the coast."

Mr. Louis Roy, of Cape Chatte, testified to the Commission, in reply to myself, as follows:—

"Q. What part of the coast of the River St. Lawrence are you acquainted with?—A. From Cape Chatte to Cape Gaspe.

"Q. What is the distance between those points?—A. About 140 miles.

"Q. That is on the south coast?—A. Yes.

"Q. Do you know anything of the north coast?—A. I have some knowledge of the north coast, but am not so familiar with it as with the south coast.

"Q. What extent of coast on the north side do you know?—A. About 160.

"Q. That would make a length of 300 miles of the river coast, that you are acquainted with?—A. Yes.

"Q. Is it to your knowledge that the Americans have been fishing on that part of the River St. Lawrence?—A. Oh, yes; they have fished near my place very often.

"Q. When did they begin to fish on that part of the river?—A. About 1854.

"Q. The time of the Reciprocity Treaty?—A. Yes.

"Q. Until then you had never seen much of them?—A. Oh, yes. I saw many during the ten years previous to that.

"Q. But they came in large numbers after that date?—A. Yes, they came in large numbers for about six or seven years, but after that they came in less numbers.

"Q. You mean during the last years?—A. Yes.

"Q. At the time they were frequenting that part of the river, how many sail have you any knowledge of as visiting the coast?—A. From Cape Gaspe to Cape Chatte?

"Q. Yes, and on the north shore also?—A. About 260 or 300 sails.

"Q. Schooners?—A. Yes.

"Q. What was the general tonnage?—A. About 70 or 80 tons.

"Q. That is the average?—A. Yes; there would be some 50 tons and some 120.

"Q. You say that many visited during one season?—A. From spring to fall. Oh, yes.

"Q. After the Treaty of Reciprocity?—A. Not so much.

"Q. You mean not so much after the Treaty was terminated?—A. Yes.

"Q. But during its existence?—A. Well, about the number I have stated.

"Q. Were they fishing for fish to trade with?—A. Yes.

"Q. What kind of fish was it?—A. Cod.

"Q. Where was the cod caught?—A. Do you mean what distance from the shore?

"Q. Yes?—A. Within three miles.

"Q. Well, out of these 300 miles you have spoken of, where could cod be fished for off the coast?—A. Well, for about 15 or 20 miles off the north shore. On the south shore there are none at all outside. You can't catch off beyond three miles on the south shore.

"Q. Where are those 15 or 20 miles?—A. From Mingan.

"Q. Have you any knowledge of the catch that one of those schooners would take, neither the largest nor the smallest. Take an average?—A. About between 500 or 600 barrels each vessel.

"Q. For the whole season?—A. Yes; because some of them made two trips and some three.

"Q. Well, then they would not take 500 or 600 barrels each trip?—A. No, no; I mean for the whole season.

"Q. Is the cod as abundant now as it was 30 or 40 years ago? Do you get as much?—A. Oh, yes, as much as 30 or 40 years ago. I am sure of it.

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"Q. Have you any idea what quantity of fish is taken by the Canadians in that part of the river?—A. Oh, yes; I have a memorandum here. I calculate that the catch of codfish from Cape Chatte to Cape Gaspe, along the coast, is about 220,000 quintals of dry fish, valued at 4·50 dollars a quintal.

"Q. Do you know if much of that is exported to the United States?—A. Not at all; not any.

"Q. Now, as to the mackerel, is that the fish for which the Americans were fishing on that part of the river?—A. Yes.

"Q. Where is the mackerel taken generally?—A. It is within three miles, because always the fat mackerel is inside of a mile—close by.

"Q. Well, from the knowledge you have of the locality, do you think you would see any American schooners if they were prevented from fishing within three miles of the shore?—A. No.

"Q. Would it be profitable for them?—A. They cannot do it. They would not come because they would not catch enough to pay expenses."

Mr. James Jessop, of Gaspe, examined by Mr. Weatherbe, testifies as follows:—

"Q. As a matter of fact, where do they get most of the bait, on the shores or on the banks?—A. More inshore than on the banks.

"Q. Do the Americans come inshore constantly for bait?—A. They may not come on our shores, but on other shores they do. Most of them go to Shippegan, which is a great place for fishing herring. The herring come in from the Banks of Shippegan; the Americans catch them and also follow them inshore.

"Q. The Americans come from the banks on purpose to catch bait?—A. Yes, and when they go out of the bay they get fresh bait when the herring school is passing out.

"Q. How long does fresh bait last?—A. It will only keep fresh one day.

"Q. That is when there is no ice on board to preserve it?—A. Yes.

"Q. Where there is ice, how long will the bait keep fresh?—A. Two or three days.

"Q. From Cape Chatte to Cape Gaspe, how far from the shore did the Americans fish?—A. From Cape Chatte to Cape Gaspe, the Americans came in along the shore. I never fished there. I have passed up and down and seen American vessels fishing for mackerel right along the shore.

"Q. Did you see or hear of Americans fishing for mackerel outside of three miles from shore?—A. No; all within one mile, one mile and a half and two miles of the shore.

"Q. Did you ever hear of any fishing outside three miles?—A. Not on that coast.

"Q. On the north side of Bay Chaleurs where are mackerel found?—A. The great body of mackerel is along the shore. A few may be caught outside in deep water, but the mackerel make into the shore, and come after small bait.

"Q. Where are most of the mackerel caught?—A. Handy to the shore, sometimes a mile and a half out. Sometime not five acres out.

"Q. Do you know from the Americans themselves whether they catch the greater part of the mackerel inshore?—A. Yes. The vessel I was on board fished inshore with boats. The vessel was at anchor in Newport harbour.

"Q. How far from the land?—A. About 300 yards.

"Q. Did you catch all the fish there?—A. There were no fish in the harbour. We caught them in a cove called Carnaval.

"Q. How far from the shore?—A. About 2 cables' length. We got 100 barrels one day.

"Q. Did you catch your fish far from the shore?—A. The farthest we caught might be half-a-mile off.

"Q. How many did you catch?—A. I could not say exactly, but we pretty nearly loaded her. I left her, and she afterwards left to tranship her cargo.

"Q. Do the Americans fish along your shores for cod?—A. They do.

"Q. Within three miles from shore?—A. Yes.

"Q. To any extent?—A. They don't fish codfish to any great extent within three miles from shore.

"Q. Where do they fish for cod?—A. On Miscou Bank and Bank Orphan.

"Q. What is the number of the fleet engaged in fishing on Miscou Bank alone?—A. I have heard my men say from forty to fifty sail.

"Q. You would put the average at forty sail?—A. Yes.

"Q. Do you know what is the number of the cod fishing fleet in the bay on an average each year?—A. From 300 to 400 vessels.

"Q. Nearer 400 than 300?—A. About 400.

"Q. Where do these cod fishermen get the bait they use?—A. A great deal of it inshore, along our coast.

"Q. How do they get it?—A. By setting nets inshore, and sometimes by buying it.

"Q. What kind of fish do they catch for bait?—A. Herring. I have seen them seining herring. I have heard that they jig squid and bob mackerel.

"Q. They catch caplin?—A. Yes."

Mr. Joseph Couteau, of Cape Despair, examined by myself, gives the following evidence:—

"I am 42 years of age. I live at Cape Despair, in the county of Gaspe. I am a fisherman, and at present employ men in the fishing business. This fishery is carried on along the coast from one to three miles from the shore, and also on Miscou Bank. The Americans fish there. I have seen as many as forty sail fishing there at the same time. The Americans procure their bait along and near the coast. The bait consist of herring, caplin, and squid. The cod fishery cannot be prosecuted to advantage with salt bait. The Americans cannot bring with them to Miscou Bank a sufficient supply of bait. In 1857 I fished in an American schooner called the 'Maria.' I do not remember her captain's name. The schooner was fitted out at and started from Portland. During the first three months of the voyage, we fished for cod along Cape Breton, the Magdalen Islands, and Miscou Bank. At Cape Breton we took the cod at distances of from a mile to a mile and a half from the shore. We fished at about the same distance from the shore at the Magdalen Islands. We took 330 quintals of cod. We caught about three-quarters of our load within three miles of the coast off Cape Breton and the Magdalen Island, and the remainder at Miscou Bank. We procured our bait on the Cape Breton shore."

Mr. Abraham Lebrun, of Perce, examined by Mr. Weatherbe, tells the Commission where the Americans procure their bait:—

"Q. Where do they procure their bait?—A. The generality of them procure it on the coast.

"Q. How do they get it?—A. In nets. They take herring in nets.

"Q. And what else?—A. Squid; they also seine caplin on our coast.

* * * * * * * * * *

"Q. Where do they get their nets with which they catch it?—A. They bring them with them.

"Q. Where did they get the bait after the abrogation of the Reciprocity Treaty?—A. They run the risk of capture to obtain it within three-mile limit.

"Q. Year after year?—A. Yes.

"Q. How do you know that?—A. I have seen them do so."

The witness is then asked about halibut:—

"Q. Halibut are caught along the north shore of the River St. Lawrence for the distance of 180 miles, to which you have referred?—A. Yes.

"Q. And they are taken on the coast of Anticosti, and along the south coast, and along the other coasts, on the south side of the St. Lawrence, which you have mentioned?—A. Yes, sir, from Cape Chatte to Cape Gaspe; this is a celebrated coast for halibut.

"Q. Are halibut caught on the shores of Gaspe and the Bay of Chaleurs?—A. They are, or have been caught there.

"Q. By whom is the halibut fishery carried on?—A. Chiefly by the Americans.

"Q. And how are they caught?—A. With trawls.

"Q. What effect has their mode of fishing had on the coast as a halibut fishery ground?—A. With regard to halibut, it has injured the fishery.

"Q. By what means?—A. By overfishing. Halibut is a fish which does not reproduce itself like the cod, and of course the fishing is thus affected and injured.

"Q. By whom has this over-fishing been done?—A. By the Americans.

"Q. During how many years?—A. It has been the case as long as I can remember—that is, from 1856 to the time when I left the north shore, in 1873. They have frequented the coast from year to year.

"Q. Is the halibut fishery carried on now on the south shore?—A. At present halibut are very scarce there, but formerly they were very plentiful on this coast."

Mr. John Holliday, who pursues the fishing business on an extensive scale at the mouth of the Moisie River, testified, in his examination by Mr. Thomson, as follows:—

"Q. Well, do you take no halibut or hake?—A. We take a few halibut, not of any great moment, this year past.

"Q. Why is that? It used to be plenty?—A. They used to be, but since 1868 or 1869, the coast is nearly cleaned of halibut by the American fishermen coming there. Two of them were taken in my neighbourhood; that is two of their vessels were taken by the cruizers.

"Q. What became of them?—A. I think they were both condemned.

"Q. Well, were those halibut taken within three miles of the shore?—A. Oh, yes, within about a mile and a half of the shore.

"Q. There was no doubt, then, about the fact of the infringement of the law, for which those vessels were taken?—A. I have seen several of them leave the coast and leave their lines. When they saw the cruizers come they stood out to sea and came back a day or two afterwards and picked up their lines.

"Q. That was within three miles?—A. Yes.

"Q. How near?—A. About a mile and a half.

"Q. I do not know whether the atmosphere there is of that peculiar character that a vessel within half-a-mile will think she is three miles out?—A. They could not well think that.

"Q. You can generally tell when you are within three miles?—A. Yes; at all events within a mile and a half.

"Q. Well, you say that in 1868 and 1869, the American schooners came there and fished out the halibut—A. Yes, they cleaned them out.

"Q. What kind of fishing was it?—A. With long lines or trawls.

"Q. There were a great many hooks upon them?—A. A great number; there were several miles of them.

"Q. What was the effect of that, either to your own knowledge or from what you have heard?—A. The whole of our inshore fishermen fished codfish and halibut. We get none now, or next to none.

"Q. No halibut you mean?—A. No halibut.

"Q. Are they a fish that keep pretty close to the bottom as a rule?—A. Yes.

"Q. Therefore they are the more liable to be taken up by the trawl?—A. That is the method adopted in this country of catching them altogether.

"Q. Before the Americans came with a trawl, how did your people take them?—A. With hand lines.

"Q. Where they reasonably plenty in those days?—A. Yes; a boat has got from eight to ten. Now they very seldom get any.

"Q. Well, had the hand-line fishing been continued and those trawls not introduced, is it or is it not your opinion that the halibut would be now there just as it used to be?—A. I think it would be as good as previously.

"Q. In your opinion then this trawl fishing is simply destructive?—A. To halibut."

Saturday, November 17, 1877.

The Conference met.

Mr. Doutre continued his argument in support of the case of Her Majesty's Government as follows:—

May it please your Excellency and your Honours—

When we separated yesterday, I demanded and obtained an adjournment until Monday, as I considered I required that time to lay before the Commission the matter in issue in its different aspects; and I am still of opinion that I would have fulfilled my duty in a more complete manner, if the arrangement of yesterday had been adhered to. However, a very pressing demand was made upon me to meet this afternoon, in order to close my part of the argument, and leave the way free and clear for my successor on Monday. With a strong desire to comply with the demand from gentlemen with whom I have been acting so cordially so far, and with whom I hope to act cordially up to the time of our separation, I made an effort to be able to present myself before the Commission at this hour. However, I shall have to deal, I fear, in a very ineffectual manner with the matters that remain to be considered. I have taken particular care in arranging the evidence and argument, not entirely for the reason that your Honours required any information from me to form your opinion. I think, after this long investigation, the minds of your Honours must be pretty well made up, and could not be much altered and influenced by any remarks I could offer. But we must not forget that this Treaty is a temporary arrangement, which will be the object of fresh negotiations within a pretty short period, and I considered that those who will have to deal with the question five, six, or eight years hence, will be unable readily to discover, in this mass of evidence, what part has a bearing upon one branch of the case, and what part upon another branch; and I thought it would be useful, if not for the present moment, for the future, to make a complete investigation of the evidence, and to place it in such a shape that those who shall succeed your Honours in dealing with this question may be guided in some way through these fields of testimony. When we adjourned yesterday, I was showing at what distance from the shore the cod fishery in the estuary of the St. Lawrence is prosecuted. Before proceeding to another part of the evidence, I desire to draw the attention of your Honours to what has fallen from the learned counsel on behalf of the United States, Mr. Foster and Mr. Trescot.

Mr. Trescot admits that the British case can be supported by proof of "*the habit of United States' fishermen.*"

> "If fifty fishermen of a fishing fleet swore that it was the habit of the fleet to fish inshore, and fifty swore that it was the habit never to fish inshore, you might not know which to believe; but supposing, what in this case will not be disputed, that the witnesses were of equal veracity, you would certainly know that you had not proved the habit.
>
> "You will see, therefore, that the burden of proof is on our friends. They must prove their catch equal in value to the award they claim. If they cannot do that and undertake to prove habit, then they must do—what they have not done—prove it by an overwhelming majority of witnesses. With equal testimony their proof fails."

There is an enormous quantity of testimony produced, on the part of Her Majesty's Government, to show that the United States' fishing *fleet* constantly, throughout the season, fished within three miles of almost all the shores of the Gulf of St. Lawrence—on the shores of Nova Scotia (including all the shores of Cape Breton), the shores of Prince Edward Island, the west shore of the Gulf, the shores of Bay de Chaleur and Gaspe, both shores of the River St. Lawrence, and the whole north shore to Labrador, the shores of Anticosti, as well as the shores of the Bay of Fundy. The various fleets of United States' vessels were very seldom, if ever, during the fishing season, out of sight of very large numbers of respectable and intelligent witnesses residing on various parts of the coast, whose sworn evidence has been received by the Commission. Besides, witnesses too numerous to mention have given evidence sufficient literally to fill a volume, of having fished in American bottoms, and they testify that the common custom of the various fleets was to fish within three miles of all the shores thrown open by the Treaty of Washington.

In addition to this, a very large number of witnesses have corroborated the views of almost all United States' writers and statesmen who have offered the opinion that, without the "three-mile belt," the Gulf fishery is useless; and these latter witnesses, who have been interrogated on the subject, have, without perhaps a single exception, stated that the American skippers and fishermen have invariably admitted that, without the free use and enjoyment of the three-mile inshore fisheries, they considered it useless

to enter the Bay of St. Lawrence for fishing purposes. Can there be stronger proof of habit? Speaking of the British testimony, says the learned counsel, Mr. Trescot: "With equal testimony, their proof fails." Perhaps so. Has "equal testimony" been produced by the United States? Is there any testimony whatever to contradict this immense mass of evidence of the "habit" of the United States' fishing fleet?

Numbers of fishermen were produced by the United States to show that they themselves had fished at Banks Bradley and Orphan, and other banks and shoals, and at the Magdalen Islands, outside of British waters, who by the way, nearly all suffered loss, but scarcely any of these witnesses undertook to show *where* the fleet fished. On the contrary, they almost invariably qualified their statements by showing that they spoke only of their own individual fishing.

The learned counsel for the United States impliedly admits that, unless there has been produced witnesses contradicting the British evidence as to "habit," the British case is made out. There is a singular absence in the vast number of witnesses and affidavits produced on both sides for twelve weeks—there is a singular and marked absence of contradiction, and upon the principle involving "habit," enunciated by Mr. Trescot, the evidence can be relied on with confidence as fully and completely establishing the claim.

The learned agent, Mr. Foster, in his very able speech, contends that the British claim is not made out, because there are but a trifling quantity of fish caught by United States' vessels within the formerly prohibited limits, but it can be clearly shown that he is entirely mistaken as to the weight and character of the evidence. He says:—

"If the three-mile limit off the bend of Prince Edward Island, and down by Margaree, where our fishermen sometimes fish a week or two in the autumn (and those are the two points to which almost all the evidence of inshore fishing in this case relates), if the three-mile limit had been buoyed out in those places, and our people could have fished where they had a right to, under the law of nations and the terms of the Treaty, nobody would have heard any complaint."

Again:—

"Almost all the evidence in this case of fishing within three miles of the shore relates to the bend of Prince Edward Island and to the vicinity of Margaree. As to the bend of the island it appears, in the first place, that many of our fishermen regard it as a dangerous place, and shun it on that account, not daring to come as near the shore as within three miles, because in case of a gale blowing on shore their vessels would be likely to be wrecked."

He also says:—

"There is something peculiar about this Prince Edward Island fishery, and its relative proportion to the Nova Scotia fishery. As I said before, I am inclined to believe that the greatest proportion of mackerel caught anywhere inshore, are caught off Margaree, late in the autumn. The United States' vessels, on their homeward voyage, make harbour at Port Hood, and lie there one or two weeks; while there they do fish within three miles of Margaree Island; not between Margaree Island and the main land, but within three miles of the island shores; and just there is found water deep enough for vessel-fishing. Look at the chart, which fully explains this fact to my mind. Margaree is a part of Nova Scotia, and Professor Hind says there is an immense boat-catch all along the outer coast of Nova Scotia, and estimates that of the mackerel catch, Quebec furnishes 7 per cent. (he does not say where it comes from), Nova Scotia 80 per cent., New Brunswick 3 per cent., and Prince Edward Island 10 per cent."

This is also from the learned Agent of the United States:—

"When I called Professor Hind's attention to that, and remarked to him that I had not heard much about the places where mackerel were caught in Nova Scotia, he said it was because there was an immense boat-catch on the coast. If there has been any evidence of United States' vessels fishing for mackerel within three miles of the shore, or more than three miles from the shore of the outer coast of Nova Scotia, it has escaped my attention. I call my friends' attention to that point. If there is any considerable evidence, I do not know but I might say any appreciable evidence of United States' vessels fishing for mackerel off the coast of Novia Scotia (I am not now speaking of Margaree, but the coast of Nova Scotia), it has escaped my attention. As to Cape Breton, very little evidence has been given, except in reference to the waters in the neighbourhood of Port Hood."

Providing Mr. Foster were correct in the view he has put forward of the evidence, he might with some reason urge the Commission to refuse the Award claimed on behalf of Her Majesty's Government.

Nothing could be more unjust and unfair to the character of the Canadian fisheries than to adopt the statement of the learned Agent as to Prince Edward Island and Margaree as the correct result of the facts established by absolutely uncontradicted evidence now before the Commission.

It is true that the main efforts of United States' counsel were exerted to impeach

the large array of respectable witnesses who testified to the great wealth of the fishery in the bend of Prince Edward Island, and the constant use of those grounds by United States' fleets. But, if Mr. Foster should ever again have occasion closely to examine the whole evidence given in this case on both sides, he will find that, beyond the efforts to depreciate that tract of water between the North Cape and the East Point, and that at Grand Manan, there is scarcely a line of testimony offered by him or his learned associates to shake or contradict the evidence given respecting all the other vast and rich Canadian fishing grounds. The evidence of the value to, and use by, American fishermen of all the coasts of Nova Scotia from the Bay of Fundy eastward, all round the Island of Cape Breton, the north shores of the coasts and bays of New Brunswick to Gaspe, and the entire coasts of Quebec, within the jurisdiction of the Commission, is almost, if not absolutely, uncontradicted.

This applies as well to the affidavits as to the oral testimony, and it may be stated here of the British affidavits, what cannot be said of those of the United States, that they are strikingly corroborated by the testimony of witnesses both on the direct as well as the cross-examination.

I here produce a number of extracts and references, which are more than sufficient to convince even our learned friends on the other side that they have taken only a very partial view of this case; and I call Mr. Foster's especial attention to these witnesses. At the risk of being considered tedious, I cite this evidence, because the statement of my learned friend was emphatic, and he threw out a special challenge in asserting that there was but little evidence of fishing by Americans, except at the two places mentioned by him.

The pages refer to the British evidence:—

Page 79. Mr. George Harbour, a resident of Sandy Beach, Gaspe, was called as a witness, and gave evidence of the Americans fishing for mackerel in that locality. He says, "They came in right to the shore, close to the rocks. Upon an average they take 500 barrels in a season (two trips). He has never seen them fishing for mackerel outside three miles."

Page 83. Mr. William S. Sinnett, a resident of Griffin's Cove, Gaspe, called as a witness, says, "that he has seen American skippers fish two miles from the shore, and inside of a mile for mackerel; and that he has never seen them fishing outside of three miles." This witness speaks entirely with reference to his own locality.

Page 87. Mr. George Grenier, of Newport, Gaspe, gave evidence that he "has seen American vessels fishing for mackerel 25 yards from the Point."

Page . Hon. Thomas Savage, of Cape Cove, Gaspe, says, in his evidence, that "the fishing grounds extend from Cape Gaspe to Cape Chatte. As soon as the mackerel come in, the American fishermen take that fish, and the Gaspe fishermen cannot get bait."

Page 276. Mr. James Joseph testifies that he has seen the Americans fishing from Cape Chatte to Gaspe, right along the shore, all within one or two miles from the shore.

Page 280. Mr. Joseph Couteau, of Cape Despair, Gaspe, called as a witness, says that "the Americans fish along the coast of Gaspe, from one to three miles off shore."

These witnesses are confirmed and supported by—

Wm. McLeod, of Port Daniel, Gaspe.
Philip Vibert, of Perce, Gaspe.
James Baker, Cape Cope, Gaspe.
Wm. Flynn, Perce, Gaspe.
Abraham Lebrun, Perce, Gaspe.
Louis Roy, Perce, Gaspe.

Page 180. Mr. James McKay, Deputy Inspector of Fish, Port Mulgrave, after giving evidence of fishing close inshore off Cape Breton, in 1862, says: "In 1872, fished in American schooner 'Colonel Cook,' and caught 400 barrels on second trip—three-fourths caught inshore. Caught 800 barrels of mackerel in two trips in 1872. In 1873 caught 360 barrels in two trips. The greatest portion of the fish were taken about Cape Low, Cape Breton, 'close inshore.'"

Page 226. Mr. John Stapleton, of Port Hawkesbury, Cape Breton, says in his evidence that he has fished in American vessels in Bay Chaleur, on the west coast of New Brunswick, to Escuminac and Point Miscou, from Point Miscou to Shippegan, and thence to Paspebiac and Port Daniel, down to Gaspe, round Bonaventure Island as far as Cape Rogers.

Page 243. Mr. James Lord, of Deer Island, New Brunswick, gives evidence that the

Americans "take as much as the British fishermen on the mainland from Point Lepreaux, including West Isles, Campobello and Grand Manan."

Page 347. Hon. Wm. Ross, Collector of Customs at Halifax, formerly a resident of Cape Breton, and a member of the Privy Council of Canada, gives evidence as follows: "The American fishermen fish for mackerel on the *Atlantic coast* of Cape Breton, from Cape North to Scatterie, in August, September, and October, fishing inshore and offshore, but more inshore than offshore."

Page 374. Mr. John McDonald, of East Point, Prince Edward Island, says, in his evidence, that he "has fished in American vessels about Cape Breton, Prince Edward Island, on west shore, Bay of Chaleurs, and Gaspe, within three-mile limit."

Similar evidence is given by—

Page 558. John Dillon, Steep Creek, Gut Canso.

Page 361. Marshall Paquet, Souris, Prince Edward Island.

Page 365. Barnaby McIsaac, East Point, Prince Edward Island.

Page 384. John D. McDonald, Souris, Prince Edward Island.

Page 388. Peter S. Richardson, Chester, New Brunswick.

Page 399. Mr. Holland C. Payson, Fishery Overseer at Westport, Nova Scotia, says in his evidence that St. Mary's Bay, the coast around Digby Neck, with Briar Island and Long Island, are valuable fishing grounds. The two islands in 1876 exported about 200,000 dollars' worth of fish. This district is frequented by small American schooners, who fish for cod, halibut, pollock, and herring.

Mr. Payson's evidence is corroborated by that of Mr. B. H. Ruggles, of Briar Island, Digby, Nova Scotia.

Page 407. Mr. John C. Cunningham, of Cape Sable Island, Nova Scotia, says in his evidence, that United States' fishermen take halibut off Shelburne County, within three miles of the shore—say one and a-half to two miles. A full fare is about 800 quintals; take two fares in three months.

These witnesses were examined orally, and nearly all, if not all, ably cross-examined.

The following are from the British affidavits, also to show the extent of coast used by United States' fishermen:—

J. E. Marshall, fisherman, a native of Maine, was ten years master United States' fishing vessel.

"1. The fishing by American schooners was very extensive from 1852 to 1870. During that period the number of American vessels which have visited the shores of the Gulf of St. Lawrence, for fishing purposes, yearly, amounted from 300 to 500 sails. This I have seen with my own eyes. All these were mackerel fishing. The places where the Americans fished most during that period were on the shores of Cape Breton, Prince Edward Island, New Brunswick, and on the shores of Bay of Chaleur, from Port Daniel to Dalhousie, and east, from Port Daniel to Bonaventure Island, in Gaspe Bay, and on the south shore of Gaspe, from Cape Rozier to Matane, and on the north shore from Moisie to Gadbout River. I have fished myself nearly every year in these places, and I never missed my voyage."

James A. Nickerson, master mariner, Nova Scotia:—

"4. My best catches were taken off the north coast of Cape Breton, from Shittegan to Hanley Island, Port Hood, and I never caught any of the fish to speak of beyond three miles from the shore. I am certain, and positively swear that fully nine-tenths, and I believe more than that proportion of my entire catch was taken within three miles of the shore, the nearer to the shore I could get the better it would be for catching fish. One reason of that is that the mackerel keep close in shore to get the fishes they feed on, and these little fishes keep in the eddies of the tide quite close to the shore.

"9. These American fishermen get their catches in the same place we did. They took the fish close into the shore, that is by far the larger proportion of them, and the opinion among the American fishermen was universal, that if they were excluded from fishing within these three miles off the shore, they might as well at once abandon the fishery."

John L. Ingraham, Sydney, Cape Breton, Nova Scotia, fish merchant:—

"I have seen at one time 200 American fishing vessels in this harbour. In the summer of 1876, I have seen as many as thirty at one time.

"3. These vessels fish often within one-half mile of the coast, north and east of Cape Breton, and all around.

"21. American fishermen come around the southern and eastern coast of Cape Breton, by dozens through the Canal and Bras d'Or Lake, and wherever it suits them."

Daniel McPhee, fisherman, Prince Edward Island:—

"1. That I have personally been engaged in the mackerel and cod-fishing in the Gulf of St. Lawrence since the year 1863.

"2. That in the year 1863 I commenced mackerel fishing in the American vessel 'Messina,' and that during that year, we fished in the Bay Chaleur, and took home with us 600 barrel s of mackerel during the fishing season of that year, one-third of which quantity, I would say, was caught within three miles of the shore.

"10. That about 200 of the American vessels get their bait on the Nova Scotian coast, and, in my opinion, without the bait obtained there they could not carry on the fishing.

"11. Then there is also a fleet of forty American vessels which fish off Grand Manan. They average 350 barrels of herring per vessel, which are all caught close to the shore."

Chas. W. Dunn, fisherman, Prince Edward Island :—

"1. That I have been engaged in fishing for about twenty-eight years, winter and summer, in both boats and vessels, having fished in the cod-fishing on the banks for about seven winters. I have also fished mackerel in this gulf with the Americans, from the summer of 1868 till 1871, and also in the halibut fishery on these coasts.

"2. "At Anticosti we could often see the halibut on the bottom when we were trawling. This would be about two or three hundred yards from shore. I have seen 10,000 halibut a day caught at Anticosti, in water where we could see bottom. This halibut fishery is the best paying fishery that I have ever been in. I have made 90 dollars in twelve days as one of the hands of the fishery."

Jas. Houlette, fisherman, Prince Edward Island :—

"1. That I have been engaged in fishing for fifteen years, in vessels belonging to the United States. I have fished all about Bay Chaleur, from Portwood to Seven Islands, at the Magdalens, all along this island coast, and two years' mackerel fishing on the American shores, and many winters cod-fishing."

John R. McDonald, farmer and fisherman, Prince Edward Island :—

"13. That *almost all the American fishermen* fish close into the shore *of the different provinces of the Dominion*, and I do not think the Americans would find it worth while to fit out for the Gulf fishing if they could not fish near the shore. The year the cutters were about the Americans did not do very much, although they used to dodge the cutters and fish inshore."

Alphonso Gilman, fisherman, Prince Edward Island :—

"7. That when the mackerel first came into the bay, they generally came up towards Bay Chaleur, Gaspe, and round there—passing the Magdalen Islands on their way. It is up there that the American fleet generally goes first to catch fish."

Joseph Campbell, Prince Edward Island, master mariner, nine years United States' vessels :—

"2. That from the years 1858 to 1867 I was constantly and actively engaged in fishing aboard American vessels, and during that time I fished on all the fishing grounds.

"3. We got our first fare generally in the Bay Chaleur. Fully nine-tenths of this fare would be caught close inshore, within the three-mile limit."

Alex. Chiverie, merchant, Prince Edward Island, formerly fisherman; was twenty years in United States' vessels :—

"We fished off the north part of Cape Breton, and caught the whole of our fare within three miles from the shore.

"7. That in the year 1867 I was master of a British fishing schooner. The first trip of that season we fished between the Miramichi and Bay Chaleur. During that trip the fish played chiefly inshore, about a mile from the shore. At times during that trip I would be getting a good catch, when the American vessels, to the number of fifty or sixty, would come along, and by drawing off the fish, spoil my fishing. During that trip, the Americans, I would say, caught fully three-fourth of their fare within the three mile limit."

Nathaniel Jost, master mariner, Lunenburg, Nova Scotia :—

"2. I have also seen many American mackerel-men engaged in taking mackerel around the coast of Cape Breton, Prince Edward Island, and eastern side of New Brunswick, and many of these fished inshore. I would say that there were at least 400 American vessels around the before-mentioned coasts taking mackerel. During the past two years I have seen at one time in sight, five American vessels engaged in taking codfish on the southern coast of Nova Scotia, and a great many in sailing along; and at Sable Island this spring I have seen from fifteen to twenty in sight at one time, engaged in taking codfish."

Benjamin Wentzler, fisherman, Lower La Have, Nova Scotia :—

1. "I have been engaged in the fisheries for twenty-seven years, up to eighteen hundred and seventy-five inclusive, and fished every year in the North Bay, around Cape Breton, Prince Edward Island, eastern side of New Brunswick, and around the Magdalens. I have taken all the fish found in the waters of the above-mentioned coast. I am also well acquainted with the inshore fisheries in Lunenburg County

I have seen often more than a hundred American vessels fishing on the above-named coasts in one fleet together, and I have seen these vessels make off from the shore when a steamer appeared to protect the fishery, and when the smoke of the steamer could not be seen they came in again to the shore. Such large numbers of them made it dangerous for Nova Scotian fishermen, and I have lost many a night's sleep by them in order to protect our vessels. I have seen in Port Hood harbour about three hundred sail of American vessels at one time, and it is seldom, if ever, that a third of them are in any harbour at one time, and I have been run into by an American schooner in Port Hood Harbour. From 1871 to 1875 inclusive, I have seen the Americans in large numbers around Prince Edward Island, eastern side of New Brunswick, and around Cape Breton. I have seen many American vessels on the above-mentioned coast engaged in taking codfish."

Jeffrey Cook, fisherman, Lunenburg, Nova Scotia :—

"2. While in the Bay of Chaleur, the summer before last, I saw many American vessels there engaged in fishing, and have also seen many of them there fishing since 1871. I have counted, the summer before last, fifty American vessels within three-fourths of a mile from each other. The most of the American vessels which I saw fished inshore around the above-mentioned coasts. I saw them take both codfish and mackerel inshore within three miles of the shore. Mackerel are taken mostly all inshore, and I would not fit out a vessel to take mackerel unless she fished inshore."

James F. White, merchant, Prince Edward Island :—

"13. The mackerel, in spring, come down the Nova Scotian shore, and then strike up the bay to the Magdalen Islands, from there some shoals move towards the bend of this island, and others towards Bay Chaleur, Gaspe, and round there. The Americans are well acquainted with this habit of the mackerel and follow them. They have very smart schooners, and follow the fish along the shore, taking their cue, to a great extent from what they see our boats doing."

John Champion, fisherman, Prince Edward Island :—

"13. On an average there are eight hundred American vessels engaged in the cod, hake and mackerel fisheries in the bay, that is including this island coast, the Magdalen Islands, the New Brunswick and Nova Scotian coasts. There have been as many as fifteen hundred sail in a season, according to their own accounts. I myself have seen three hundred sail of them in a day."

Wm. Champion, fisherman, Prince Edward Island :—

"Was one year in an American vessel, down eastward on this island, and about Port Hood, Antigonish, Cape George and other places in that direction. The boats and also the American schooners fish close inshore. We fished right up in the Bay Chaleur and round the other shores of the provinces."

James B. Hadley, Port Mulgrave, notary public, merchant :—

"The principal places where the Americans fish for mackerel in the summer months are all over the Gulf of St. Lawrence, off Pomquett Island, Port Hood, Prince Edward Island, in the Northumberland Straits off Point Miscou, as far up as the Magdalen River, across to the Seven Islands, off and around Magdalen Islands, and in the fall from East Point and the Magdalen Islands, and Island Brion, thence to Cape St. Lawrence and Port Hood, and around the eastern shore of Cape Breton to Sydney Harbour. The trawling for cod-fish is done all round our shores from the 1st of May till the fall."

George McKenzie, master mariner, Prince Edward Island, was forty years fishing :—

"When the mackerel strike off for this island, the American schooners never wait along the bight of this island, but press up towards the North Cape, and Miscou, and Mira, and generally along the west coast of New Brunswick and up as far as Seven Islands above Anticosti, as their experience has taught them that that is the quarter where the fish are to be found first. Later on in August and September they come back into the bight of this island. Nearly all the fish caught during these times are caught near the shores of the British possessions, although there are some American vessels which fished entirely in deep water away from the land, but these are comparatively few."

William H. Sweet, of Fall River, in the State of Massachusetts, United States of America, but now of Port Hood, fisherman :—

"1. I have been engaged in the fishing vessels fitted out by the Americans for the past five years, and have been engaged during that time *in fishing in all parts of the Gulf, on the coast of Nova Scotia, Cape Breton, and Prince Edward Island*, and on the shores of the Magdalen Island.

"2. A large number of American vessels have been engaged in fishing in these waters for some years past, taking chiefly mackerel and cod-fish."

Jas. Archibald, fisherman, of Boston :—

"1. I have been engaged in the fishing business for twenty years past, and during seven years past I have been fishing in American vessels, in American and Canadian waters. I have been engaged

in various kinds of fishing on the coasts of Nova Scotia and Cape Breton, in the Gulf and about the Magdalen Islands, and Prince Edward Island. I came into this port in an American fishing vessel, and have been engaged in fishing here during the present season."

This last is corroborated by Richard Thomas, fisherman, of Booth Bay, Maine.

Michael Crispo, merchant, Harbor au Bouche, Nova Scotia :—

"The mackerel are caught all around the shores of the Gulf of St. Lawrence."

Thomas C. Roberts, master mariner, Cape Canso, Nova Scotia :—

"2. During the years that I was employed in fishing, the number of American vessels fishing for mackerel and cod-fish in the Gulf of St. Lawrence and on the coast of Nova Scotia, would, to the best of my knowledge, range from six hundred to seven hundred each year. The average number of men to each vessel would be about fifteen."

Jacob Groser, fisherman, Lower La Have, Nova Scotia :—

"2. Four years ago I was in the Bay of Chaleur, and for many years constantly before that time year after year. Five years ago I have seen in the Bay of Chaleur, from 200 to 300 American vessels in one fleet. The most of these vessels took mackerel, and they took the most of their mackerel inshore, and very seldom caught much mackerel beyond three miles from the shore."

Philip Le Montais, Arichat, agent of Robin and Co. :—

"The harbour of Chaticamp is much frequented by American fishing vessels, and I have seen at one time along the shore between 600 and 800 fishing vessels, most of which were American. These vessels were fishing for mackerel along the shore of Cape Breton."

John Ingraham, Yarmouth, Nova Scotia :—

"2. About 600 American vessels, from all ports, are engaged in fishing in Canadian waters, the average number of men is about fourteen ; this is within my knowledge the past fifteen years. They fish for mackerel, codfish and halibut, from Bay de Chaleur to Cape Forchu."

Page 110. John Morien, of Port Medway, Nova Scotia, proves fishing for mackerel by American vessels at Cape Canso, within half-a-mile of the shore.

Page 111. John Smeltzer, of Lunenburg, testifies that he has seen American vessels fishing for mackerel in the back Harbour of Lunenburg.

Page 115. John Bagnall of Gabarus, Cape Breton, proves American fishing vessels in Gabarus Bay, north-east side of Cape Breton.

Page 118. Ryan Murphy, of Port Hood, Cape Breton, swears that he has known as many as 700 American vessels fishing in the Gulf and the shores around *Nova Scotia, Cape Breton,* and the Magdalen Islands.

Page 126. H. Robertson, of Griffiin's Cove, Gaspe, proves an extensive mackerel-fishery by Americans at Griffin's Cove, and neighbouring coves.

Page 126. Donald West, of Grand Greve, Gaspe, swears to over 100 American schooners in Gaspe Bay yearly for mackerel fishing.

Page 127. Michael McInnis, of Port Daniel, Bonaventure County, Quebec, testifies that the mackerel fishery by Americans has been carried on on an extensive scale on that shore.

Pages 134 *and* 136. John Legresly and John Legros, of Point St. Peter, Gaspe, prove a large number of American mackerelers in Gaspe Bay during and since the Reciprocity Treaty.

Daniel Orange and Joshua Mourant, of Paspebiac, Gaspe, swear that they have annually seen a large fleet of American mackerelers in Bay of Chaleur.

Page 138 *to* 190. Forty-nine others, all of Gaspe, swear to the continual use by the United States' fishermen of the fishing-grounds inshore of that region, and to the annual presence of a large fleet of American fishing-vessels in the Bay of Chaleur and Gaspe Bay.

The following persons also testify that the Americans fish on all the shores of Nova Scotia, eastern and northern shores of Cape Breton, Antigonish Bay, east coast of New Brunswick, and Bay Chaleur :—

Page of Affidavits—

156. W. Wyse, Chatham, New Brunswick.
181. Gabriel Seaboyer, Lunenburg, Nova Scotia.
182. Patrick Mullins, Sydney, Cape Breton, Nova Scotia.
190. John Carter, Port Monton, Nova Scotia.
192. Thomas Condon, Guysboro', Nova Scotia.

200. Matthew Monroe, Guysboro', Nova Scotia.
200. Isaac W. Rennells, Cape Breton, Nova Scotia.
206. Joshua Smith, Cape Breton, Nova Scotia.
207. Martin Wentzel, Lunenburg, Nova Scotia.
209. Alexander McDonald, Cape Breton, Nova Scotia.
216. Amos H. Oathouse, Digby, Nova Scotia.
226. Robert S. Eakins, Yarmouth, Nova Scotia.
227. John A. McLeod, Kensington, Prince Edward Island.
230. Angus B. McDonald, Souris, Prince Edward Island.
233. John McIntyre, Fairfield, Prince Edward Island.
237. Thomas Walsh, Souris, Prince Edward Island.
239. Daniel McIntyre, Prince Edward Island.
217. John Merchant, Northumberland, New Brunswick.

From end to end, the British evidence shows that the United States' fishermen carry on their operations within the British territorial waters. I beg here to introduce a few instances from the evidence of the United States' witnesses who were produced to prove that the mackerel fishery was carried on in what is called by the United States' counsel "the open sea."

Timothy A. Danies, of Wellfleet, Massachusetts, fisherman, called on behalf of the Government of the United States, sworn and examined.

By *Mr. Foster*:—

"Q. How old are you?—A. Seventy years.
"Q. Were you engaged in mackerel fishing during a good many years?—A. Yes.
"Q. How many years did you come to the Gulf to fish mackerel?—A. Seventeen years.
"Q. What year did you begin and what year end?—A. From 1846 to 1873, I believe, inclusive; one year out.
"Q. Were you in the same schooner all the time?—A. Yes.
"Q. What was the name of the vessel?—A. 'Pioneer.'
"Q. What tonnage?—A. Sixty-two tons.
"Q. New or old measurement?—A. Old measurement.
"Q. Were you captain all these years?—A. Yes.

* * * * * * * * * * *

"Q. Where did you do your principal fishing in those places, more than three miles from the shore or less?—A. More than three miles.

* * * * * * * * * * *

"Q. If you were a young man and fisherman once more, and wanted to come to the Gulf to catch mackerel, would you be prevented from doing it by the fact that you were forbidden to fish within three miles of the shore?—A. I think so."

By *Mr. Weatherbe*:—

"Q. If you were forbidden to come within three miles of the shore, would you come at all?—A. It would be under certain circumstances. If there were no fish with us and plenty there, perhaps I might. I cannot say as to that.
"Q. From your experience, if you had been restricted, during all the years you come to the bay, from coming to within three miles of the shore, you would not have come?—A. I think not."

Stephen J. Martin, master mariner and fisherman, of Gloucester, was called on behalf of the Government of United States. Here are some extracts from pages 212 and 215 of the American evidence.

By *Mr. Dana*:—

"Q. But you did not fish within the three-mile limit?—A. No.
"Q. Can you not find out from reports of vessels and from your own observation where the fish are?—A. Yes.
"Q. You keep your ears and eyes open all the time you are fishing?—A. Yes.
"Q. It is not necessary, actually, to go in and try if you find vessels leaving a place without catching anything, to discover that this is the case?—A. No.
"Q. And you have to judge as to the presence of fish, a good deal from the reports of others?—A. Yes. A great many men have a choice as to fishing grounds; this is the case everywhere, whether in cod, halibut, or mackerel fishing. Some fish one way and some another.

* * * * * * * * * * *

"Q. From your experience in the bay—a pretty long one—do you attach much importance to the right of fishing within three miles of the shore?—A. Well, no, I do not think it is of any importance. It never was so to me."

By *Mr. Weatherbe*:—

"Q. You never fished so close to the shore as that?—A. Sometimes we did. We fished within five miles of Bird Rocks.

"Q. And within four miles of them?—A. Well, yes.

"Q. But you did not generally run in so close?—A. We might have done so. I could not tell exactly how far off we fished. We used to catch our fish on different days in different places.

"Q. You were asked whether you would not have your ears open and your understanding to know where other people caught their fish, and your answer was that some people had their choice? —A. Yes, sir.

"Q. That is to say that some people have their choice to fish in certain places and other in different places?—A. Yes.

"Q. And that is the only answer you gave. I suppose that you did hear where others were fishing. Have you given a full answer?—A. I have given a full answer.

"Q. You must have heard where others have fished?—A. Of course if a man gets a full trip on Orphan Bank he will go there again.

"Q. He does not care where others have fished?—A. No.

"Q. Then it is possible that some fish altogether in one place, and some altogether in another place?—A. Well, I don't know anything about that—I only know my own experience.

"Q. Then you can give no idea where fish are caught except your own actual experience?—A Well, I know where people have said.

"Q. That is just what Mr. Dana asked you. I want to take the same ground that he did that your ears were open and you understood. Your answer was simply that some had their choice?—A. If I spoke a vessel and he said there was a good prospect at Bradley I should go there. If he said there was good fishing on the Magdalens I should go there.

"Q. I thought your answer was that some would have their choice, that no matter what they heard, they would still go to the same places?—A. I would go where I got good catches the year before.

"Q. Then you did'nt hear of others fishing in other places?—A. I have heard of them fishing at Bradley and Magdalens, and up the Gulf."

Again:—

"Q. Now I don't want to trouble you with reading any opinions, but about what time was it ascertained that the mackerel fishing was inshore?—A. I could not tell.

"Q. At the time you mentioned it was not known that it was an inshore fishery at all?—A. No, not to my knowledge.

"Q. It was after it was ascertained that it was an inshore fishery that you heard of a difficulty about the limit?—A. Yes."

By *Mr. Dana*:—

"Q. I wish to ask you with reference to the last question, when you ascertained that the mackerel fishery was an inshore fishery?—A. I stated it was not in the year 1838.

"Q. Mr. Weatherbe asked you when you first ascertained that the mackerel fishery was an inshore fishery, and whether this or that happened before you ascertained that it was an inshore fishery. Now have you ever learned that it was an inshore fishery in distinction from an outshore fishery?—A. No.

"Q. Well, what do you mean when you speak of 'after you understood it was an inshore fishery.' Do you mean mainly or largely inshore?—A. No. We would hardly ever catch any inshore in the first part of the season. Some parts of the year they did take them inshore and offshore too.

"Q. Taking them all through, where did you catch them?—A. Most of them are caught offshore."

By *Mr. Weatherbe*:—

"Q. I asked when it was that the difficulty first arose about the limit, and whether it was after it was considered an inshore fishery, that is, 1839?—A. I referred to the year 1838. It was an inshore fishery when they fished there. When vessels didn't fish there, you could not call it an inshore fishery."

The attempt of many witnesses to show that the fishing was all carried on outside of three miles was amusing, to say the least.

Isaac Burgess, of Belfast, Maine, fisherman, called on behalf of the Government of the United States, sworn and examined.

By *Mr. Foster*:—

This witness fished in the Gulf of St. Lawrence in the years 1868, 1869, 1872, and 1874, and excepting on one day, all his fishing was outside of three miles.

By *Mr. Weatherbe*:—

"Q. You caught your mackerel four miles off?—A. Yes.

"Q. What proportion?—A. Half of them—I could not tell.

"Q. I suppose that would be the distance you would select as being good fishing?—A. Yes sir.

"Q. That would be the best fishing you have?—A. Yes, sir.

"Q. I suppose most of the fishermen fished that distance?—A. Yes, they generally fished off there near four or five miles.

"Q. It is considered about the best fishing for four or five miles?—A. Yes, it is.

"Q. I suppose in some places the fish would go in three and a half miles?—A. Yes, some fish do.

"Q. You would not mind coming in three and a half miles if you were four miles out, I suppose; sometimes they would manage to get in three miles?—A. No vessel that I have ever been in.

"Q. I am not speaking of the vessels, but the fish—is there anything to stop them at four miles?—A. No.

"Q. There is no obstruction of any kind. Just as good water?—A. Yes, only a little shallower.

"Q. Just as good feed?—A. Yes.

"Q. Perhaps better feed?—A. Well, most generally the gales drive them off, but they come back again.

"Q. I suppose when the wind is a little offshore, the best feed would be inside, close in?—A. Yes.

"Q. Closer inside than four miles?—A. I should say so.

"Q. They would then go in pretty close?—A. Yes.

"Q. You would then go in there and drift off?—A. Yes.

"Q. And the fleet would do that. We have evidence of that. The fleet would run in as close as they could get and then drift off?—A. Yes, that was the way they fished.

"Q. As close as they could get in?—A. Not within four miles.

"Q. I was referring to a little closer. I wanted to come in a little closer if I could. I was throwing a little bait?—A. Well, probably there might have been some fellows got in handier.

"Q. Some would go in handier?—A. Yes, some of the captains went in.

"Q. Let us make a compromise and say three miles and a half. You don't object to that, do you?"—(No answer.)

George Friend, of Gloucester, whose evidence is to be found on page 119 of the United States, was produced and examined by Mr. Foster. He had many years' experience of fishing in the Gulf of St. Lawrence, having fished there every year from 1855 to 1860, and owned several fishing schooners, two of which were seized, but afterwards released. He gave evidence that the great body of his mackerel were caught more than three miles from the shore.

He was cross-examined, and at page 123 the following record appears:—

By *Mr. Weatherbe:*—

"Q. Between 1868 and 1876 you had five vessels fishing?—A. Yes.

"Q. And you made three mackerel trips?—A. Yes.

"Q. And you lost money by them?—A. Yes.

"Q. Where did the vessels fish—outside of the three mile limit?—A. I could not tell you.

"Q. You have no idea where they fished?—A. No.

"Q. You had three vessels fishing in the bay—you sent them there?—A. Yes.

"Q. They came home, and you lost money by the trips?—A. Yes.

"Q. And you undertake to say that you do not know, and never made any inquiry whether the vessels fished inshore or outside?—A. Yes.

"Q. You never made any inquiry about it?—A. No."

This witness also stated that he was not aware whether any of these vessels had fishing licenses from the Canadian Government.

"Q. Is the privilege of using the inshore fisheries of any use to you as fishermen?—A. No. Personally I say no.

"Q. Do you know that practically yourself?—A. That is my opinion.

"Q. You never fished inshore?—A. No.

"Q. Therefore you are not able to say so from your own knowledge?—A. I fished offshore for the very reason that I thought I should do better there. I had a perfect right to come inshore.

"Q. You lost money, you say?—A. Yes.

"Q. Did you every try inshore fishing?—A. No.

"Q. But you say the privilege of inshore is of no value?—A. That is my opinion.

"Q. For what reason?—A. I gave you my reasons. It would keep the vessels out of the harbours and they would get more mackerel.

"Q. What else?—A. Then we would not have so many drafts. They lay in the harbours too long, and go into harbours when it comes night.

"Q. Is it not the practice for the fishermen to run into the shore and drift off, and then run in again?—A. It is not always you can drift off shore.

"Q. Is the privilege of going inshore an advantage to you?—A. If the mackerel were inshore it would certainly be an advantage; if they were not inshore, it would not be an advantage.

"Q. You never tried whether the inshore was not better than the outshore fishing; why did you not try it?—A. Because I thought I could do better outside.

"Q. Year after year you lost money. As a business man, why did you not try fishing inshore like other fishermen who have made money?—A. I don't know where they are; they are very much scattered.

"Q. Why did you not try?—A. Because I thought I could do better offshore.

"Q. Do you know of any vessel which fished within three miles of the shore?—A. Not personally.

"Q. Why do you say not personally?—A. Because I do not know any one. I never saw them in there fishing.

"Q. Did you hear of any vessel which fished inshore?—A. I could not tell what I have heard.

"Q. Have you heard of vessels fishing inshore?—A. I could not answer that.

"Q. Did you ever make any inquiries?—A. No. I was not interested.

"Q. You fished offshore, lost money, and never tried to fish inshore, and never made any inquiries as to whether there was good fishing there or not?—A. Yes.

This is from the record of the evidence of Charles H. Brier, of Belfast, Maine, called on behalf of the Government of the United States.

By *Mr. Doutre*:—

"Q. Can you find out easily whether you are three miles or four miles, or five miles off?—A. I don't know how we can.

"Q. Suppose you were about five or four miles, would you call it offshore or inshore?—A. I would call it inshore.

"Q. Then what leads you to say you caught about half of your trip inshore and half out?—A. Because we did I suppose. We had a licence to fish inshore, and we did.

"Q. You were not afraid of going in there? So long as you found fish you fished there?—A. Yes.

"Q. Well, you had no reason whatever, had you, to take a note of the quantity taken inshore or outshore—what reminds you now of the fact?—A. I don't know anything to remind me, only that we fished about half the time offshore and caught about as many fish offshore as in."

Permit me to refer to one locality to show how completely our learned brethren on the other side have ignored our evidence. I select this instance because the absence of contradiction is perhaps unusually striking. Grand Manan, on the west side of the Bay of Fundy, I have intimated, has received the especial attention of United States' Counsel, and many witnesses were called to contradict the very strong case made out by Mr. Thomson there. Let me call your attention to the other side of that Bay, and to the attention bestowed to that part of the Province of Nova Scotia by my learned friend Mr. Weatherbe. If you look at the map you will find St. Mary's Bay on the south-westernmost corner of Nova Scotia, on the eastern shore of the mouth of the Bay of Fundy. From Cape Split, near the head of the Bay of Fundy, follow down the eastern shore of that bay to Brier Island at the very extremity of Digby Neck, a strip of rocky soil averaging one or two miles in width, which forms the barrier between the Bay of Fundy and St. Mary's Bay, a bay 6 miles in width at Petite Passage. From Brier Island go to the head of St. Mary's Bay, 30 miles, and follow the sinuosities of the opposite coast to its mouth, and proceed southwardly along the shores of the old French settlement of Clare towards Barrington, that ancient town which was founded by fishermen from Cape Cod, who settled there with their families in 1763. Here is a coast-line on the western part of Nova Scotia 250 or 300 miles, including the whole length of Digby and Annapolis Counties, with the finest zones and currents and temperature on the globe for a great fishing ground—swarming within three miles of the shore, as you will find by turning to the 413th page of the British evidence, with *codfish*, *haddock*, *pollock*, *halibut*, *herring*, and *mackerel*. In twenty-four hours, with the "Speedwell," Professor Baird would extend the list of edible fish very much. It is true we did not call witnesses from every part of this coast; it would have occupied too much time. We did, however, produce sufficient evidence. Take Brier and Long Islands, about 14 miles in their entire coast line. These islands are within about five or six hours' sail of the United States, and will in a few months be almost connected by rail, after you cross St. Mary's Bay, with Halifax. The Inspector of Fisheries at Brier Island, Holland C. Payson, who was cross-examined by Mr. Dana, has carefully collected information. The people of these two islands alone catch 200,000 dollars' worth of fish annually. It would be fair to put the catch of that entire coast at 3,500,000 dollars. Ezra Turner, from Maine, whose testimony is to be found on page 235 of the American evidence, and who has fished in the British waters for thirty or forty years, swore that Maine is bankrupt in the fisheries from end to end. This is corroborated by a number of American witnesses, and by the official records of the nation.

In the American Answer, it is claimed that the poor people of our fishing villages are saved from destitution by the American fishermen. Mr. Payson and Mr. Ruggles—the latter a descendant of the celebrated General Ruggles—say their people do not pay a cent of poor tax. The almost destitute fishermen from the bleak coasts of Maine, and from New England, *since the Treaty of Washington*, during the last four years throng these friendly neighbouring coasts of ours, and from these two islands alone they carry away annually from one-third to one-fourth as many fish as are caught by the inhabitants—say 50,000 dollars' worth. They come with small vessels, which they haul up or anchor, and they establish themselves on the shore, and carry on these fisheries side by side with their Canadian brethren. This exercise of the right is gradually growing annually.

These American fishermen admit their distressed condition at home, and the great advantages they enjoy by access to our coasts. These fisheries of ours, with those on the New Brunswick shore, including the Grand Manan, are a great blessing to our neighbours. This is no fancy picture. Here is a list of the affidavits filed to establish the facts. Here are the facts from fourteen men, whose statements could have been fully sifted.

The statements of Holland C. Payson and Mr. Ruggles as to the value and extent of the fisheries in the Bay of Fundy and the southern coast of Nova Scotia, are corroborated by the affidavits of—

155. Joseph D. Payson, Westport, Digby County.
207. Livingston Collins, Westport, Digby County.
218. Wallace Trask, Little River, Digby County.
218. George E. Mosely, Tiverton, Digby County.
220. Gilbert Merrit, Sandy Cove, Digby County.
221. Joseph E. Denton, Little River, Digby County.
221. John McKay, Tiverton, Digby County.
222. Whitfield Outhouse, Tiverton, Digby County.
222. John W. Snow, Digby, Digby County.
223. James Patterson Foster, Port Williams, Annapolis.
223. Byron P. Ladd, Yarmouth, Yarmouth.
225. Samuel M. Ryerson, Yarmouth, Yarmouth.
240. Thomas Milner, Parker's Cove, Annapolis.
240. James W. Cousins, Digby Town, Digby.

More than seven weeks before the United States' Agent closed his case, we produced two of the most intelligent and respectable men in the district. While Mr. Dana was cross-examining them, his countrymen were on the shores of Digby fishing with their vessels. A messenger in a few hours could have detected any exaggeration in their statements. From that hour to the end of their case, not one word of all that evidence has been contradicted or shaken. These New England fishermen continue, under the Treaty of Washington, to pursue their ancient calling, and their number is increasing on the western and southern shores of Nova Scotia and at Grand Manan, and all around the Bay of Fundy.

Mr. Dana calls this practical pursuit of the fisheries in British waters a franchise, an incorporeal faculty. Call it what you will, is it not a great advantage to his countrymen? Is it not the salvation of the State of Maine? Is it not affording an increasing number of Americans safe and steady employment? These fisheries do not fail. I invite the careful attention of the Commission to pages 399 and 412 of the British evidence. Are these fisheries not supplying cheap and wholesome food to citizens of the United States? Is it not making hardy sailors of her stalwart sons? Mr. Dana can appreciate that. Mr. Foster says he fails to find any evidence, except as to the bend of Prince Edward Island and Margaree. Can you, "pencil in hand," measure by arithmetic the benefit of the right of fishing to the people of a whole coast, who have been trained to no other pursuit, and whose families are dependent on the return of the boats from Brier Island and the other coast of Nova Scotia?

What goes on here at one extremity of these wonderfully varied and prolific Canadian fisheries, is going on at the other extreme at Gaspe and the mouth of the St. Lawrence, and at all other points varied by the circumstances of place.

I wish to call your attention to an error—shall I say a geographical error—of our learned friends. The learned Agent for the United States says he can figure this question up pencil in hand. He admits, with all the assistance of Mr. Babson and his figures (which are not evidence at all)—he admits one link in the chain of his argument is wanting—the Port Mulgrave returns of 1875. Does the learned Agent know that the Port Mulgrave returns are entirely incomplete? Mr. Foster seems to be labouring under the delusion that every American fisherman reports himself as he passes through the Strait of Canso. This is not really the case. Look at the map and read the evidence, and then see if it is possible to say how many fishermen never sail in the direction of the Strait. All round the eastern and northern side of the Island of Cape Breton there are the finest mackerel grounds in the Gulf of St. Lawrence or the world. No United States' witnesses could be produced to call this a dangerous coast. There are a number of fine harbours—the ancient port of Louisburg among the number, open all winter. This latter port is now connected by forty miles of railroad with the magnificent harbour of Sydney.

James McKay, of Port Mulgrave, Inspector of Fish, was called and examined as a

witness before the Commission. He says: "No one man stationed in the Gut of Canso can get an accurate list of the vessels that go through there. To do so is a moral impossibility."

James Purcell, Revenue Officer at Port Mulgrave, says: "The number of light-dues collected would not be a fair return as showing the actual number of vessels that pass through the Gut of Canso."

B. M. Smalley, fisherman, of Bedford, Maine, was called on behalf of the United States and examined. I invite the Commissioners to read his evidence:—

"Q. Now don't you think the same fish go out and in?—A. Is it your idea that certain schools keep in one place, and certain schools in another?—A. Yes, it is my opinion the mackerel go out and in, and we know they do. But it is my positive idea that the best fish that go into the Bay Chaleurs go through the strait and by Sydney.

"Q. Do you mean the Strait of Canso?—A. No. The Strait of Belleisle, and come down to Sydney.

"Q. What time?—A. Well, they are passing up and down there after the month of August, until they all go out.

"Q. You think these are not the same as you catch off the north of the island?—A. No, I don't.

"Q. Do you think your opinion is general?—A. Yes, sir.

Here are a few extracts from the evidence on file:—

Archibald B. Skinner, Inspector of Fish at Port Hastings, Cape Breton, has been thirty-two years engaged in the fishing business, and has been a practical fisherman:—

"During the Reciprocity Treaty a large fleet of American fishing vessels came to this coast during the summer season to carry on a fishing business. The number increased during the Treaty, until at the termination a fleet numbering hundreds of vessels were engaged in fishing around the coast of Nova Scotia, Cape Breton, Prince Edward Island, and the Magdalen Islands. These principally took mackerel and cod-fish, but they took other fish as well.

"A large portion of the American fishing fleet is now going every year up the eastern side of Cape Breton, and fishing in the vicinity of Scaterie, Cape North, and the sections around there. I understand that these grounds are very rich in fish."

To reach these localities they are under no necessity whatever of passing through the Gut of Canso. They may, directly after they come from the Bay of Fundy, either pass along the coast of Nova Scotia and reach the Gulf by way of the northern part of Cape Breton, or pass north in the vicinity of Newfoundland.

George C. Lawrence, merchant, Port Hastings:—

"Not nearly all the American fishing vessels passing through the Straits of Canso are noted or reported. A great number pass through every year that have never been noted or reported at all.

"The Newfoundland herring fleet from American ports go thither along the eastern side of Cape Breton instead of passing through the Straits, and toward the latter part of the season large quantities of the most valuable mackerel are taken by Americans on the eastern shore of Cape Breton, between Cape North and Louisburg, and thereabouts."

Alexander McKay, merchant, North Sydney, Cape Breton:—

"None of the cod-fish vessels to my knowledge, go through the Strait of Canso. They come around the southern and eastern coast of Cape Breton, and many mackerelmen do the same. Mackerelmen fish around by Scaterie, and it is therefore shorter for them to come round by the southern and eastern sides of the Island of Cape Breton."

James McLeod, master mariner, Cape Breton:—

"Last summer I fished from Cape North to Scaterie, during the cod season, and saw at that season great numbers of American fishermen there, engaged in fishing. Within the last two years I have seen many American fishermen, from Cape North to Scaterie, engaged in mackerel fishing, and have seen at one time between twenty and thirty American fishermen so engaged within sight, and think that there would be, in that vicinity, at one time, about one hundred."

William Nearing, fisherman, Main-à-Dieu, Cape Breton:—

"All the cod-fish and halibut fishermen come around the southern and eastern coasts of Cape Breton, and do not run through the Strait of Canso. During the past five or six years I have seen, on an average, upwards of one hundred American fishing vessels each year around in this vicinity.

William Edward Gardiner, merchant, Louisburg:—

"The American vessels which come here do not pass through the Strait of Canso."

Thomas Lahey, fisherman, Main-à-Dieu, Cape Breton:—

"I have seen in one day from fifty to sixty of these American vessels. These American vessels came round the southern coast of Cape Breton and did not run through the Strait of Canso. During

the past five or six years I have seen on an average during the fishing season over a hundred American fishing vessels in and near the waters where I fished, and I have often found it difficult to keep out of their way. Those American vessels take all kinds of fish—mackerel, codfish, and halibut. On board these vessels there are from sixteen down to ten men on each."

Isaac Archibald, merchant, Cow Bay, Cape Breton :—

"The Americans in this bay have often practised throwing bait overboard, and thus enticing the mackerel off-shore."

John Peach, fisherman, Cow Bay, Cape Breton, fished from Cape North to Scaterie, and in Cow Bay :—

"The Americans fish from three miles off-shore close up to the land for mackerel, and come in among us inshore fishermen and take the fish away from us."

James Fraser, master mariner, Sydney :—

"During the past ten years I have seen 160 American vessels fish in Sydney harbour for mackerel in one day, and large fleets of American fishing vessels visit our harbour daily for the purpose of catching mackerel during the mackerel season year after year."

John Ferguson, Cow Bay, Cape Breton .—

"I have seen from forty to fifty American vessels pass through the "Kittle" between Scaterie and Main-à-Dieu, in one day."

John Murphy, fisherman, Lingan, Cape Breton :—

"During the past five or six years I have caught mackerel in-shore around Lingan harbour, and last year I have seen from ten to fifteen sail of American vessels engaged in taking mackerel.

"The American mackerelmen who fish around here come around the southern and eastern coasts of Cape Breton, and all the codfish and halibut fishermen come around the same way."

Angus Matheson, fisherman, Sydney, Cape Breton :—

"I have caught them in Sydney Harbour, until the bottom of the boat touched the ground. The Americans always come in-shore for the mackerel, and when they did not fish them in-shore they baited them off to beyond the three miles."

At a time when the imaginative faculties of the learned American Agent and Consul had not been appealed to by their Government,—at a time when it had not yet been discovered that the Americans derived their title to our fisheries from the achievements of a Massachusetts army and navy, our American friends had another basis to rest their claim, also not to be found in the Treaties. Until quite recently, American fishermen were under the firm impression that the mackerel was an American born fish, from the neighbourhood of Newport, Rock Island, Cape Henlopen, Cape May, and other places on the American coasts, which were and are spawning grounds. Under that notion, whatever mackerel was to be found in Canadian waters, were nothing but the migrating product of the fertile American coasts. That theory was touchingly impressed upon the minds of the Joint High Commissioners during the winter and in the early spring which preceded the Washington Treaty. The mackerel of the Canadian waters were represented as a species of strayed chicken or domestic duck and pigeon, which the owner had the right to follow on his neighbour's farm. At that time they had no interest at all in depreciating our fish, for Canadian mackerel were then quoted at the highest rates on the markets of Gloucester and Boston; this was avowedly the case. They had even prepared statistics for the Centennial, in which these fish were at the highest price quoted on these markets, because it was only the prodigal son which was thus offered. These fish were considered then their property, and why should they endeavour to depreciate the value of their property? Some of the British Joint High Commissioners, under this strong assertion of right, felt a deep commiseration for the proprietor of the poultry in being restricted to certain grounds in the execution of a search warrant for the recovery of his property; and in order to repair the cruelties of the Convention of 1818, they were—like a facetious American writer—prepared to sacrifice all their wives' relatives to do something at our expense for the United States, as an atonement for that long injustice.

While these notions were prevalent, our American friends had no interest in depreciating a property which constructively was their own. In a long article on the fisheries, published in the New York "World," of the 15th April, 1871, not quite a month before

the signing of the Washington Treaty, evidently written by a well-informed person, we read the following:—

"About the middle of April, or the 1st May, the mackerel fleet makes the first trip of the season to off Newport, Rock Island, Cape Henloden, and Cape May, and if they have good luck, may get as much as 200 barrels to each vessel. Those are all, however, poor fish, only ranking as No. 2, and sometimes not even that. A little later in the season, say in June, and far northward, "No. 2" fish are caught, but it is not until the middle and latter part of August, that up in the Bay of Chaleur, off Prince Edward's Island, and off the Magdalen Islands, in Canadian waters, the finest and fattest fish, both Nos. 1 and 2, are caught. From the time they are first struck in the Bay of Chaleur, the mackerel move steadily southward, until they leave Canadian waters, and are off Maine and Massachusetts, the fishermen, both American and Canadian, follow them."

As already said, this idea of a migrating mackerel prevailed until Professor Baird, of the Smithsonian Institute, Washington, and other specialists, destroyed it by asserting that the mackerel was a steady and non-migrating squatter, that what was found on the American coasts was born there, and remained there, in a pretty limited circle of motion induced by necessity of finding food; that what was caught in Canadian waters was also born, and had there its habitat, in similar conditions of circumnavigation for food, or to escape from predacious fish. From the moment our friends discovered that the fish which were caught in the Bay were Canadian fish, these lost with them all prestige. From that moment Canadian markets lost all consideration and credit in the minds of many. American witnesses, heard in the case, called our mackerel trash; others invented a contemptuous word to describe its rank inferiority, and called it eel-grass mackerel, something hardly good for manure, almost unfit for quotation on the market of the United States.

We do not claim such marked superiority for Canadian mackerel as was attributed to them when supposed to be of American growth; but the evidence fairly weighed shows that while both shores have good, indifferent, and inferior mackerel at times, as a whole the Gulf mackerel have commanded a higher price on the American market than American caught mackerel, and in a run of years the quantity caught in the Gulf was, as well as quality, superior to American shore mackerel.

In order to see whether there is any difference between Canadian and American mackerel, I appeal to the statement produced here by Mr. Low, unknowingly, I think, because he put his hand in the wrong pocket at the time, and drew out a statement prepared for the Centennial, showing that our mackerel, which had been described as being of such inferior quality, netted 50 per cent. more than the American mackerel in the market.

The valuation which this Commission is called upon to make of the respective advantages resulting from the Treaty can hardly be based on an arithmetical appreciation of the quantity of fish caught by Americans in the three-mile limit, although the evidence given on this point cannot but assist the Commissioners in forming their opinion. No tribunal of arbitration probably ever had to deal with such variable and uncertain elements; and if the Commission were left without anything to guide them towards a port of refuge, they would be left on a sea of vagueness as to amount. Fortunately, they will find in the case an anchor, something of a definite character to guide them. During the Conferences of the Joint High Commission, the Representatives of the United States offered to add to fish and fish oil, as additional compensation, the admission, free of duty, of coal, salt, and lumber. The annual value of the duty on these articles in the United States, taking an average of the period from 1864 to 1875, would be:—

	Value.	Duty.
	Dollars	Dollars.
Coal	773,645	190,886
Salt	91,774	46,182
Timber and Lumber	7,345,394	1,083,609
Total	..	1,330,677

Which gives for the twelve years of the Treaty the sum of 15,848,125 dollars. The annual value of the duties in Canada on these articles, taking an average of the same period, would be:—

	Value.	Duty.
	Dollars.	Dollars.
Coal	1,196,469	8,491
Salt	92,332	248
Timber and Lumber	500,085	6,874
Total	..	15,613

	Dollars.
American duties	15,848,124
Canadian duties	187,356
The balance in favour of Canada would therefore be	15,660,768

If the matter had been settled on that basis, it does not mean that Canada would have received 15,660,768 dollars as a direct compensation paid into her Treasury, but according to the theory adopted by American statesmen it would have to cost that sum to have acquired those fishing privileges.

In the estimation of the evidence adduced on both sides, I admit that there is apparently a conflict of views and facts; but when weighed in the scales of an expert, by a judge or lawyer accustomed to winnow the chaff from the grain, the discrepancies would turn out more fictitious than real. We have built, by a mass of witnesses and documents unassailable, the foundations of our claim. In many instances we have obtained, from American writers, reports and witnesses, the confirmation of that substantial part of our case which consists in the value of our fisheries, both to our people and for the American nation. The *ex parte* portion of our evidence, consisting in the affidavits, has been fully sustained by the oral evidence. Generally our witnesses have been selected among citizens, whose station in life and well-established character, gave moral authority to their statements; and we could challenge our friends on the American side to point out the deposition of one witness who had to correct his examination in chief, when cross-examined. Can we say the same thing of a large number of American witnesses without imputing to any of them the desire of stating an untruth? They have, as a rule, shown themselves so completely blinded by their national prejudices, that they have, unwittingly to themselves, been induced to give to most of their statements a colour which would have been, in an ordinary court of justice, easily construed as a determined misrepresentation of facts. As an example of the reckless manner in which some of the American witnesses have spoken of the relative value of the fishing privileges granted by the Treaty of Washington, we refer to the 21st American Affidavit, subscribed to by Frank W. Friend and Sydney Friend, of the firm of Sydney Friend and Brothers, Gloucester, and sworn to before one of the most important witnesses before this Commission, David W. Low, Notary Public and Postmaster of Gloucester, who could not ignore, and perhaps wrote himself this affidavit. In answer to the 34th Question (p. 53): "The amount of remission of duties on Canadian fish, and the free market of the United States for their mackerel and other fish, saving the expense of cutters; and the benefits of a large trade from the American vessels; the admission to our coasts for menhaden and mackerel, will aggregate an advantage of nearly 2,000,000 dollars a year in gross amount." I may here mention the fact that two other witnesses wrote at full length the amount, "200,000,000." (Affidavits 18 and 19.) "For this we obtain the privilege of pursuing a fishery, which, after deducting expenses, will not net to the American fishermen 10,000 dollars a year.

The United States' Agent and Counsel, who have made a successful effort to exclude from the consideration of this Commission the commercial advantages resulting from the purchase of bait and supplies, and of transhipping cargoes on our coast, have thought proper to collect a mass of evidence to prove the commercial advantages resulting to British subjects from the Washington and Reciprocity Treaties. For instance, Messrs. R. V. Knowlton and Edward A. Horton, of Gloucester, value at 200,000 dollars per year the bait sold by Canadians to Americans; and at half a million dollars per year the goods sold to Americans for refitting.

The principal witnesses brought from Gloucester came here with such prejudiced minds, not to say worse, that their examination in chief seemed like an attempt to blind this Commission with one-sided statements, from which, at first sight, evolved a mystery which took us some time to penetrate. Taking their figures as they first gave them it seemed a piece of folly for any American fisherman to have attempted, more than once or twice, to have fished in British waters, as the result of each trip constituted a net loss—the quantity of fish taken being almost insignificant, and in quality unfit for the American market. Their statistics were arranged to create that impression. The statistics with the names of several firms who had pursued such an unprofitable business for a period of twenty-five and thirty years consecutively were furnished. We could not find in our experience of things and men, an obstinacy of that magnitude in mercantile affairs. The cross-examination of these witnesses, extracted piecemeal, presented these transactions under a different aspect, and it turned out after all, that the Gloucester vessel owners and fishermen had had all along more sense than the witnesses wanted us to suppose—it turned out that the fish caught in our waters were highly remunerative in quality, and was in

quality branded in the Boston and Gloucester markets far above the American shore mackerel.

I have now done with this portion of my subject, and I have said all I have to say with reference to the evidence brought in support and in contradiction of the British Case; and I now desire to deal briefly with what has been pleaded as an offset to our claim.

When we come to deal with the privileges granted by the Americans to the subjects of Her Majesty in British North America, we find them to be of two kinds:

1st. Right to fish on the south-eastern coast of the United States to the 39th paralle of north latitude.

2nd. The admission, free of duty, of fish and fish-oil, the produce of British North American fisheries into the United States' market.

As to the privilege of fishing in American waters, this Commission will have very little difficulty in disposing of it. It the first instance, it has been proved that the most of the fish to be found in these waters are caught 30 and 90 miles offshore, almost exclusively on Georges Bank, and the British fishermen would not derive their right of fishing there from Treaties, but from international law. In the second place, no British subject has ever resorted to American waters, and the province of the Commissioners being limited to twelve years, to be computed from the 1st July, 1873, there is no possibility to suppose that they will ever resort to these waters, at least during the Treaty. There remains, then, but one item to be considered, as constituting a possible offsett, that is, the admission, free of duty, of Canadian fish and fish oil. This raises several questions of political economy, which will be better dealt with by my colleague who is to follow me, and I will limit myself to say that if the question now under consideration were pending between the fishermen of the two countries individually, this would suggest views which cannot be entertained as between the two Governments.

The controverted doctrines between freetraders and protectionists as to who pays the duty under a protective tariff, whether it is the producer or consumer, seems to be solved by this universal feature, that, in no country in the world has the consumer ever started and supported an agitation for a protective tariff; on the contrary, we find everywhere directing and nursing the movements of public opinion on this matter, none but the producers and manufacturers. This cannot be explained otherwise than that the manufacturer receives in addition to a remunerative value for his goods the amount of duty as a bonus, which constitutes an artificial value levied on the consumer. It is in most instances the consumer that pays the whole amount of the duty. In a few cases there may be a proportion borne by the producer, and there is no process of reasoning or calculation to determine that proportion. When duties are imposed on articles of food which cannot be classed among luxuries, there seems to be no possibility of a doubt that the whole duty is paid by the consumer. Salt cod or mackerel will never be called luxuries of food. A duty imposed upon such articles has had the effect of raising their cost far above the amount of duty, and had thereby the effect of increasing the profit of the producer, at the expense of the consumer. For instance, a barrel of mackerel which would have brought 10 dollars when admitted free, will bring 14 dollars under a tariff of 2 dollars per barrel; and statistics will be laid before the Commissioners to prove that fact, which I will not undertake to explain. This being so, however, would it be equitable to subject the Canadian Government to the payment of an indemnity to the United States for providing American citizens with a cheap and wholesome article of food, when it is evident that the Canadian fishermen have, as a rule, been benefited by the existence of an American duty on the product of their fisheries. The Government of the Dominion any more than its inhabitants have not suffered in an appreciable manner from the imposition of duties on fish, and the remission of that duty has been profitable only to the consumers of the United States or to the merchant who re-exports Canadian fish to foreign countries. We may therefore conclude that in a fiscal or pecuniary point of view, the remission of duty almost exclusively profits the citizens of the United States. The admission of the United States' fishermen to British waters at this period is pregnant with advantages unknown under the Reciprocity Treaty. Of late numerous new lines of railway have been built in all the British provinces bordering, or in the immediate neighbourhood of the United States, especially in the provinces of Quebec, New Brunswick, Prince Edward's Island, and Nova Scotia. A new industry, consisting in the carrying of fresh fish all over the continent as far as California, has sprung up of late. With the confessed exhaustion of most of the American sea-fisheries, this industry must find the largest part of its supplies in British waters.

To these varied advantages must be added the political boon conferred upon the United States, of allowing them to raise and educate, in the only possible school, that

class of seamen which constitutes the outer fortification of every country, and of protecting her against the advance of her enemies on the seas. Would it not be a monstrous anomaly if, by means of an indirect compensation under the name of offset, the Canadian Government should be taxed for creating a United States navy, from which alone Canadians might entertain apprehensions in the future? I am sure any tribunal would pause before committing such a flagrant act of injustice. Your Honours will remember, I am certain, that, although the Treaty of Washington is apparently made for a period of twelve years, it might become the starting point of a perpetual Treaty of Peace, if not stained by the verdict of this Commission, as an iniquitous instrument. It is, on the contrary, to be hoped that future diplomatists will find both in our proceedings and in the award the elements upon which to base an everlasting adjustment, which will for ever settle the question of the British North American fisheries. On presenting such a result to the three Governments interested in this matter, we would collectively and individually feel proud of having been associated with this international trial.

I cannot close these remarks without acknowledging the valuable aid I have received from Professor Hind's book, filed in this case. As a specialist in the several branches of science connected with this case, he elucidated several grave questions, and gave the key to a great part of the evidence. My learned friend and esteemed colleague, Mr. Weatherbe, with whom I more particularly consulted, and who was so well acquainted with every spot in Nova Scotia, directed my attention to those parts of the evidence which brought in relief the advanced post occupied by this province in the fisheries. To both I here tender my most cordial thanks. The inexhaustible patience and endurance of your Honours during these proceedings extending over a period of five months, were only equalled by the exquisite urbanity and kindness with which we have all been treated. To my other British and American confreres before the Commission, I wish to express a feeling of fellowship which I will for ever cherish. The American and British Agents and the Secretary will also be associated in my remembrance with one of the most pleasant incidents of my life,—enlivened by their sincerity of purpose, and the uniform good-will they have brought to bear in the discharge of their onerous duties.

No. IX.

Final Arguments on behalf of Her Britannic Majesty, by Mr. Thomson.

Monday, November 19.

THE Conference met.

May it Please your Excellency and your Honours:—

IT has now become my duty, after the evidence taken during this long and tedious inquiry has been concluded, to present the final argument on behalf of Her Majesty's Government. I could wish, in view of the great importance of the issue, that the matter had been placed in abler hands, I shall not go very much into the historical question which has been involved in this inquiry, because my learned friends who preceded me have gone fully into that; and, although I dissent from some of the views presented by the learned Counsel for the United States, and may, incidentally, in the course of my remarks, have occasion to state some particulars of that dissent, I do not think there is anything in those views that calls upon me to consider the subject at length.

There was one matter which, if I may use the expression of my learned friend, the Agent of the United States, at one time appeared likely to loom up with very great importance. I refer to the headland question. I feel that I can congratulate this Commission that, for the purpose of their decision upon the subject submitted to them, that question does not assume any importance whatever in this inquiry. But I wish to guard myself distinctly from assenting to the view presented by Mr. Foster, when alluding to that subject. He rather appeared to assume that, for practical purposes, this headland question had been abandoned by Her Majesty's Government, and that the mode of conducting this inquiry, on the part of the Counsel for Her Majesty's Government, showed such an abandonment. I beg to set my learned friends on the other side right upon that matter. There has been no abandonment whatever. It only comes to this: that in this particular inquiry the evidence has so shaped itself, on either side, that your Excellency and your Honours are not called upon to pronounce any opinion on the subject. There can be no doubt that under the terms of the Treaty, your Excellency and Honours are not empowered to pronounce any authoritative decision, or effect any final settlement of that much-vexed question. Incidentally, no doubt, it might have fallen within your province to determine

whether the contention of the British or of the American Government, in reference to that question were the correct one; because, had it been shown that large catches had been made by the American fishermen within the bodies of great bays, such as Miramichi and Chaleurs, it would have become at once necessary to come to a decision as to whether we were entitled to be credited with those catches. But, in fact, no such evidence has been given. And that course was taken somewhat with the view of sparing you the trouble of investigating that question, when the Treaty did not empower you to effect a final decision of it. The learned Counsel, associated with me on behalf of Her Majesty's Government, and myself, shaped our evidence as much as possible with reference to the inshore fisheries. We concluded that if the American Government, who had put this matter prominently forward in their Brief, intended to challenge a decision from this Commission, they would have given evidence of large catches made by their vessels in those bays. They have not done so. The evidence on our side has shown that, to a very great extent, the value of the fisheries is inshore; that, undoubtedly, very large catches could be made in the bodies of those bays, and that the fish frequent the body of the bays as well as the portion within three miles from the contour of the coast all around those bays; but we tendered evidence chiefly with relation to the fisheries within three miles of the shore, by no means intending to have it understood—in fact, we expressly disclaimed the intention of having it understood—that there was not in the bodies of those bays valuable fisheries. I can only say, however, that before this Commission there is no evidence of that, and you may dismiss it, therefore, from your minds. When this headland question shall hereafter arise (if it should unfortunately arise), then I beg to say that the position laid down when the Convention of 1818 was made, has since been in no way departed from. My learned friends on the other side point to the Bay of Fundy. They say, there is a bay which, Great Britain contended, came within the Convention of 1818, and yet she was obliged, in consequence of the decision given by Mr. Bates, in the case of the "Washington," in 1854, to recede from that position in reference to that bay. I beg to say that Great Britain did not recede. It was stated on the other side that it was *res adjudicata*. I say it is not. It is wholly improbable that the Bay of Fundy will ever again become a matter of contest between the two nations, but the fact in regard to that case is, that Great Britain gave the United States the right to do in that Bay that which answered their purpose quite as well as if she had abandoned her claim. She relaxed any claim that she had by the Convention of 1818, and that relaxation has never been departed from, and in all human probability never will be departed from for all time to come. *But it is relaxation, and nothing else.* My learned friend rather assumed, than distinctly stated, that the decision in regard to the Bay of Funday would have considerable weight in reference to other bays. I deny that. Great Britain expressly guarded herself against any such construction. And, moreover, she guarded herself against another construction placed upon the negotiations between the two Governments, viz., that the Gut of Canso was common to the two nations. The British Government, so far as I am informed (I have no special knowledge on the subject, except that afforded by the correspondence and negotiations between the two Governments) emphatically deny that doctrine. The Gut of Canso is a *mare clausum*, belonging to Great Britain, to the Dominion of Canada. It is a strait on either side of which is the territory of the Dominion. There is no foreign shore upon that strait. It is not necessary for me to argue, nor shall I argue, what would be the effect on the international question, assuming the Gulf of St. Lawrence to be an open sea, whose waters could be traversed by the keels of other nations, and to which the Gut of Canso was the only entrance. How far the position I assume might be modified, if that were the case, I shall not consider; but such is not, in fact, the case. There is another entrance north of the Island of Cape Breton, and also one by the Straits of Belle Isle.

In connection with this subject, permit me to call your attention to the instructions issued by the British Government to the Admiralty, immediately after the Reciprocity Treaty had been abrogated by the United States. These instructions are dated the 12th April, 1866, and were issued by Mr. Cardwell, then Secretary of State for the Colonies, to guide the fleet about to protect the British North American fisheries:—

"It is, therefore, at present the wish of Her Majesty's Government neither to concede, nor, for the present, to enforce, any rights in this respect which are in their nature open to any serious question. Even before the conclusion of the Reciprocity Treaty, Her Majesty's Government had consented to forego the exercise of its strict right to exclude American fishermen from the Bay of Fundy, and they are of opinion that during the present season that right should not be exercised in the body of the Bay of Fundy, and that American fishermen should not be interfered with, either by notice or otherwise, unless they are found within three miles of the shore, or within three miles of a line drawn across the mouth of a bay or creek, which is less than ten geographical miles in width, in conformity with the arrangement made with France in 1839.

"American vessels found within these limits should be warned that by engaging, or preparing to engage in fishing, they will be liable to forfeiture, and should receive the notice to depart which is contemplated by the laws of Nova Scotia, New Brunswick, and Prince Edward Island, if within the waters of one of these colonies under circumstances of suspicion. But they should not be carried into port except after wilful and persevering neglect of the warnings which they may have received, and in case it should become necessary to proceed to forfeiture, cases should, if possible, be selected for that extreme step in which the offence of fishing has been committed within three miles of land.

"Her Majesty's Government do not desire that the prohibition to enter British bays should be generally insisted on, except when there is reason to apprehend some substantial invasion of British rights. And in particular, they do not desire American vessels to be prevented from navigating the Gut of Canso (from which Her Majesty's Government are advised they may be lawfully excluded), unless it shall appear that this permission is used to the injury of colonial fishermen, or for other improper objects.

"I have it in command to make this communication to your Lordships as conveying the decision of Her Majesty's Government on this subject.

"I have, &c.,
(Signed) EDWARD CARDWELL."

I quote these instructions, and make these observations, in order that hereafter it may not be said that the views expressed by the American Counsel in regard to the Bay of Fundy and the Gut of Canso were acceded to by being passed *sub silentio* by the Counsel for Great Britain.

With these preliminary observations, I shall return to the main question, and here I may say that some weeks back, when your Excellency and Honours arrived at the conclusion that this inquiry should be closed by oral, instead of written, arguments, I foresaw that great difficulties must occur, if Counsel were expected to do what Counsel ordinarily do whilst closing cases in Courts of justice. If the immense mass of testimony, covering many hundreds of pages, together with the voluminous appendices and addenda to the evidence, were to be gone over, and the relative value of the testimony on either side to be weighed, it seemed certain that the several speeches closing this case, on either side, must necessarily extend over weeks. I had some curiosity, when my learned friend, Mr. Foster, commenced his address,—and a very able one it was,—to see in which way he would treat this matter, and whether or not he would attempt to go over all this evidence. He quite reassured me, when he said:—

"A great mass of testimony has been adduced on both sides, and it might seem to be in irreconcilable conflict. But let us not be dismayed at this appearance. There are certain land-marks which cannot be changed, by a careful attention to which I think we may expect to arrive at a tolerably certain conclusion."

I thought he had made an epitome of the evidence, and had attempted to sift it, but I was "dismayed" afterwards, when I discovered that, so far from considering himself bound by the testimony, he conveniently ignored nearly the whole of the British evidence, and that the small portions to which he did refer, he was pleased to treat in a way that did much more credit to his ingenuity as an advocate than to his spirit of fair dealing with the witnesses. I therefore did not feel at all relieved by his course. Throughout his speech, as I shall show, there have been a series of assumptions, without the slightest evidence on which to base them. It was a most admirable speech in every respect but one. It had little or no foundation in the facts proved. It was an admirable and ingenious speech, I admit, and the same may be said of the speeches of his learned colleagues. It was an admirable speech in a bad cause. Fortunately, I feel that I am not here for the purpose of measuring my strength as an advocate against that of Judge Foster. Were it so, I am very much afraid I should go to the wall. But I have just this advantage over him, as I think I shall satisfy you before I have done, that my cause could not be injured even by a bad advocate; and I think I shall show you that his cause has been made the very best of by a wonderfully good advocate.

Now, I think that probably the proper course for me to take is to go through those speeches, and after having done so, to turn your attention somewhat to the evidence. I take the very pleasant and humourous speech of my learned friend Mr. Trescot, which certainly gave me a great deal of amusement, and, I humbly conceive, put me very much in the position of the man who was beaten by his wife, and who, being remonstrated with by his friends for permitting it, said that it pleased her and didn't hurt him. The speech of my learned friend pleased him, and didn't hurt us a bit. I will show why. In the course of his argument he referred to a Minute of the Privy Council of Canada, made in answer to Earl Kimberley shortly after the Treaty of 1871 was negotiated between the two countries. Mr. Trescot laid great stress upon the fact that this was not a Treaty between the United States and Canada, but that it was a Treaty between the United

States and England. No person disputes that proposition. It is not doubted. But I suppose that no person will dispute the fact that, although England is nominally the party to the Treaty, the Dominion of Canada is vitally interested in the result of this Commission. There is just this difference between this Treaty and an ordinary Treaty between the United States and England; that by its very terms it was wholly inoperative as regards the British North American Possessions, unless it were sanctioned by the Dominion Parliament and the Legislature of Prince Edward Island, which at that time was not a part of the Dominion. In this respect it differed from an ordinary Treaty, inasmuch as by the very terms of the Treaty the Dominion of Canada had a voice in the matter. But I am willing to treat the matter, as Mr. Trescot has been pleased to put it, as one between England and the United States alone, as the High Contracting Parties. You will recollect that, in the "Answer" to the British case, it was put prominently forward that this Treaty was not only a boon to the Dominion, but that it was so great a boon that the then Premier of this Dominion, in his place in Parliament, made a speech to that effect, which is quoted at length in the Answer. Now, it may be right enough to quote the statements of public men in each of the countries. They are representative persons, and may be supposed to speak the language of their constituencies. Therefore I do not complain of their words being quoted. But I was surprised when, in the course of this inquiry, it was argued—I do not know whether it was by Mr. Foster or by one of the learned gentlemen associated with him—that these speeches were calm expressions of opinion by gentlemen not heated in any way by debate. It struck me that that was a curious way in which to characterize a debate in the House of Commons upon a question vital to the existence of the Ministry for the time being. I thought that was just a case where we had a right to expect that the speeches delivered on either side would probably partake of a partizan character, and not only so, but that it was inevitable that the Government speakers would use the strongest arguments they could in defence of the action of their leader, even though their arguments weakened the case of their country in an international point of view. Had my learned friends been content to put forward these speeches in their answer, and quote them for the purpose of argument, there would have been nothing to say beyond this, that when Sir John A. Macdonald and others talked about the fisheries, they were speaking of what they knew nothing about. They had no practical knowledge whatever. What practical knowledge of the matter had any of us around this table before hearing the evidence? None whatever. And yet, can it be that Sir John A. Macdonald, Dr. Tupper, Mr. Stewart Campbell, or anybody else who made speeches, and whose remarks have been quoted, had a tithe of the information that we now possess. Therefore, I think that we may dismiss the whole of those speeches by saying, without meaning anything discourteous, that the persons who made them were talking about matters of which they knew nothing, and therefore that their speeches ought to have no weight with this Commission. But Mr. Trescot has relieved me from using even that argument, for he has referred to this Minute of Council which I hold in my hand, passed in the very year in which the Washington Treaty was negotiated, and before the Legislature of Canada had adopted it. And I wish to call the attention of the Commission to the fact that the whole Privy Council were present, including Mr. Peter Mitchell, the then Minister of Marine and Fisheries, and especially to the fact that Sir John A. Macdonald was present. The Minute is as follows:—

"*Privy Council Chamber, Ottawa, Friday, July* 28, 1871.

"Present:—The Hon. Dr. Tupper, in the chair; the Hon. Sir John A. Macdonald, the Hon. Sir George Et. Cartier, the Hon. Mr. Tilley, the Hon. Mr. Mitchell, the Hon. Mr. Campbell, the Hon. Mr. Chapais, the Hon. Mr. Langevin, the Hon. Mr. Howe, the Hon. Sir Francis Hincks, the Hon. Mr. Dunkin, the Hon. Mr. Aikins.

"To His Excellency the Right Honourable John, Baron Lisgar, G.C.B., G.C.M.G., P.C.,
"Governor-General of Canada, &c., &c.

"May it please your Excellency—

"The Committee of the Privy Council have had under their consideration the Earl of Kimberley's despatch to your Excellency, dated the 17th June ultimo, transmitting copies of the Treaty signed at Washington on the 8th May last, by the Joint High Commissioners, and which has since been ratified by Her Majesty and by the United States of America; of the instructions to Her Majesty's High Commissioners, and of the Protocols of the Conference held by the Commission; and likewise the Earl of Kimberley's despatch of the 20th June ultimo, explaining the failure of Her Majesty's Government to obtain the consideration by the United States' Commissioners, of the claims of Canada for the losses sustained owing to the Fenian raids of 1866 and 1870.

"The Committee of the Privy Council have not failed to give their anxious consideration to the important subjects discussed in the Earl of Kimberley's despatches, and they feel assured that they will consult the best interests of the Empire by stating frankly, for the information of Her Majesty's

Government, the result of their deliberations, which they believe to be in accordance with public opinion in all parts of the Dominion.

"The Committee of the Privy Council readily admit that Canada is deeply interested in the maintenance of cordial relations between the Republic of the United States and the British Empire, and they would therefore have been prepared without hesitation to recommend the Canadian Parliament to co-operate in procuring an amicable settlement of all differences likely to endanger the good understanding between the two countries. For such an object they would not have hesitated to recommend the concession of some valuable rights, which they have always claimed to enjoy under the Treaty of 1818, and for which, as the Earl of Kimberley observes, Her Majesty's Government have always contended, both Governments having acted on the interpretation given to the Treaty in question by high legal authorities. The general dissatisfaction which the publication of the Treaty of Washington has produced in Canada, and which has been expressed with as much force in the agricultural districts in the West as in the Maritime Provinces, arises chiefly from two causes.

"1st. That the principal cause of difference between Canada and the United States has not been removed by the Treaty, but remains a subject for anxiety.

"2ndly. That a cession of territorial rights of great value has been made to the United States, not only without the previous assent of Canada, but contrary to the expressed wishes of the Canadian Government.

"The Committee of the Privy Council will submit their views on both those points for the information of Her Majesty's Government, in the hope that by means of discussion a more satisfactory understanding between the two Governments may be arrived at. The Earl of Kimberley has referred to the rules laid down in Article VI of the Treaty of Washington, as to the international duties of neutral Governments as being of special importance to the Dominion, but the Committee of the Privy Council, judging from past experience, are much more apprehensive of misunderstanding, owing to the apparent difference of opinion between Canada and the United States as to the relative duties of friendly States in a time of peace. It is unnecessary to enter into any lengthened discussion of the conduct of the United States during the last six or seven years, with reference to the organization of considerable numbers of the citizens of those states under the designation of Fenians. The views of the Canadian Government on this subject are in possession of Her Majesty's Government, and it appears from the Protocol of Conference between the High Commissioners that the British Commissioners presented the claims of the people of Canada, and were instructed to state that they were regarded by Her Majesty's Government as coming within the class of subjects indicated by Sir Edward Thornton, in his letter of 26th January last, as subjects for the consideration of the Joint High Commissioners. The Earl of Kimberley states that it was with much regret that Her Majesty's Government acquiesced in the omission of these claims from the general settlement of outstanding questions between Great Britain and the United States, and the Committee of the Privy Council, while fully participating in that regret, must add that the fact that this Fenian organization is still in full vigour, and that there seems no reason to hope that the United States' Government will perform its duty as a friendly neighbour any better in the future than in the past, leads them to entertain a just apprehension that the outstanding subject of difference with the United States is the one of all others which is of special importance to the Dominion. They must add, that they are not aware that during the existence of this Fenian organization, which for nearly seven years has been a cause of irritation and expense to the people of Canada, Her Majesty's Government have made any vigorous effort to induce the Government of the United States to perform its duty to a neighbouring people, who earnestly desire to live with them on terms of amity, and who during the civil war loyally performed all the duties of neutrals to the expressed satisfaction of the Government of the United States. On the contrary, while in the opinion of the Government and the entire people of Canada, the Govenment of the United States neglected, until much too late, to take the necessary measures to prevent the Fenian invasion of 1870, Her Majesty's Government hastened to acknowledge, by cable telegram, the prompt action of the President, and to thank him for it. The Committee of the Privy Council will only add, on this painful subject, that it is one on which the greatest unanimity exists among all classes of the people throughout the Dominion, and the failure of the High Commissioners to deal with it has been one cause of the prevailing dissatisfaction with the Treaty of Washington.

"The Committee of the Privy Council will proceed to the consideration of the other subject of dissatisfaction in Canada, viz., the cession to citizens of the United States of the right to the use of the inshore fisheries in common with the people of Canada. The Earl of Kimberley, after observing that the Canadian Government took the initiative in suggesting that a joint British and American Commission shonld be appointed, with a view to settle the disputes which had arisen as to the interpretation of the Treaty of 1818, proceeds to state that 'the causes of the difficulty lay deeper than any question of interpretation,' that 'the discussion of such points as the correct definition of bays could not lead to a friendly agreement with the United States,' and that 'it was necessary therefore to endeavour to find an equivalent which the United States might be willing to give in return for the fishery privileges.'

"In the foregoing opinion of the Earl of Kimberley, the Committee of the Privy Council are unable to concur, and they cannot but regret that no opportunity was afforded them of communicating to Her Majesty's Government their views on a subject of so much importance to Canada, prior to the meeting of the Joint High Commission.

"When the Canadian Government took the initiative of suggesting the appointment of a Joint British and American Commission they never contemplated the surrender of their territorial rights, and they had no reason to suppose that Her Majesty's Government entertained the sentiments expressed by the Earl of Kimberley in his recent despatch. Had such sentiments been expressed to the delegate appointed by the Canadian Government to confer with his Lordship a few months before the appointment of the Commission, it would at least have been in their power to have remonstrated against the

cession of the inshore fisheries, and it would moreover have prevented any member of the Canadian Government from acting as a member of the Joint High Commission, unless on the clear understanding that no such cession should be embodied in the Treaty without their consent. The expediency of the cession of a common right to the inshore fisheries has been defended, on the ground that such a sacrifice on the part of Canada should be made in the interests of peace. The Committee of the Privy Council, as they have already observed, would have been prepared to recommend any necessary concession for so desirable an object, but they must remind the Earl of Kimberley that the original proposition of Sir Edward Thornton, as appears by his letter of 26th January, was that 'a friendly and complete understanding should be come to between the two Governments as to the extent of the rights which belong to the citizens of the United States and Her Majesty's subjects respectively, with reference to the fisheries on the coasts of Her Majesty's possessions in North America.'

"In his reply, dated 30th January last, Mr. Secretary Fish informs Sir Edward Thornton that the President instructs him to say that 'he shares with Her Majesty's Government the appreciation of the importance of a friendly and complete understanding between the two Governments with reference to the subjects specially suggested for the consideration of the proposed Joint High Commission.'

"In accordance with the explicit understanding thus arrived at between the two Governments, Earl Granville issued instructions to Her Majesty's High Commission, which, in the opinion of the Committee of the Privy Council, covered the whole ground of controversy.

"The United States had never pretended to claim a right on the part of their citizens to fish within three marine miles of the coasts and bays, according to their limited definition of the latter term; and although the right to enjoy the use of the inshore fisheries might fairly have been made the subject of negotiation, with the view of ascertaining whether any proper equivalents could be found for such a concession, the United States was precluded by the original correspondence from insisting on it as a condition of the Treaty. The abandonment of the exclusive right to the inshore fisheries, without adequate compensation, was not therefore necessary in order to come to a satisfactory understanding on the points really at issue.

"The Committee of the Privy Council forbear from entering into a controversial discussion as to the expediency of trying to influence the United States to adopt a more liberal commercial policy. They must, however, disclaim most emphatically the imputation of desiring to imperil the peace of the whole empire in order to force the American Government to change its commercial policy. They have for a considerable time back ceased to urge the United States to alter their commerclal policy, but they are of opinion that when Canada is asked to surrender her inshore fisheries to foreigners, she is fairly entitled to name the proper equivalent. The Committee of the Privy Council may observe that the opposition of the Government of the United States to reciprocal free trade in the products of the two countries was just as strong for some years prior to 1854, as it has been since the termination of the Reciprocity Treaty, and that the Treaty of 1854 was obtained chiefly by the vigorous protection of the fisheries which preceded it, and that but for the conciliatory policy on the subject of the fisheries, which Her Majesty's Government induced Canada to adopt after the abrogation of the Treaty of 1854 by the United States, it is not improbable that there would have been no difficulty in obtaining its renewal. The Committee of the Privy Council have adverted to the policy of Her Majesty's Government, because the Earl of Kimberley has stated that there is no difference in principle between a money payment and 'the system of licenses calculated at so many dollars a ton, which was adopted by the Colonial Government for several years after the termination of the Reciprocity Treaty.' Reference to the correspondence will prove that the licence system was reluctantly adopted by the Canadian Government as a substitute for the still more objectionable policy pressed upon it by Her Majesty's Government, it having been clearly understood that the arrangement was of a temporary character. In his dispatch of the 3rd March, 1866, Mr. Secretary Cardwell observed: 'Her Majesty's Government do not feel disinclined to allow the United States for the season of 1866, the freedom of fishing granted to them in 1854, on the distinct understanding that unless some satisfactory arrangements between the two countries be made during the course of the year this privilege will cease, and all concessions made in the Treaty of 1854 will be liable to be withdrawn.' The principle of a money payment for the concession of territorial rights has ever been most repugnant to the feelings of the Canadian people, and has only been entertained in deference to the wishes of the Imperial Government. What the Canadians were willing under the circumstances to accept as an equivalent was the concession of certain commercial advantages, and it has therefore been most unsatisfactory to them that Her Majesty's Government should have consented to cede the use of the inshore fisheries to foreigners for considerations which are deemed wholly inadequate. The Committee of the Privy Council need not enlarge further on the objectionable features of the Treaty as it bears on Canadian interests. These are admitted by many who think that Canada should make sacrifices for the general interests of the Empire. The people of Canada, on the other hand, seem to be unable to comprehend that there is any existing necessity for the cession of the right to use their inshore fisheries without adequate compensation. They have failed to discover that in the settlement of the so-called 'Alabama' claims, which was the most important question in dispute between the two nations, England gained such advantages as to be required to make further concessions at the expense of Canada, nor is there anything in the Earl of Kimberley's despatch to support such a view of the question. The other parts of the Treaty are equally, if not more, advantageous to the United States than to Canada, and the fishery question must, consequently, be considered on its own merits; and if so considered, no reason has yet been advanced to induce Canada to cede her inshore fisheries for what Her Majesty's Government have admitted to be an inadequate consideration. Having thus stated their views on the two chief objections to the late Treaty of Washington, the Committee of the Privy Council will proceed to the consideration of the correspondence between Sir Edward Thornton and Mr. Fish, transmitted in the Earl of Kimberley's despatch of the 17th June, and of his Lordship's remarks thereon. This subject has already been under the consideration of the Committee of the Privy Council, and a report, dated the 7th June, embodying their views on the subject, was transmitted to the Earl of

Kimberley by your Excellency. In his despatch of 26th June, acknowledging the receipt of that report, the Earl of Kimberley refers to his despatch of the 17th of that month, and 'trusts that the Canadian Government will, on mature consideration, accede to the proposal of the United States' Government on this subject.' The Committee of the Privy Council in expressing their adherence to their report of the 7th June, must add, that the inapplicability of the precedent of 1854, under which the action of the Canadian Parliament was anticipated by the Government, to the circumstances now existing appears to them manifest. The Treaty of 1854 was negotiated with the concurrence of the Provincial Governments represented at Washington, and met with the general approbation of the people; whereas the fishery clauses of the late Treaty were adopted against the advice of the Canadian Government, and have been generally disapproved of in all parts of the Dominion.

"There can hardly be a doubt that any action on the part of the Canadian Government in anticipation of the decision of Parliament would increase the discontent which now exists. The Committee of the Privy Council request that your Excellency will communicate to the Earl of Kimberley the views which they entertain on the subject of the Treaty of Washington, in so far as it affects the interests of the Dominion.

(Signed) WM. H. LEE,
Clerk, Privy Council, Canada."

Now, here is a statement made by the Privy Councillors, on oath as Privy Councillors to give the best advice to the Governor-General; and they state that the opinion they are about to give is in accordance with public opinion in all parts of the Dominion. There was no new election after that opinion was given, and before the debate in which the speeches were made that have been quoted. There was no change in public opinion, as evidenced by a new election, and the return of other persons to the House of Commons to represent that change. It was the same House. The same members were present, and the same Privy Councillers heard and participated in that debate. That is, those of them that were members of the House of Commons. Now, here is the authoritative declaration of the opinion of the members of the Privy Council, and that opinion is expressed, not simply as the private individual opinion of these councillors, but as a reflection of the public opinion of the whole Dominion, that this Treaty did gross injustice to British North American interests. And, in that opinion, Sir John A. McDonald, whose speeches are quoted here against us, agreed. Mr. Trescot, in citing that Minute of Council, to my mind cited the best evidence that could be adduced in favour of the British claim.

I admit you have nothing to do with the question whether or not this Treaty satisfies the countries interested in it, whether it satisfies the Dominion, or whether it is unsatisfactory to the United States. That is not the question. That is all over and past, and you are here for the purpose of determining the difference in value between the advantages conceded to the United States and those conceded to the Dominion of Canada by the Fishery Articles of the Treaty of Washington. I only make these observations for the purpose of saying that it is wholly impossible for the United States to show, as they have attempted to do in their Answer, by the speeches of Canadian statesmen, that all the advantages of the Treaty are in favour of the Dominion. I will therefore pass to another branch of the subject, but before doing so I wish to revert for a moment to the question as to the Bay of Fundy, to which I referred a few moments ago. I desire to cite a letter addressed on the 6th July, 1853, by the then Secretary of State of the United States, Mr. Marcy, to the Hon. Richard Rush, one of the negotiators of the Convention of 1818. It is as follows:—

"DEPARTMENT OF STATE, WASHINGTON,
"*July* 6, 1853.

"Sir,

"You are probably aware that within a few years past, a question has arisen between the United States and Great Britain, as to the construction to be given to the Ist Article of the Convention of 1818, relative to the fisheries on the coast of the British North American Provinces. For more than twenty years after the conclusion of that Convention, there was no serious attempt to exclude our fishermen from the large bays on that coast; but about ten years ago, at the instance of the provincial authorities, the home government gave a construction to the Ist Article, which closes all bays, whatever be their extent, against our citizens for fishing purposes. It is true that they have been permitted to fish in the Bay of Fundy. This permission is conceded to them by the British Government as a matter of favour, but denied as a right. That Government excludes them from all the other large bays.

"Our construction of the Convention is that American fishermen have a right to resort to any bay, and take fish in it: provided they are not within a marine league of the shore. As you negotiated the Convention referred to, I should be much pleased to be favoured with your views on the subject.

"I have the honour to be, etc., etc., etc.,
"(Signed) W. L. MARCY.

"To the Honourable RICHARD RUSH,
"Sydenham, near Philadelphia."

This clearly proves that the American Government understood the matter thoroughly. Official correspondence is the best authority on the subject.

Mr. Foster.—That correspondence was before the decision in the case of the Washington.

Mr. Thomson.—Lord Aberdeen wrote the despatch containing the relaxation on March 10th, 1845. The schooner had been seized in 1843, and the decision of Mr. Bates, as umpire, was given in 1854, in December. The reason why I cited the letter to Rush was to show that in 1853, in July, the United States had full knowledge of the construction which had been placed upon that relaxation. It is true, says Mr. Rush, they have been permitted to fish in the Bay of Fundy, but that is conceded as a matter of favour and not of right, and that was in 1845.

Mr. Dana.—But you recollect that after we had that decision, we did not accept the concession as a favour.

Mr. Thomson.—Great Britain has expressly adhered to her opinion from the beginning to the end as I said before. It is no use to quarrel about the terms of relaxation. Whether the terms mean a relaxation or not is behind the question. It is a practical abandonment since Great Britain has said that as regards the Bay of Fundy she has relaxed her claim and does not purpose to enforce it again. No such claim has been made since that time, and we have given no evidence of any fishing in the Bay of Fundy, except the fishing within territorial limits, around Grand Manan, Campobello, Deer Island, and the coasts of the county of Charlotte and the Province of Nova Scotia.

Mr. Trescot.—No one objects to the view that Great Britain adheres to the construction you insist upon, so long as you admit that the United States adheres to its construction under which the waters of the Bay of Fundy are not British territorial waters.

Mr. Thomson.—I only wish to say that the United States themselves understood the position of the British Government, and that they must take the concessions in the terms and with the meaning that the British Government attached to it. A man who accepts a gift cannot quarrel with the terms of it.

Mr. Dana.—Mr. Everett declined to accept it as a courtesy.

Mr. Thomson.—As a matter of fact the United States have not declined to accept it. They have acted upon it ever since. If they had kept all their vessels out of the Bay of Fundy for fear of that construction being placed upon their use of these waters, we would have understood it. But they have entered and used it ever since.

Mr. Dana.—The United States had fished there under a claim of right. England agreed not to disturb them, but still contended that we had not a right. Therefore our going in was not an acceptance of any favour from Great Britain. This subject was referred to a Commission and the Commission decided, not on general grounds, but on the ground that one headland was on the American territory. Therefore it was a special decision, and that decision settled the question as to the Bay of Fundy, so that we have not accepted anything from Great Britain which precludes us from taking the position always, that we had claimed from the first, namely, that we had a right to fish in the Bay of Fundy.

Mr. Thomson.—The two Commissioners, Mr. Hornby and Mr. Upham, were authorized to decide whether the owners of the Washington should or should not be paid for the seizure of their vessel. That was the only authority they had. They had no more authority to determine the headland question than you have, and it is conceded that you have no such power. Neither had they. A fortiori neither had Mr. Bates, the umpire.

Mr. Dana.—That was the very thing they had to determine.

Mr. Thomson.—They had to determine the legality of a seizure. Incidentally the question of the headlands might come up, just as it would have here, had evidence been given.

Mr. Foster.—Will you not read the paragraphs from the umpire's decision?

Mr. Thomson.—I haven't it here.

Mr. Foster.—He puts it on two grounds. It was impossible to decide the question whether the United States could be paid without deciding whether the Washington was rightly or wrongly seized. That depended upon whether she was seized in British territorial waters. Mr. Bates, the Umpire, decided she was not, and put it on two grounds, one of which Mr. Dana has stated, viz.: that one of the headlands of the Bay of Fundy was on American waters, and the other that the headland doctrine was new and had received its proper limitation in the Convention of 1839, between France and Great Britain, that it was limited to bays not exceeding ten miles in width.

Mr. Thomson.—While I do not dispute what Mr. Foster says—I go back to what I was saying when I was interrupted, that these two gentlemen, Mr. Hornby and Mr. Upham, had no authority to decide the headland question. They had undoubted power to decide whether the vessel was improperly seized, and if so, to assess the damages, and because Mr. Bates in giving his decision against the British Government was pleased to base it upon the ground that one headland was in the United States and the other in British territory, according to his views of the contour of the bay, is behind the question.

He had no more power to determine that important international question than, as it is conceded, have your Excellency and Honours in this Commission.

Mr. Trescot.—Does not the question of damages for trespass settle the right of possession?

Mr. Thomson.—I am quite willing that when the learned Counsel for the United States think I am making misstatements of law or facts I should be interrupted, but I cannot expect them to concur in my arguments, and it is difficult to get on in the midst of interruptions. If I understand the arguments against the British case, able arguments I admit they are, and if I understand the arguments which I shall have the honour to submit, I shall show that they have not one single leg to stand upon; that they have no foundation for the extraordinary defence that has been set up to the righteous claim of the British Government for compensation. If I fail to show this, it will not be because it cannot be shown by Counsel of the requisite ability, but simply because I have not the ability to present the subject as it should be presented to your Excellency and Honours.

My learned friend, Mr. Trescot, after taking the ground that the Treaty was not made between the United States and Canada, but was made between the United States and Great Britain, went on to use an argument which certainly caused me a great deal of astonishment at the time, but which I think, upon reflection, will not inure to the benefit of the United States. "Why," said he, referring to a Minute of Council which he read, "the Canadian Government said in that Minute that if Great Britain would guarantee a loan of (I think it was 4,000,000*l.*) they would be willing that this Treaty should be passed." Now, that had reference, we well know, to the Fenian claims particularly. Whether it was creditable to Canada or not to give up the right to compensation for the outrageous violation of neutral territory by marauders from the United States, it is not my province to argue. She had a right to give it up if she saw fit to do so in consideration of a guarantee by Great Britain of the proposed loan. Mr. Trescot says: "Because you were dissatisfied with this Treaty,—because you were dissatisfied with losing your territorial rights,—you obliged Great Britain to guarantee a loan of 4,000,000*l.* in reference to an inter-colonial railway." Great Britain did guarantee a loan, and Canada got the money. "With what face," he says, "does Canada come here now and claim compensation since she has been paid for that?"

Well, it struck me that if his argument was correct it proved a little too much. What does it show? This question, by his own contention, is one between Great Britain and the United States. Great Britain claims a compensation here which, under the terms of the Treaty she is entitled to get. If, therefore, as Mr. Trescot argues, the claim has been paid, I would ask, who has paid it? If Canada has been paid for yielding certain important territorial rights to the United States for the term of twelve years from 1873, if Canada has ceded those rights to the United States, as undoubtedly she has by the Treaty of Washington, and if Canada has been paid for that cession by Great Britain, then I apprehend Great Britain has paid the debt which the United States ought to have paid, and she can properly and justly look to the United States to be refunded. Now, that guarantee was exactly 4,000,000*l.* sterling. We are modest in our claim, and ask for only 15,000,000 dollars altogether. That being so, I think Mr. Trescot has pretty well settled this case. I think it was he, but I am not quite sure, who said in the course of his speech, although I did not find it reported afterwards, perhaps it was Mr. Dana,—that when he came down here first he thought the case of the British Government was a great deal better than it turned out in evidence.

Mr. Trescot.—I didn't say that.

Mr. Thomson.—It was said by one of the Counsel for the United States. It may be repudiated now.

Mr. Dana.—I haven't committed my speech to memory.

Mr. Thomson.—Unfortunately, I do not find it committed to paper. At all events that is the fact. If you take Mr. Trescot's argument, the result is that we must get 4,000,000*l.* sterling. Great Britain paid that; and it is just the case of a man who, with the consent of another, pays that other's debt. It is money paid to his use, as all lawyers know, and is a valid claim against the party for whom it was paid.

Now, I will follow him a little further, and will examine some other propositions that he laid down. He says this, on page 58 of his speech:—

"It is precisely, as far as you are concerned, as if, instead of the exchange of fishing privileges, that Treaty had proposed an exchange of territory, if that Treaty had proposed the exchange of Maine and Manitoba, and the United States had maintained that the value of Maine was much larger than Manitoba, and referred it to you to equalise the exchange. It is very manifest that to New England for instance, it might not only be disadvantageous, but very dangerous; but the only question for you to consider, would be the relative value of the two pieces of territory."

Well, I will take his view of that matter, and let us see what follows. He in effect says, just put one territory against another and take their value—how many acres are there in the State of Maine, and how many in the Province of Manitoba? Now we have evidence of what the concession is under this Treaty to the fishermen of the Dominion. They get the right to fish as far north as they please over a line drawn from the 39th parallel of north latitude upon the American coast, a distance, I think of somewhere about 1,050 miles. As against that, the United States fishermen get upon the British American coast the right to fish over an extent of some 3,700 odd miles. There is a clear balance entirely against them. Or, if you choose to take the area in square miles you have nearly 3,500 square miles of fishing territory given to us by the United States, while 11,900 square miles of British territorial waters are given to them. I am quite willing to meet them upon their own ground, to oppose them with their own weapons. In that view there is just the difference in our favour, between 3,500 square miles and 11,900.

Now, I will pass on to another branch of our claim for compensation. Great Britain says, and we have proved that, along the line of Canadian coast upon which the American fishermen ply their calling by virtue of this Treaty, there have been very costly harbours made, and there have been numerous large and expensive lighthouses erected. Great Britain says that by means of these harbours and lighthouses the fishermen of the United States have been enabled more successfully to prosecute their calling in territorial waters. That would strike you, I think, as being obviously the case. These improvements render the privilege conceded by us much more valuable than it otherwise would have been. Suppose the coast to have been entirely unlighted, and the harbours to have been unsafe and difficult of access, it might then well have been said that the privilege was merely a nominal one; that no fisherman could ply his vocation in Canadian territorial waters without danger to life and property. The evidence as to the cost of these works is before you, and I do not intend to go into it. I am only alluding to it because I am following the course of Mr. Trescot's address. Does it not strike you as reasonable that the effect of these expenditures upon the American fishing business should be taken into consideration? Not only is there greater safety and more certainty of successful catches, but money is thereby actually put into the pockets of their merchants in the shape of premiums of insurance saved. If it be true that they pay 1 per cent. a month for a fishing vessel in the Bay,—and some of the witnesses say that is the rate,—what would they pay if there were no such lighthouses to guide their vessels to a place of safety, no such harbours to shelter them from storms. When Mr. Trescot made his flourish on the subject, he asked if we had no trade that required these lighthouses. I am afraid to trust my memory to quote the very words he used, for his language startled me a little. I read his remarks as follows :—

"And now, with regard to this question of consequences, there is but one other illustration to which I will refer, and I will be done. I find at the close of the British testimony, an elaborate exhibit of 166 lights, fog-whistles, and humane establishments, used by United States' fishermen on the coast of the Dominion, estimated to have cost in erection, from the Sambro Lighthouse, built in 1758, to the present day, 232,138 dollars, and for annual maintenance, 268,197 dollars. I scarcely know whether to consider this serious; but there it is, and there it has been placed, either as the for a claim, or to produce an effect. Now, if this Dominion has no commerce; if no ships bear precious freight upon the dangerous waters of the Gulf, or hazard valuable cargoes in the straits which connect it with the ocean; if no traffic traverses the Imperial river which connects the Atlantic with the the great lakes; if this fabulous fishery, of which we have heard so much, is carried on only in boats so small, that they dare not venture out of sight of land, and the fishermen need no other guide and protecting light than the light streaming from their own cabin windows on shore; if, in short, this Dominion, as it is proudly called, owes nothing to the protection of its commerce and the safety of its seamen; if these humane establishments are not the free institutions of a wise and provident government, but charitable institutions to be supported by the subscriptions of those who use them—then the government of the Dominion can collect its 200,000 dollars by levying light dues upon every vessel which seeks shelter in its harbours, or brings wealth into its ports. But if, in the present age of civilization, when a common humanity is binding the nations of the world together every day by mutual interests, mutual cares, and privileges equally shared, the Dominion repeals her light dues in obedience to the common feeling of the whole world, with what justice can that government ask you, by a forced construction of this Treaty, to re-impose this duty, in its most exorbitant proportions and its most odious form, upon us and upon us alone."

Now, a more extraordinary argument than that I have never heard used. Your Excellency and your Honours are here to value the difference between the concessions made by the United States to Great Britain on the one hand, and those made by Great Britain to the United States on the other. We contend that the fisheries of the United States are useless, not because there are no lighthouses on their shores, and no harbours in which our fishing vessels could find shelter in time of need. But we say their fishing grounds

are of no service to us, because the fish are not there, because our fisherman have never used them, preferring to fish upon our own coasts; there being, in fact, no occasion for them to leave their own shores and go hundreds of miles away from home to fish on the American coast. But if the fish had been abundant in American coastal waters, and lighthouses had been there to guide our fishermen, and harbours to preserve them from shipwreck, or reduce their perils, do you think these things should not be taken into consideration in fixing the compensation for the use of those fisheries? Do you think they would not have been the basis of a claim against us? Certainly they would. I shall show from the written statements of United States officials what estimate was placed upon lighthouses immediately after the great storm, which is called the "American Storm," by reason of the vast number of American vessels that were destroyed in the Gulf of St. Lawrence, and the vast number of American seamen that found a watery grave beneath its waves. I will show you what was thought about this subject of lighthouses at that time. And if you can then agree with the view presented by Mr. Trescot, I have nothing more to say; but I do not think it is possible that you can. In the official correspondence, which is in evidence, we have this letter addressed by the then United States' Consul, I think, at Pictou, to Sir Alexander Bannerman, at that time the Governor of Prince Edward Island. It is No. 28 in the official correspondence (Appendix H.), put in as part of the evidence in support of Her Majesty's case, at the outset of these proceedings. I may mention here that a number of the witnesses spoke of the storm as having taken place in 1851. This letter bears date in 1852, but as it refers to a great storm, and I have heard of only one such storm happening between 1850 and 1860, I should judge either that this is a misprint for October, 1851, or that the storm actually took place in 1852, for no two storms succeeded one another in 1851 and 1852. The letter is as follows:—

"CONSULATE OF THE UNITED STATES,

"Sir, *Province of Nova Scotia, October* 28, 1852.

"Since my return from Charlottetown, where I had the honour of an interview with your Excellency, my time has been so constantly employed in the discharge of official duties connected with the results of the late disastrous gale, so severely felt on the north side of Prince Edward Island, that I have not found time to make my acknowledgments to your Excellency for the kind and courteous reception extended to me at the Government House, nor to furnish you with my views relative to some improvements which might be made by your Excellency's Government, thereby preventing a similar catastrophe to the one which has so lately befallen many of my countrymen; and at the same time on behalf of the Government of the United States, which I have the honour to represent, to thank you most feelingly for the promptness and energy displayed by your Excellency in issuing proclamations whereby the property of the poor ship-wrecked mariners should be protected from pillage.

"These various duties devolving upon me, I now have the pleasure of discharging, but only in a brief and hurried manner.

"The effect of the recent visitation of Providence, although most disastrous in its consequences, will yet result in much good.

"In the first place, it has afforded the means of knowing the extent and value of fisheries on your coast, the number of vessels and men employed, and the immense benefit which would result to the people within your jurisdiction, as well as those of the United States, if the fishermen were allowed unrestrained liberty to fish in any portion of your waters, and permitted to land for the purpose of curing and packing.

"From remarks made by your Excellency, I am satisfied it is a subject which has secured your most mature reflection and consideration, and that it would be a source of pride and pleasure to your Excellency to carry into successful operation a measure fraught with so much interest to both countries.

"2nd. It has been satisfactorily proved, by the testimony of many of those who escaped from a watery grave in the late gales, that had there been beacon lights upon the two extreme points of the coast, extending a distance of 150 miles, scarcely any lives would have been lost, and but a small amount of property been sacrificed. And I am satisfied, from the opinion expressed by your Excellency, that the attention of your Government will be early called to the subject, and that but a brief period will elapse before the blessing of the hardy fishermen of New England, and your own industrious sons, will be gratefully returned for this most philanthropic effort to preserve life and property, and for which benefit every vessel should contribute its share of light-duty.

"3rd. It has been the means of developing the capacity of many of your harbours, and exposing the dangers attending their entrance and the necessity of immediate steps being taken to place buoys in such prominent positions that the mariner would in perfect safety flee to them in case of necessity, with a knowledge that these guides would enable him to be sure of shelter and protection.

"From the desire manifested by your Excellency previous to my leaving Charlottetown, that I would freely express my views relative to the recent most melancholy disaster, and make such suggestions as might in my opinion have a tendency to prevent similar results, there is no occasion for my offering an apology for addressing you at this time.

"I have, &c.,

"(Signed) B. H. NORTON.

"*United States' Consul for Pictou Dependency.*

"His Excellency Sir A. BANNERMAN, &c., &c."

Bear in mind that an official letter, written in the year 1864, by Mr. Sherman, the then American Counsel at Charlottetown, was put in evidence by the United States Agent; and Mr. Foster contended with much force that the statements in that letter should be treated as thoroughly trustworthy, because the writer could have had no object in misleading his own Government. I accede to that view. No doubt Mr. Sherman believed in the truth of all he wrote. It is for you to say on the evidence whether or not he was correct in point of fact. Apply Mr. Foster's reasoning to Consul Norton's letter, and are not the value of the Prince Edward Island in-shore fisheries, and the value to American fishermen of the lighthouses and harbours, since built and constructed around her shores, proved by the best of all evidence? As regards the in-shore fisheries, the Consul had no object in overestimating their value in any way to the Governor of the Island that owned them, or to the Government that alone, of all the Governments of the world, sought entrance into them, as against the rightful owners. Now, what does he say:—

"It has been satisfactorily proved, by the testimony of many of those who escaped from a watery grave in the late gales, that had there been beacon lights upon the two extreme points of the coast-extending a distance of 150 miles, scarcely any lives would have been lost, and but a small amount of property been sacrificed. And I am satisfied from the opinion expressed by your Excellency, that the attention of your Government will be early called to the subject, and that but a brief period will elapse before the blessing of the hardy fishermen of New England and your own industrious sons, will be gratefully returned for this most philanthropic effort to preserve life and property, and for which benefit every vessel should contribute its share of light-duty."

This is a very different opinion from that of Mr. Trescot—very different, indeed. All these lighthouses, and many more than ever Mr. Norton dreamed of, have since been built. Before they were built Mr. Norton says that such erection would prove of the greatest value to future American fishermen, and that, not only their blessings would be poured on the heads of those who should erect them, but he even pledged them to go a step further, and part with that which they are less disposed to bestow than blessings—a little money. The light dues have long since been abandoned.

Mr. Foster.—When?

Mr. Thomson.—They were abandoned in 1867. It has been so stated in evidence, and it is in the Minutes. From that time to the present, there have been no light dues collected at all.

He goes on to say:—

"It has been the means of developing the capacity of many of your harbours, and exposing the dangers attending their entrance and the necessity of immediate steps being taken to place buoys in such prominent positions that the mariner would in perfect safety flee to them in case of necessity, with a knowledge that these guides would enable him to be sure of shelter and protection."

There is the opinion of a disinterested man at that time, or rather of a man who was directly interested in getting these light-houses erected, for which we now ask them to pay us a fair share during the twelve years they are to be kept up for their fishermen. We could not ask it before, although the fishermen were in the body of the Gulf, and had the advantage of them. But when they come on equal terms with our own subjects, into our territorial waters, why should they not bear a portion of the territorial burdens? Is it not monstrous to argue against it?

Mr. Foster.—Does it not appear in your evidence that you charged the American fishing-vessels light dues from the time they came into your harbours, or passed through the Strait of Canso, until such time as you saw fit to abolish them, having collected enough to pay for them?

Mr. Thomson.—They have been abolished since 1867, as regards the Gut of Canso, if my memory does not deceive me very much, we have in the evidence of that very amusing gentleman, Mr. Patillo, a description of the way they were evaded. To this evidence I shall refer hereafter.

I think that I have now shown conclusively that this part of the British Case is entitled to serious and favourable consideration at the hands of your Honours—I mean this question of the lights.

I come to another part of Mr. Trescot's argument, which I think will be found on page 59:—

"I have but one other consideration to suggest before I come to the history of this question, and it is this: If you will examine the Treaties, you will find that everywhere it is the 'United States fishermen,' the 'inhabitants of the United States'—the citizens of the United States who are prohibited from taking part in the fishery within the three-mile limit. Now, I say,—remember, I am not talking about local legislation on the other side at all, I am talking about Treaties. I say, there is nothing in any Treaty which would forbid a Nova Scotian or a Prince Edward Island citizen from going to Gloucester,

hiring an American vessel with an American register, and coming within the three-mile limit and fishing—nothing at all. If such a vessel be manned by a crew half citizens of the United States and half Novia Scotians, who are fishing on shares, recollect, and who take the profit of their own catches, where is the difference? The United States citizens may violate the law, but are the citizens of Nova Scotia doing so? They are not the 'inhabitants' or 'fishermen of the United States' excluded from fishing within the three-mile limit."

I do not like to say I was startled at that, because Mr. Trescot says I am startled continually. Nevertheless, I was. I defy the parallel of that proposition to be found, uttered by any statesman or lawyer that ever existed. Mr. Trescot stands alone in that view, both as having the extraordinary faculty to conceive such an idea, and the yet more extraordinary boldness to utter it in a civilized community, and before a tribunal such as this. What? Because the American ship-owners of Gloucester, Wellfleet, or anywhere along the coast of New England, choose to take into their service Prince Edward Islanders, who are starved out in consequence of their fish being stolen under their noses, he has the audacity (I do not use the word offensively, but in a Pickwickian sense), to say that a vessel so manned is not an American vessel within this Treaty; but that a British crew makes an American vessel a British vessel.

Mr. Trescot.—That is not the statement of the extract you read.

Mr. Dana.—There is nothing about vessels in the Treaty.

Mr. Thomson.—I will read it again:—

"Now, I say, &c."

Now, if he means that there is nothing in the Treaty of Washington to prevent American vessels entering our waters to fish, I agree with him, but if he means that there is nothing under the Treaty of 1818, I take issue.

It is the boldest proposition I ever heard, that an American vessel, an American bottom, manned by British inhabitants from Nova Scotia, Prince Edward Island, or any other part of the Dominion, owned by American owners, but simply manned by British subjects, could come into our waters in the face of the Convention of 1818; I say I never heard such a proposition before, and do not ever expect to hear it again. Such a proposition never emanated from any northern brain. It requires the heat of the South to generate such an idea.

At page 60 Mr. Trescot says:—

"That in valuing the exchange of privilege, the *extent* to which the privilege is offered, is a fair subject of calculation, and that a privilege opened to 'all British subjects' is a larger and more valuable privilege than one restricted to only the British subjects resident in the Dominion."

I have already dealt with that proposition. I have shown that if that is the case, the United States have given us the right to fish where there are no fish at all, over an area of 3,500 square miles, and that they get under the Treaty the right to fish over 11,900 square miles on our coasts, where there are fish in abundance. So his first proposition is necessarily against him. Then take the second:—

"That in valuing the exchange of privilege, only the direct value can be estimated, and the *consequences* to either party cannot be taken into account."

It is difficult to see what is meant by that. Does he mean to say, if this privilege, which is given to the Americans, to enter our territorial waters and fish there, should have the effect of preventing the whole Gloucester and American fishing fleet from being absolutely destroyed for want of business to make it pay, and if we should show conclusively on behalf of the British Government, that such is really the case, that, nevertheless, the United States' Government should not pay 1 dollar because it is a consequence of the privilege, and not the direct value? Does he seriously contend for such an extraordinary doctrine? I think I shall be able to show you by the evidence on record in this inquiry, that unless the Americans had the right to come on the shores of Nova Scotia and New Brunswick, to enter our territorial waters along the shores of Prince Edward Island, along the Gaspe shore, the southern shore of Labrador, and along the estuary of the St. Lawrence, that unless they had those rights, the United States' fishing fleet could not subsist; and I do not intend to rely upon British proofs on that point; but I intend to turn up the American evidence, and I shall make that as clear as daylight. I will prove it by evidence from the lips of their own witnesses, man after man, witness after witness, not by evidence given by us. And it is to be said that the United States ought to pay nothing to us for rights obtained under the Treaty, if I can show that without those rights the Gloucester fishing fleet, and all the American fishing fleet, the whole North American fishery, as prosecuted by Americans, would be a failure? Are they not to pay for that privilege? If we hold fishing ground over which alone fishing can be successfully

prosecuted, is that fact not to be taken into account? Underlying the whole arguments of Mr. Foster, Mr. Dana, and Mr. Trescot, is the extraordinary fallacy that this is a simple question for you to determine as between Great Britain and the fishermen of Gloucester. They apparently think that if they can show that under the *status quo* before the Treaty, their fishermen could make more money than since the Treaty went into operation that is an end of the British Case. That is not so. The Treaty was not made between Great Britain and the fishermen of Gloucester; it was not made in respect to the Gloucester fishermen, but in respect to the whole body of the people of the United States. It is not a question whether the fishermen get more or less money. In fact, however, how is the whole trade of Gloucester and other American fishing ports kept up? Is it not by the fishing business? The people of Gloucester do not, however, live merely on fish. They have to buy meat, pork, flour, &c., which are raised elsewhere than in Gloucester, I apprehend. They come from the far West; the Gloucester people are consumers of the produce of the far West. How are they able to pay for that produce? From the fisheries; and so the far West is interested as much as the seaboard itself. So again take the consumers of the United States. If a much larger quantity of fish goes into the country under the Treaty than otherwise would, the price falls and the consumers get the fish for far less money. Is that not a benefit? I care not whether it is an injury to Gloucester fishermen or not; I care nothing about them, as a class, although it can and will be shown that the fishermen of Gloucester, as such, have not lost 1 dollar by this Treaty, but have made money. Now, let us pass on and see what is the next proposition. Mr. Trescot says:—

"That so far as British subjects participate in the in-shore fishery in United States vessels upon shares, their fishery is in no sense the fishing or fishermen of inhabitants of the United States."

I have dealt with this subject before. It requires a man possessing great flexibility of argument and great boldness of utterance, to enunciate such a proposition in this or any other Court. We have heard it for the first time, and we will never hear it again after this Commission closes. What difference does it make in valuing the privilege given under the Treaty whether the vessels sent out by the City of Gloucester, the towns of Wellfleet or Marblehead, or other towns on the New England coast, are manned by British subjects or foreigners. We have it in evidence that some of the fishermen are Portuguese, some Spaniards—Portuguese certainly—and I am not sure but that some were Danes, and men belonging to the more northern nations. Why not have prepared a schedule, showing how many of those who fished in American vessels, and made money in them, were Portuguese or Spaniards, and asked us to make deduction because they were not American citizens. The whole money and profits of the voyages, excepting the men's shares, went into the pocket of the merchants? Never was such an argument heard as that the United States should not pay 1 dollar, because fish might have been caught by Portuguese, Spaniards, or Frenchmen on board of United States' vessels. The United States must be reduced to very great straits in supporting its failing case, before they would use such an argument. I could not help thinking, after the evidence got fairly launched, that the American counsel were much abroad as to what their own case really was. I do not for one instant charge upon Mr. Foster, that in preparing his case he put in a single statement that he did not believe to be absolutely true; he necessarily had to receive the information from somebody else. Yet you see throughout the United States' "Answer" statements that are, and must be admitted to be, wholly without foundation.

Look at this statement as put forward in the United States' Answer, which will remain on record as a statement of the views of the Government and of the facts which the Government of the United States pledged itself to prove:—

"The United States' inshore fisheries for mackerel, in quality, quantity, and value, are unsurpassed by any in the world."

So far from this being the fact, we had from the lips of witness after witness, called on behalf of the United States, that their in-shore fisheries have entirely failed, that last year there was, as far as mackerel was concerned, an exceptionally good catch upon their own coast, but that the body of that catch was not taken within United States' territorial waters at all, but extended over areas of the sea from ten to fifty miles distant from the shores. Yet this extraordinary statement is put upon record. I say again I do not assume for an instant that Mr. Foster wrote this on behalf of the United States, not believing it to be true. I believe that some parties or other, I do not know who, have given him

false and incorrect information, and he has committed the United States to a statement that is utterly and wholly at variance with the facts. The Answer says :—

"The United States in-shore fisheries for mackerel in quality, quantity, and value are unsurpassed by any in the world. They are within four hours' sail of the American market, and many of the mackerel are sold fresh at a larger price than when salted and packed. The vessels fitted with mackerel seines can use the same means and facilities for taken menhaden, so that both fisheries can be pursued together. And they combine advantages compared with which the Dominion fisheries are uncertain, poor in quality, and vastly less in quantity."

In Heaven's name if these Dominion fisheries are "uncertain, poor in quality and vastly less in quantity," how happens it that such an excitement has been aroused, and such an incendiary address been made before this Commission, as was delivered by Mr. Dana, and to which I shall have to call the attention of your Excellency and your Honours. If the fisheries are so "uncertain, poor in quality, and vastly less in quantity," and miles and miles away from their own coast, what did they mean by fighting for entrance into these waters, and by challenging us with making inhospitable laws to keep them out? If the lips of their witnesses told the truth, the laws are hospitable laws; they are laws passed by us for the purpose apparently of keeping them out of the fishery, but their effect was to keep American fishermen from ruining themselves. They make voyage after voyage into the bay, each one resulting, they say, in a loss of 500 dollars or 1,000 dollars.

I will show your Excellency and your Honours by-and-bye, the figures put in for the purpose of showing the losses made by these men who sent their vessels to the Bay for the fish "poor in quality, and vastly less in quantity," while there were thousands and thousands of fish off their own coasts, just waiting to be caught, and deal with those figures as they deserve to be dealt with. Did you ever hear anything like it in the world?

The United States Answer further states :—

"The Canadian fisheries are a long voyage from any of the markets whatever, and involve far more exposure to loss of vessels and life. These fisheries along the shores of the United States are now open to the competition of the cheap built vessels, cheap fed crew, and poorly paid labour of the Dominion fishermen who pay trifling taxes, and live both on board their vessels and at home, at less than half the expense of American fishermen."

I have not heard any evidence of that yet. It is a pretty bold assertion to put forward, and not support with proof. But if it were true, what does it mean? We have had the evidence of American fishermen to show that they live like little princes, and we had one witness who absolutely told us that the cook was the chief man on board. The men must make a fortune in the Bay to enable them to live like princes, at a rate at which they would only be justified in living if they had from 10,000 to 12,000 dollars a-year. If they choose to indulge in expensive dress and food, and return at the end of the year and say they have lost money—are we to lose the compensation to which we are entitled for our fisheries? I never heard such an argument used before, and I hope never to hear it again. If men choose to eat, drink, and wear all their profits, they must abide the consequences; they cannot both have their cake and eat it.

Let us see what else the "Answer" says :—

"It is only from lack of enterprise, capital and ability, that the Dominion fishermen have failed to use them; but recently hundreds of Dominion fishermen have learned their business at Gloucester, and other American fishing towns, and by shipping in American vessels. They (the Dominion fishermen) have in the United States waters, to-day, over thirty vessels equipped for seining, which, in company with the American fleet, are sweeping the shores of New England."

When we first read that extraordinary statement, we were beyond measure astonished. We made enquiries, but no one had ever heard of these vessels; and after cross-examining American witnesses, and examining our own witnesses, we found at last trace of a phantom ship, one vessel alone that was ever heard of on the United States coast, since the Treaty was made. The truth must have been known to the man who gave the information to Mr. Foster, for he must have been a practical man or he would not have been called upon to give information, and the information is precise "over thirty vessels." The man who gave that information to Mr. Foster, who induced him to commit his Government to such an extraordinary and baseless statement, deliberately and wilfully, in my judgment, deceived the Agent of the United States.

I call your Honours' attention to these facts, in order to show that the Agent and Counsel of the United States hardly knew what sort of a case they had when they came

into Court. They must have been entirely misled as to the facts by fishermen or fish dealers, or those interested in the fisheries on the New England coast.

I will pass on. Mr. Trescot says in his argument:—

"With regard to the history of these Treaties, there are two subjects in that connection which I do not propose to discuss at all. One is the headland question. I consider that the statement made by my distinguished colleague, who preceded me, has really taken that question out of this discussion. I do not understand that there is any claim made here that any portion of this award is to be assessed for the privilege of coming within the headlands. As to the exceedingly interesting and very able brief, submitted for the other side, I am not disposed to quarrel with it. At any rate, I shall not undertake to go into any argument upon it. It refers entirely to the question of territorial right, and the question of extent of jurisdiction—questions with which the United States has nothing to do. They have never been raised by our government, and probably never will be, because our claim to fish within the three-mile limit is no more an interference with territorial and jurisdictional rights of Great Britain, than a right of way through a park would be an interference with the ownership of the property, or a right to cut timber in a forest would be an interference with the fee-simple in the soil."

Well, I should like to ask your Excellency and your Honours whether a gentleman who owned a farm would not find that its value materially diminished by someone else having a right of way over it. Could he sell it for the same price? He obviously could not. And why? Because the enjoyment of the privilege is destroyed to the extent that the easement gives the enjoyment of it to the person holding the right of way. The assertion that it makes no difference to a person possessing land that somebody else has the right to cut trees on it I submit is perfectly absurd. It is just what the Americans have the right to do under the Treaty. They have not the right to come to our lands and cut trees, but they have the right to come into our territorial waters and take from them fish, which are just as valuable to the waters as trees are to the land. They have the right to take the fish, and for that, I apprehend, they must pay. If a man has the right to enter on my land to cut trees, I presume he must pay compensation for it; I presume he cannot get the right unless compensation is agreed upon. That is what we say. Taking fish from our waters is precisely the same as taking trees off our land.

Further on in his argument, Mr. Trescot puts forward the extraordinary doctrine that the Treaty of 1818 was rescinded by the Treaty of 1854.

At page 60 he uses these words:—

"Then with regard to the character of the Convention of 1818. I wish to put on record here my profound conviction that by every rule of diplomatic interpretation, and by every established precedent, the Convention of 1818 was abrogated by the Treaty of 1854, and that when that Treaty was ended in 1866, the United States and Great Britain were relegated to the Treaty of 1783, as the regulator of their rights."

Well, the proposition that the Convention of 1818 was abrogated by the Treaty of 1854 is sufficiently novel. I will, however, show your Honours that by the Reciprocity Treaty, so far from there being any intention shown to abrogate the Treaty of 1818, the exact opposite was the case; and that the Convention of 1818 is cited in the Reciprocity Treaty as a Treaty then subsisting, and which shall continue to subsist. Before I read from the Reciprocity Treaty I desire your Excellency and your Honours to understand that in refuting these arguments, I do not do so because they can have had any substantial effect upon this Commission. They cannot possibly have any. Your Excellency and your Honours know too much of international law to believe any such proposition. But I am afraid that, if such propositions are allowed to run broadcast through their speeches, without being controverted, it may be imagined that we are unable to meet them, and therefore allow them to pass *sub silentio*. If the matter was being argued before a tribunal which had then and there to decide on it, and the Court were composed of lawyers, I would not ask to be heard, and would not insult the Court by arguments against so untenable a proposition. The observations I am now making are for the purpose of refuting opinions, not in the minds of your Excellency or your Honours, but in the minds of the public who have not the same intelligence or means of information as your Honours. The Reciprocity Act recites:—

"Her Majesty the Queen of Great Britain, being specially desirous, with the Government of the United States, to avoid further misunderstanding between their respective subjects and citizens, in regard to the extent of the right of fishing on the coasts of British North America, secured to each by Article I of a Convention between the United States and Great Britain, signed at London on the 20th day of October, 1818, and being also desirous to regulate the commerce and navigation between their respective territories and people, and more especially between Her Majesty's possessions in North America, and the United States, in such manner as to render the same reciprocally beneficial and satisfactory, have respectively, &c."

Your Honours will see that the Act commences by stating that both Governments are desirous of avoiding further misunderstandings between their respective subjects and citizens, with respect to the extent of the right of fishing given by that article; and after reciting the Convention of 1818, and the particular article in question, goes on to say that it was important that the right under the Convention should be settled. So far from showing any intention to repeal the Convention of 1818, the exact opposite was the fact. That is the preamble. Here is the enacting part:—

"It is agreed by the high contracting parties, that, *in addition to the liberty*, &c."

Does it say in this Treaty that it swept away the Treaty of 1818 and enacted a new Treaty in lieu thereof? So far from that being the case, it says:—

"* * * In addition to the liberty secured to the United States' fishermen by the above-mentioned Convention of October 20th, 1818, of taking, curing, and drying fish on certain coasts of the British North American Colonies therein defined, the inhabitants of the United States shall have, &c."

And yet it is seriously urged by one of the learned Counsel on behalf of the United States that the Treaty of 1854 abrogated the Convention of 1818. I think I have satisfactorily refuted Mr. Trescot's argument on this point, although that argument was not material to any question arising under the Washington Treaty. I now turn your attention to Twiss on "The Law of Nations." I am reading from the edition of 1859. At page 376 Sir Travers Twiss says:—

"Treaties properly so called, the engagements of which imply a state of amity between the contracting parties, cease to operate if war supervenes, unless there are express stipulations to the contrary. It is usual on the signature of a Treaty of Peace for nations to renew expressly their previous Treaties if they intend that any of them should become once more operative. Great Britain, in practice admits of no exception to the rule that all Treaties, as such, are put an end to by a subsequent war between the contracting parties. It was accordingly the practice of the European Powers before the French Revolution of 1789 on the conclusion of every war which supervened upon the Treaty of Utrecht to renew and confirm that Treaty under which the distribution of territory amongst the principal European States had been settled with a view of securing an European equilibrium."

This has a double bearing. Part of the argument which has been used by Mr. Trescot is, that we are remitted to the rights acquired by the Treaty of 1783. He conveniently passes over, for the purpose of his argument, the fact that a war occurred between the United States and Great Britain in 1812, which was followed by a Treaty of Peace signed 24th December, 1814, the Treaty of Ghent. There is no doubt, says Mr. Trescot, that in consequence of the repeal of the Convention of 1818 by the Reciprocity Treaty of 1854, the two nations are remitted back to the right each possessed under the Treaty of Paris of 1783: and that the Treaty of Ghent has nothing to do with this matter. I answer to that argument, that such is not the law of nations. By the law of nations, when war was declared in 1812 by the United States against Great Britain, every right she possessed under the Treaty of 1783 was abrogated, and, except so far as it was agreed by the parties that the *status quo ante bellum* should exist, it ceased to exist. The status, which is commonly called by writers *uti possidetis*, the position in which the Treaty found them, alone existed after the Treaty of 1814 was concluded. I have cited the express authority of Sir Travers Twiss upon the subject.

But we do not stop with British law. I will take American law on the subject, and we will see where my learned friends find themselves placed by American writers. I now cite from "Introduction to the Study of International Law, designed as an aid in teaching, and in historical studies, by Theodore D. Woolsey, President of Yale College." At page 83 President Woolsey uses this language:—

"At and after the Treaty of Ghent, which contained no provisions respecting the fisheries, it was contended by American negotiators, but without good reason, that the Article of Peace of 1783, relating to the fisheries was in its nature perpetual, and thus not annulled by the war of 1812. By a Convention of 1818 the privilege was again, and in perpetuity, opened to citizens of the United States. They might now fish as well as cure and dry fish, on the greater part of the coast of Newfoundland and Labrador, and on the Magdalen Islands, so long as the same should continue unsettled; while the United States on their part renounced for ever any liberty 'to take or cure fish, on, or within three marine miles of any of the coasts, bays, creeks, or harbours of His Britannic Majesty's Dominions in America, not included within the above-mentioned limits."

It is there positively declared by one of their own writers on international law in so many words—and he not only lays down the law generally, but takes up the specific case

with which we are now dealing—that the American contention is entirely incorrect. He says :—

"At and after the Treaty of Ghent, which contained no provisions respecting the fisheries, it was contended by American negotiators, *but without good reason*, that the Article of the Peace of 1783, relating to the fisheries, was in its nature perpetual, and thus not annulled by the war of 1812."

I think that statement is pretty conclusive. Now, here is the general law which President Woolsey lays down. At page 259 he says:—

"The effect of a Treaty on all grounds of complaint for which a war was undertaken, is to abandon them. Or, in other words, all peace implies amnesty or oblivion of past subjects of dispute, whether the same is expressly mentioned in the terms of the Treaty, or not. They cannot in good faith, be revived again, although *repetition* of the same acts may be a righteous ground of a new war. An abstract or general right, however, if passed over in a treaty, is not thereby waived.

"If nothing is said in the Treaty to alter the state in which the war actually leaves the parties, the rule of *uti possidetis* is tacitly accepted. Thus if a part of the national territory has passed into the hands of an enemy during a war, and lies under his control, at the peace or cessation of hostilities, it remains his, unless expressly ceded."

That is quite clear. If, at the end of this war, Washington had been in the possession of the British, and if nothing had been said about it in the Treaty, it would have become British territory; but with the exception of some unimportant islands in the Bay of Fundy, no territory fell into the hands of the British ; and those islands, I believe, were subsequently given up. If, however, the cities of Boston or New York had at that time been actually in possession of the British, unless there had been a clause introduced into the Treaty by which the territory was to return to the *status quo ante bellum*, it would have been governed by the *uti posseditis* rule, and would have remained British territory. I also refer your Honours to 3 Phillimore, pp. 457, 458, and 459, to the same effect. Now, I am not aware there is anything else in Mr. Trescot's speech which I need specially take up, because some of the other points occur in the arguments of Mr. Dana and Mr. Foster.

Mr. Trescot.—Perhaps you will allow me to say that you are replying to an opinion, and not to an argument.

Mr. Thomson.—Where an opinion is put forward by Counsel, he must either be Counsel of such eminence that his opinion did not require to be supported by authorities, or else authorities should be advanced at the time. I admit that Mr. Trescot possesses great ability; but I have undertaken to meet him by British and American authorities, and, as I have shown, he is completely refuted by both. I think it was Mr. Trescot's duty, when he put forward such an extraordinary doctrine, to have stated his authorities. If he did not choose to do so, I cannot help it; but if he now wishes to retract it as not being anything else than an opinion, well, of course, it makes the matter different.

Mr. Trescot.—No ; but I did not argue it.

Mr. Thomson.—It is put forward not as an opinion, but as a proposition on behalf of the United States ; there is no opinion about it; and when the United States speak through the mouth of Counsel, I am bound to treat the matter seriously. If this were a common case between man and man, I would not treat it seriously ; but when such a proposition is put forward on the part of a great nation, through Counsel, it cannot be treated lightly, but is entitled to be treated with respect ; and if there is nothing in it, I am bound to show that such is the case.

I pass from Mr. Trescot to Mr. Dana. I propose to take this course for this reason : while I admit the great ability of Mr. Trescot and Mr. Dana, still I think your Honours will agree with me that whatever the case of the United States has in it, is to be found in the speech of Mr. Foster. No doubt it is also to be found in the other speeches ; but I am taking Mr. Trescot's speech and Mr. Dana's speech out of their order because I only want to touch on those subjects contained in them which Mr. Foster did not put forward. Anything submitted by Mr. Foster, although it is put forward by Mr. Dana and Mr. Trescot, I will treat as it appears in Mr. Foster's speech, in order to avoid going over the ground twice. Besides, Mr. Foster, as Agent, put forward his case with great ability, and as he on this occasion is officially the Representative of the United States, I shall treat his argument as the most serious one of the three.

Mr. Dana stated that all these fisheries belonged to the United States as a right—it is very curious language—because, said he, they were won. He gave a very good description, only a little fanciful, of the whole of the contests for the last century, in respect to the fisheries. It was a very pretty essay, and I had much pleasure in listening to it. It was delivered, as one would expect anything emanating from him would be delivered,

very well indeed—the English was admirable, and the style not to be found fault with. But there was very considerable play of imagination, and in this respect the learned Counsel on the other side have a great advantage over me, for I am obliged to stick to hard facts. They have followed the practice of the free-swimming fish, and taken a little trip through history in a most graceful but free-and-easy manner. Mr. Dana sets out by stating that the fisheries belonged to the United States, and particularly to the State of Massachusetts, because, says he, they were won by the "bow and spear" of Massachusetts men. I never had the pleasure of visiting any of the museums of Boston or other cities of New England, where those bows and spears are, presumably, hung up, but if those bows of that olden time were anything like so long as the bow which American orators, statesmen, and lawyers sometimes now-a-days draw in defence of real or imaginary American rights, then I must confess that they must have been most formidable weapons. It is a very extraordinary view, certainly, to present, that because those people fought in some former time with some persons on the coast—Mr. Dana does not say whether they were French, or barbarians, or Indians—they at that time being British subjects, they thereby acquired the right to our fisheries.

But Mr. Foster went a step further. He stated—I suppose it was this which set off his colleagues—that we are indebted to the people of Massachusetts for now being in possession of Nova Scotia, and that it was entirely owing to their efforts that the British flag waves to-day on the Citadel, instead of that of France. Well, it was rather a bold assertion to make, certainly. I believe some of these Massachusetts men were fighting characters in those days. They fought with the people of England, and came out because they could not live in peace and quietude under British rule; they came out and found liberty of conscience for themselves, and terrified other people by burning witches and stripping Quakers, showing that, after all, the old British intolerance was pretty well uppermost. But they were fighting people always, and they came over, and no doubt fought with the French to some extent; and for the first time, I knew they went down to Le Pre, and committed the abominable outrage of turning out all the Acadians; I suppose they were commanded by General Winslow. Mr. Dana should have told Mr. Longfellow the story before he wrote "Evangeline," because, probably, the British might not have suffered so much in public opinion if it had been generally known that they were Massachusetts people who committed the outrage. I am glad to this extent that the people of Nova Scotia are relieved from the odium. A friend placed in my hands, after the statement had been made, a well-known history of England, containing a statement which shows the spirit in which the descent was made by the Massachusetts people upon the coast and upon the French. I find that about that time, after they had come here and fought, and—if I may accept Mr. Foster's view of history as true—delivered us out of the hands of the French, they sent a claim to England for their services. That claim was laid before the British Parliament, which, at the instance of George II, voted them the large sum, in those days, of 115,000*l.* for their services. So, besides being fighting men, they were cute enough to get paid for their trouble. Now, by the rule *qui facit per alium facit per se*, it was Great Britain herself that was fighting, and these were her hired troops. If the people of Massachusetts are going to set up a claim to the Province of Nova Scotia and all the fisheries on the score of their fighting, the money so paid to them should be given back, and 115,000*l.* with 125 years' interest will be a sum which we will condescend to receive for our fisheries and go and live somewhere else, as we must do when our fisheries are gone.

That is really the history of that transaction on which the Counsel of the United States so vaunt themselves. I do not say that the Massachusetts men did not fight well; no doubt they did. Mr. Foster says they were people who knew their rights, and, knowing, dared maintain them. The people of this Dominion also knew their rights, and will maintain them too. When I know that the present learned and able Chief Justice of Nova Scotia is sitting in this chamber, within sound of my voice, as I now speak—when I see the portraits of his eminent predecessors, and of Sir Fenwick Williams of Kars, and Sir John Inglis of Lucknow (both sons of Nova Scotia) looking down upon me from the walls, I know that our rights have been and are thoroughly understood, and can, if necessary, be bravely upheld and defended in the future as they have been in the past. But I presume the day will never again come when Great Britain will be forced to measure strength with the United States. It is perfectly idle to make use of such language in an inquiry such as this, and in making these remarks I do not wish to be understood as saying anything that can be considered at all offensive to my friends of the United States; I make them simply in answer to observations made, as I submit, most unnecessarily by them.

Mr. Dana's other propositions I will pass over as rapidly as I can consistently. He said we had no territorial waters—that no nation has. He stakes his reputation on that point.

Mr. Dana.—No; you misunderstood me.

Mr. Thomson.—On page 67 Mr. Dana says :—

"Now, these fishermen should not be excluded except from necessity, some kind of necessity, and I am willing to put at stake whatever little reputation I may have as a person acquainted with the jurisprudence of nations, (and the less reputation, the more important to me) to maintain this proposition, that the deep-sea fisherman, pursuing the free-swimming fish of the ocean with his net, or his leaded line, not touching shores or troubling the bottom of the sea, is no trespasser, though he approaches within three miles of a coast, by any established, recognized law of all nations."

Now, I say that the meaning of that proposition is this, that there are no such things as territorial waters. I say it means that and nothing else. That is a distinct affirmation, that by international law any fisherman can approach within not merely three miles of the coast, but within any distance from the coast, if he keeps his leaded line from touching the bottom, and the keel of his vessel from touching the land, and that no international law excludes him. Upon that extraordinary proposition I take direct and unqualified issue.

Mr. Dana.—What is the proposition to which you refer?

Mr. Thomson.—The proposition was that there are no such things as territorial waters.

Mr. Dana.—I made no such proposition. The question was this—was there among territorial rights the right to exclude fishermen from fishing?

Mr. Thomson.—I did say this, that Mr. Dana had put forward the proposition that no nation possessed territorial waters. But no doubt that was too broad, because there may be territorial waters so enclosed by land that I presume no question could arise in regard to them, therefore I stated his proposition too broadly. But Mr. Dana does not confine his statement to the one that no nation has absolute territorial rights over waters. He says that any foreign fisherman can come within any distance of the shores, and if he does not allow his leaded line or the keel of his vessel to touch the bottom, he has an undoubted right to fish.

Mr. Dana.—There is no established recognized law of all nations against it.

Mr. Thomson.—Mr. Dana says, "by any established, recognized law of all nations." I do not wish to have any fencing about words; I use words in their ordinary meaning. I presume Mr. Dana means civilized nations. I do not suppose he will contend that, if the civilized nations of Europe and America had recognized a doctrine totally different from that enunciated by him, but the King of Ashantee or Siam or some other potentate away off in the interior of the vast Continents of Asia and Africa had not acceded to that doctrine, it was not therefore the law of nations. I presume he refers to the civilized nations. I will now show the Commission that the proposition submitted by Mr. Dana has no foundation in international law. I say again, that I understand the expression to mean all *civilized* nations.

I undertake to prove the contrary of that proposition to be true, not only by international law writers in England, but also by the writers in the United States. Taking up the English writers, I call your attention to I. Phillimore, page 180, edition of 1854, at which he says :—

"Besides the rights of property and jurisdiction within the limit of cannon shot from the shore, there are certain portions of the sea which, though they exceed this verge, may, under special circumstances, be prescribed for."

The writer there assumed that in regard to the three mile line there was no doubt about it. Sir Robert Phillimore further wrote :—

"Maritime territorial rights extend, as a general rule over arms of the sea, bays, gulfs, estuaries, which are enclosed, but not entirely surrounded by land, belonging to one and the same state."

Not only does Sir Robert Phillimore lay down the law that round the coast of any maritime nation, to the extent of three miles, its territorial waters flow, but he goes further, and says that in the case of estuaries and bays, inclosed within headlands, such estuaries and bays belong to the State. That would have been an authority, had the headland question *per se*, come up for argument. I state it, however, for another purpose. That is an authority which at all events shows the views of one of the greatest writers on International Law upon the subject under discussion.

Mr. Dana.—Is there anything said about fisheries.

Mr. Thomson.—I have read the passage, and will hand you the book, if you desire it.

Mr. Dana.—The question is, whether among the rights is there one to exclude fishermen.

Mr. Thomson.—With great respect for Mr. Dana, I am meeting the proposition as I find it in his argument, not as he chooses to cut it down. It is thus stated:—

"That the deep-sea fisherman, pursuing the free-swimming fish of the ocean with his net or his leaded line, not touching shores or trawling the bottom of the sea, is no trespasser, though he approach within three miles of a coast, by any established, recognized law of all nations."

I think the *onus probandi* lies on Mr. Dana, and those who support such a proposition, of showing that there is a special exception to be made in favour of fishermen of all nations by which they can enter, without permission, the territorial waters of another nation—a foreign nation—and be no trespassers. I have shown that the waters are territorial; that is all I have to do. The moment I show that the waters are territorial, then for all purposes they are as much part of the State as are the lands owned by the State, with the exception that vessels prosecuting innocent voyages may sail over them without committing any trespass; they may pass to and fro to their respective ports, but foreigners can pursue no business within those waters any more than they can pursue business on land.

Mr. Dana.—Can nations inclose them?

Mr. Thomson.—In answer to that question, I say that nations cannot inclose them. Other nations have the right of way over them, and the right in case of tempest to enter the ports. Humanity dictates that. But no business can be pursued by the citizens of one nation within the territorial waters of another, whether that business be carried on by fishermen or by any other class of persons. That proposition is sustained by the authority I have read from Phillimore. I will show, however, that Sir Robert Phillimore does not stand alone, and that it is not the law of England only, but the law of the United States as well. I call your attention to Wheaton on International Law, page 320. This language is used:—

"The maritime territory of every state extends to the ports, harbours, bays, mouths of rivers, and adjacent parts of the sea inclosed by headlands, belonging to the same state. The general usage of nations superadds to this extent of territorial jurisdiction a distance of a marine league, or as far as a cannon shot will reach from the shore along all the coasts of the state. Within these limits its right of property and territorial jurisdiction are absolute, and exclude those of every other nation."

Mark the emphatic language of this great writer on International Law:—

"*Within these limits its rights of property and territorial jurisdiction are absolute.*"

He declares that no right to interfere with these limits in any way is possessed by other people or by other classes of people. If fishermen had the right to approach within these limits of territorial jurisdiction which extend to the distance of three marine miles from the coast, no English-speaking writer on International Law would use the term here employed, and say that every nation whose coasts are surrounded by these territorial waters has such an absolute right. Under such circumstances, the author would have used the term "qualified right;" and supposing that fishermen were the only class to be allowed within these waters, he would say at once that "these nations have this right against all the world, *except fishermen,* who undoubtedly have the right to fish within those waters if they do not touch the land with the lead of their fishing lines or with the keels of their vessels;" but no one has so written, and this very accurate author, who is quoted with approbation by English and Continental writers on International Law, states that—

"Within these limits its rights of property and territorial jurisdiction are absolute, and exclude those of every other nation."

This language, I repeat, is emphatic, and I am glad that it is the language of an American writer, because I presume that it will in consequence have greater weight with Mr. Dana.

Mr. Dana.—I would like to ask my learned friend whether he would himself be willing to adopt that language and say that these rights of property are absolute.

Mr. Thomson.—Yes; I have seen no decision which in any way qualifies that, unless it can be said that the case of the Queen *v.* Keyn (which is quoted against us in the American Brief, and reviewed at some length in the British Brief in reply) qualifies it. To that case it will become my duty to refer by-and-bye.

Mr. Wheaton further states that "the general usage of nations superadds to this extent of territorial jurisdiction a distance of a marine league, or as far as a cannon shot will reach from the shore along all the coasts of the State."

Now, I say that the propositions of International Law thus laid down by this very eminent American writer are entirely at variance with the doctrine laid down by Mr. Dana.

Mr. Dana has put to me a question which I am quite willing to answer. It is this:—Whether or no I would myself, if writing on the subject, use such language as that, and say that a nation has exclusive right of property within its territorial waters.

Mr. Dana.—Absolute right.

Mr. Thomson.—Yes, absolute right of property; with the single exception—which is, of course understood by all writers on the subject—that the ships of other nations have a right to pass through and by those waters for innocent purposes, and in cases of storm to enter harbours, or anchor in them for the purpose of shelter. I say that nations have such absolute right; and that there is no law of nations—no International Law, or any other law anywhere, by which fishermen or any other class have the privilege of coming within those waters and fishing without the permission of the nation to whom those territorial waters belong, and whose coasts they wash.

Let me now turn the attention of your Excellency and Honours to the case of the Queen *v.* Keyn, upon the authority of which Mr. Dana very much relies. In that case the prisoner was indicted for the crime of manslaughter, alleged to have been committed by him on board a foreign ship, of which he was the Captain, in the English Channel, and within three miles of the British shore. He was tried in the Central Criminal Court of London, and convicted. A novel point of law was raised by the prisoner's Counsel and reserved for the Judge. In order to understand the bearing of that point, I think it right to explain to the Commission that, in order to clothe English Courts of Assize with the common-law jurisdiction to try offenders, the offence must have been committed within the body of a county. Unless so committed, no grand jury could indict, and no petit jury try or convict a prisoner. Those large bodies of sea water within English headlands, called "King's Chambers," were considered to lie within the bodies of counties, as the case of the Queen *v.* Cunningham, cited in the "British Brief," shows. No formal decision had ever, so far as I am aware, determined that the territorial waters lying around the external coasts of England were within bodies of counties. Over offences committed upon the seas, and not within bodies of counties, the jurisdiction of the Lord High Admiral attached, and he or his deputies, sitting in Admiralty Court, tried and punished the offenders.

By a statue passed in the reign of William IV., the criminal jurisdiction of the Admiral was transferred to Judges of Assize, and to the Central Criminal Court. The substance of the objection raised by Captain Keyn's Counsel was this: The realm of England over which the Common-law jurisdiction extends, does not reach beyond the line of low water, and therefore the Court has no common-law right to try the prisoner. In regard to the Admiralty jurisdiction conferred upon it by the statute of William, that cannot affect the question, because the Admiral never had jurisdiction over *foreign vessels*, or over crimes committed on board of them. The Court of Appeal quashed the conviction, holding, by seven Judges against six, that the realm of England did not, at common-law, extend, on her external coasts, beyond the line of low water. *But the Judges who quashed the conviction all held that the Parliament of Great Britain had the undoubted right to confer upon the Courts of the Kingdom full authority to deal with all questions arising within her territorial waters around the external coasts.* Owing to the absence of such legislation Captain Keyn escaped punishment.

The Court of Appeal in this case was composed of thirteen Judges, and it is well to bear in mind that the authority of the judgment is greatly weakened by the fact that six were one way and seven the other.

Mr. Dana.—One of them died.

Mr. Thomson.—Judge Archibald died, I think; and after his death, the decision of the Court, letting the man go free and holding that the Central Criminal Court had no jurisdiction in the matter, was given by the casting vote of the Lord Chief Justice of England, Sir Alexander Cockburn.

I was surprised at Mr. Dana, who, whilst commenting on this case—I presume that he had not read it very recently—stated that the Common-law lawyers were greatly puzzled, and that the Civil-law lawyers alone—

Mr. Dana.—I said other lawyers—other than those who were strictly trained in the Common-law.

Mr. Thomson.—I think that I can give your exact language.

Mr. Dana.—You will find it on page 71 of our argument.

Mr. Thomson.—Mr. Dana said:—

"The *Franconia* case which attracted so much attention a short time ago did not raise this question, but it is of some importance for us to remember. There there was no question of headlands. It was a straight line coast, and the vessel was within three miles of the shore. But what was the ship doing? She was bearing her way down the English Channel against the sea and wind, and she made her stretches toward the English shore, coming as near as safety permitted, and then to the French

shore. She was in innocent use of both shores. She was not a trespasser, because she tacked within three miles of the British shore—'all this I conceded.' It was a necessity, so long as that channel was open to commerce. The question which arose was this. A crime having been committed on board of that ship while she was within three miles of the British coast, was it committed within the body of the county? Was it committed within the realm, so that an English sheriff could arrest the man, an English grand jury indict him, an English jury convict him, under English law, he being a foreigner on board a foreign vessel, bound from one foreign port to another, while perhaps the law of his own country was entirely different? Well, it was extraordinary to see how the common-law lawyers were put to their wit's end to make anything out of that statement. The thorough-bred common-law lawyers were the men who did not understand it, it was others, who sat upon the bench, who understood it better."

Now, I mean to say, that when my learned friend delivered himself after this manner, I think that he forgot who composed the Bench on this occasion. That Bench was wholly composed of Common-law lawyers, with the solitary exception of Sir Robert Phillimore. The only Civil-law Judge who then sat on the Bench, out of the whole thirteen, or whatever was the number, was Sir Robert Phillimore; and the judgment of the majority of the Court was determined by a casting judgment, which was delivered by the Lord Chief Justice against the jurisdiction of the Crown; and of course this is a decision of which I understand that Mr. Dana approves. So far, however, from the Common-law lawyers having had nothing to do with this finding, the fact is, that if it had not been for the Common-law lawyers no such decision would have been given at all.

Mr. Dana.—I do not include the Equity and Chancery lawyers among the others.

Mr. Thomson.—No Equity or Chancery lawyers sat on the Bench, not one; all the Judges who sat on that Bench were Common-law Judges, except Sir Robert Phillimore, who was a Judge of the High Court of Admiralty; and, as I have stated, the casting decision was given by Lord Chief Justice Cockburn, himself a great Common-law lawyer.

How was the Parliament of England to exercise or give jurisdiction over these waters, unless they were within the territorial jurisdiction of the nation, for neither the Parliament of England nor the Parliament of any other country can possibly make laws for the government of the high seas? The moment you get within the three mile line of coastal sea, you are within the jurisdiction of the country whose coast is washed by those waters. The Lord Chief Justice decided on a technical ground against the authority of the Crown, but further stated his conviction—and so also expressly held all the other Judges who agreed with him—that it was within the province and the power of the British Parliament to pass an Act by which its own jurisdiction and the jurisdiction of the Courts (over these territorial waters which washed the coast) could be established and maintained; therefore, so far from this judgment being against the doctrine that there are such territorial waters, it is the very best authority which could possibly be given for saying that such jurisdiction does exist. If it were not for the law of nations, the very moment that you got beyond the realm—that is to say, on the coast just below low-water mark, the nation would have no jurisdiction over you, and Parliament could not touch you at all, as you would then be on the high seas; but, by the law of nations, all civilized countries have this jurisdiction within the three mile line, and hence the Parliament or other legislative body existing within the country can pass laws governing this territory; and it was only the absence of these laws that induced the Lord Chief Justice and the other Judges to arrive at the decision to which they came. I therefore think, may it please your Excellency and your Honours, that I have refuted this proposition of Mr. Dana's, and refuted it by the authorities of his own country, as well as by British authorities.

Mr. Dana.—Which proposition do you mean—the one that I put, or the one which you put?

Mr. Thomson.—I refer to the one which you put, viz., that there is no exclusive jurisdiction enjoyed by any nation over its territorial waters.

There is now another thing to be mentioned. What is the practice of the United States herself? Why, the United States has never permitted any vessel of any foreign country to approach her coasts within the three mile limit to fish there. They have uniformly excluded such vessels; and not only have they uniformly excluded them from within the three mile limit, but further, they have also rigidly excluded them from the large bays, such as the Chesapeake and Delaware Bays, and bays of a similar description—not bays which are merely six miles in width at the mouth, but many miles beyond. The whole practice of the United States is entirely against Mr. Dana's theory; and what is the practice as recognized by this very Treaty, under which your Excellency and your Honours are now sitting—this Treaty of 1871? What do you find is here given by Great Britain to, and accepted by, the United States? It is the right to enter our territorial waters; and the United States gives to Great Britain, and Great Britain accepts from the United

States the right to enter her territorial waters; and she absolutely not only gives that right, which England accepts—and England admits her right, or otherwise she would not accept the grant—but the United States also go a step further, and say that, "although we give you the right to come on our coasts and fish in our waters within this privileged and territorial distance, yet we warn you that we only give you that right for the portion of our coasts lying to the northward of the 39th parallel of North latitude." Can anything be clearer than that. It is in the face of that declaration of the United States herself, that one of her Counsel, in arguing this case, advances this most extraordinary doctrine. If Mr. Dana be right about that matter, then the 39th parallel of North latitude is no barrier at all to our fishermen, and we have the right to go down and fish where we please along the whole length of the coast of the United States. But do you think that this would be tolerated for a moment? What would be said to us if we attempted it? Would it not be this? "You have admitted our rights, and we have admitted your rights, then how dare you come to the southward of that line?" What could be said to that? Why clearly nothing, save that we were infringing our agreement.

And then, although I do not know that this, in itself, would have very much strength as an argument, it might be mentioned that, in 1818, the Americans agreed, not on any account whatever to come within three miles of our coasts; but we never made any agreement not to come within three miles of their coasts. At all events, we are not hampered by any such agreement; and if this novel law be correct, as Mr. Dana lays it down, then, beyond a doubt, we have a right to fish on their coast anywhere we please. There can be no doubt about that at all. It belongs to the law of nations, says Mr. Dana, that, as long as our leaded line does not touch bottom, and our vessel's keel touches no sand beneath the water, we have the undoubted right to go there and fish; but I am very much afraid that the Americans would treat us to some of their torpedoes if we were to go down there, and explode us out of those waters in a very short time; and I think that we would, under such circumstances, have very scant sympathy from the civilized world. What does Mr. Dana, or the other Counsel in this case, mean by raising this question? A number of the observations made by Mr. Dana, in the course of his speech, I could understand would well become the hustings. I could well understand that, in a speech before a Legislative Assembly, having a jurisdiction over the matter, for the purpose of getting such Assembly to alter the law, he might advance such reasons and argument to show why the law should be altered; but are we not now met—the very point which has been forgotten by some of the Counsel—to determine the relative value of reciprocal privileges bestowed on each nation by the Treaty of 1871? Is not that Treaty the charter under which you sit? and does not that expressly admit that we have this three-mile limit? And have not the Americans accepted all our terms? They got permission, by that Treaty, to enter these limits; and you are here to assess the damages which they ought to pay to Great Britain for having that right extended to them. Why are these questions raised at all?

I must now refer to some language employed by Mr. Dana, which, I hope, he used unadvisedly. I am not going to say a harsh word at all; but, I confess, it struck me that a great deal of what he said was out of place; and I only refer to it for the reason, which I stated at the outset, that I cannot pass by these observations without notice, lest it should be said hereafter that they were put forth by a man of high reputation at the United States' Bar, and therefore advanced seriously on behalf of the United States, and that Great Britain stood here, represented by her Counsel, and never dissented from these views. Let me now say what they are. I will first take one expression, which he uses on page 69. He says:—

> "But there were great difficulties attending the exercise of this right of exclusion—very great difficulties. There always have been, there always will be, and I pray there always shall be such, until there be free fishing as well as free trade in fish."

Now, I hope that my learned friend, Mr. Dana, used that language unadvisedly. If Mr. Dana had been a member of a High Commission, appointed to settle new Treaties between two countries—two great and Christian countries, as Mr. Foster characterized Great Britain and the United States—this language might then be used, and he might then pray that the time would come when there should be no such exclusion: but, I think it is a very different thing when the law stands as it does, fixed, and as yet unaltered, and unalterable for the next seven or eight years, to employ this dangerous and incendiary language. I use the term incendiary, in this way: I fear that this language will come to the ears and be read by the eyes of a class of men, whom the evidence laid before your Excellency and your Honours, if it be not entirely untrue, shows are not always the most peaceable and law-abiding citizens to be found in this world. Those fishermen are sometimes rather lawless men; and if they find language such as this used by the lips of a learned and

eminent Counsel of the United States, they may say at once, "This is United States' doctrine, and they will back us up; and if we break through these laws, which we know perfectly well were passed for the purpose of preventing us having these rights, and passed for the purpose of preventing us entering these waters, the United States will back us up, for she has said so through her Counsel." I deprecate that language very much.

In this connection I will point out some other sentences, from which I entirely dissent for the same reason. I will take the following statement, which will be found on page 71 of the Argument:—

"There was, at the same time, a desire growing on both sides for reciprocity of trade, and it became apparent that there could be no peace between these countries until this attempt at exclusion by imaginary lines, always to be matters of dispute, was given up—until we came back to our ancient rights and positions. It was more expensive to Great Britain than to us. It made more disturbance in the relations between Great Britain and her provinces than it did between Great Britain and ourselves; but it put every man's life in peril; it put the results of every man's labour in peril, and for what? For the imaginary right to exclude a deep-sea fisherman from dropping his hook or his net into the water for the free swimming fish, that have no habitat, that are the property of nobody, but which are created to be caught by fishermen."

I again say that these views might possibly be properly advanced by High Commissioners appointed to settle new Treaties between nations; but, in respect to a definite Treaty which cannot be altered, and over which this Commission has no power whatever, this language ought never to have been uttered.

Again, on page 72, we find the following:—

"That, may it please the tribunal, is the nature of this three-mile exclusion, for the reliquishment of which Great Britain asks us to make pecuniary compensation. It is one of immense importance to her, a cause of constant trouble, and, as I shall show you—as has been shown you already by my predecessors—of very little pecuniary value to England, in sharing it with us, or to us in obtaining it, but a very dangerous instrument for two nations to play with."

Now, I cannot conceive why any danger should exist in connection with any solemn agreement made by two great nations which clearly understood their respective rights under that agreement. I am not now talking of the headland question at all. I am not discussing that, but there is an explicit agreement that these people shall not enter waters within three miles of the land, and how that became a "dangerous instrument," unless one or other of the parties to it intend to commit a breach of it, I cannot understand. Of course, Great Britain does not intend to commit any breach of it, because she gained no privilege under it; and, unless the United States' fishermen intend to violate it, and the United States intend to uphold them in committing this breach of international law, and this breach of faith, I cannot see where this "dangerous instrument" is.

Mr. Dana.—Does the learned Counsel refer to the present Treaty?

Mr. Thomson.—Oh, certainly not. As I stated at the outset, I cannot perceive why this language was used at all, because, under the Treaty by virtue of which you are now sitting, there is no question about this at all. The Treaty of 1818 has nothing to do with this inquiry except, indeed, showing how Americans were formerly excluded from the limits, and therefore, what privileges they have gained under the Treaty of Washington.

So, on the same page, 72, he says, after alluding to the abrogation of the Reciprocity Treaty:—

"We were remitted to the antiquated and most undesirable position of exclusion, but we remained in that positiou only five years, from 1866 until 1871, until a new Treaty could be made, and a little while longer, until it could be put into operation. What was the result of returning to the old system of exclusion? Why, at once the cutters and the ships of war that were watching these coasts spread their sails; they stole out of the harbours where they had been hidden, they banked their fires, they lay in wait for the American vessels, and they pursued them from headland to headland, and from bay to bay; sometimes a British officer on the quarter-deck—and then we were comparatively safe—but sometimes a new-fledged provincial, a temporary officer, and then we were anything but safe. And they seized us and took us, not into court, but they took us into harbour, and they stripped us, and the crew left the vessel, and the cargo was landed; and at their will and pleasure the case at last might come into court. Then, if we were dismissed, we had no costs, if there was probable cause, we could not sue, if we had not given a month's notice, and we were helpless."

I repeat that I deprecate these terms. Who brought the cutters down upon them after 1866? Did Great Britain do so? Did the Dominion of Canada do so? Most certainly not. The United States did so. Their eyes were open to the consequences of their act, and the United States, under these circumstances, of their own mere motion, abrogated the Treaty of 1854, by which common privileges were given to American and British fishermen. It was their own act by which that Treaty was abrogated, and as a consequence, they were remitted to the old system of exclusion. We did not do this.

According to Mr. Dana, during all this time, during the twelve years that this Treaty was in force, our cutters were lying in all our harbours, with their fires banked, and new-fledged officials, clothed in a little brief authority, strutting the quarter-deck, waiting to come out and make piratical excursions against American fishing-vessels.

Is that description borne out by the evidence? I appeal to your Excellency and your Honours whether that is language which ought to have been used on this occasion. I emphatically say that it is not. I say that it is calculated to excite a bad feeling amongst these fishermen, who are not too much disposed to be governed by the law any way, and to make them more lawless in the future than they have been in the past.

I will now read another statement to which I take exception. It is to be found on page 73. While speaking of the imposition of the licences, and of their prices being raised, &c., he said this :—

"Why, this was the result—I do not say it was the motive—that it left our fishermen unprotected, and brought out their cutters and cruizers, and that whole tribe of harpies that line the coast, like so many wreckmen, ready to seize upon any vessel and take it into port and divide the plunder. It left us a prey to them and unprotected."

Now, may it please your Excellency and your Honours, I would be less than a man, and be doing less than my duty, if I did not repudiate that language, and if I did not say there is not a tittle of evidence to warrant that language being used in this Court. This is not a matter to laugh at and joke about at all. These are serious statements which go forth to the public, and statements which, if they are uncontradicted, are calculated to prejudice not only the good relationships which subsist between the United States and Great Britain, but also those that exist between Great Britain and the Dominion of Canada herself. If it were true that her officers were a set of harpies, preying on the United States' fishermen and seizing their vessels, taking them into her harbours, and dividing the plunder, it would be time that England should interfere, but such is not the case. I appeal to every member of this Commission, to your Excellency and your Honours, whether there has been a tittle of evidence adduced warranting the use of language such as that. We have had no evidence at all upon this subject, except the testimony, I think, of a witness whose name I forget, and who gave evidence about a Mr. Derby, who commanded one of the Government vessels. He stated that Captain Derby came on board, and was going to seize the vessel, when the master said that he would go on board of the cutter, see Mr. Derby, and settle the matter up; and that the master, when he came back, said that he had settled it up with Mr. Derby for 25 barrels of mackerel. On cross-examination of this man, I discovered by his own admission that they had been in the harbour of Margaree that morning, or somewhere on the coast of Cape Breton, and had then taken more than 25 barrels of mackerel within the three-mile limit.

So that, if his statement were true, all that Captain Derby had done was, instead of putting the law into force and seizing that vessel, and confiscating her tackle and apparel and furniture, and all the cargo she had on board, he had let the man off by taking only 25 barrels, which had been caught within British limits.

Does that look like the act of a man who was a "harpy," or a "pirate," or who was disposed to "divide the plunder?" But I say, moreover, it is convenient to make these charges—I speak now of the witnesses, and not of Mr. Dana—it is convenient for a witness to make charges against a man who is dead. Captain Derby is now lying in his grave. The tongue that could come forward and show the falsehood and slander of that statement is silent for ever, and it is cheap work for this witness, with respect to a dead man, to say that such and such a thing was done, when he knows that the falseness of his statements cannot be proven. I pay very little respect to such testimony; and, with the exception of this, not a particle of evidence has been presented in the course of this long inquiry which would justify the making of this very serious charge by Mr. Dana. On behalf of Her Majesty's Government, I repudiate that language. I say that it is not called for in this case, and that there are no facts proven to warrant it.

Again, we have very strong language used in reference to Mr. Pattilo, and it has been said that if a portion of his blood had been shed, the seas would have probably been "incarnadined." But what is Pattilo's own statement? A curious subject was Mr. Pattilo to go to war about. What kind of a character he was when young, I know not; but some person told me that he had experienced religion before he came into this Court. I thought that if he had, the old man was not entirely crucified in him when he gave his evidence here. What did he tell you? That he was a Nova Scotian by birth, that he went to the United States, as he had a right to do, and that he took the oath of allegiance there, as he had a right to do. And when I put to him the question as to whether, when he had taken this oath of allegiance, he had not taken an oath of abjuration against Queen Victoria and

everything British, he admitted that he had. Now, in this there was nothing criminal. He had a perfect right to take the oath of allegiance there, and certainly nobody cared to have him remain in Nova Scotia. But what did he do? After becoming an American citizen, and a citizen more American than they are themselves, he takes his vessel into the Gulf, and systematically trespasses on our fisheries. It is not attempted to say that when it suited his convenience he did not go in and trespass on our fishing rights. He had no scruples, when it suited him to do so, about fishing inside the limits; and, so far did he carry this matter, that he absolutely sailed up into the territorial waters of Newfoundland, and got into the ice close up to the shore; and, when some officers came there, he armed his crew, and set them all at defiance. He said that he drove away the "whole calabash" of the officers. At all events, he kept them off, and stayed there the whole winter, cutting holes in the ice, fishing, taking herring up and walking off with them. This man did not appear to understand that there are national rights which he could infringe. Was a man like that, one to go to war about?

Take his own account of the circumstances, and of the shots fired at his vessel, and what was it? He was passing through the Gut of Canso, and having the advantage of those very lights which one of the Consuls of his adopted country, Mr. Norton, has stated in his despatches to be absolutely necessary to their fishermen, and for which they ought to pay. Now, for the use of these lights, which save vessels from being destroyed, which warn them of their danger when danger is near, he refused to pay the dues. He does not pretend to say that he did not know that the officer in question had a perfect right to collect these duties; but nevertheless, instead of paying, he asks, "Where are your papers?" The officer replies, "I have left my papers on shore." "Then," exclaims Pattilo, "be off out of here," and he gives a most graphic description of how he turned the officer into his boat. I should think that he was a nice subject to go to war about.

Mr. Foster.—This affair arose, not because he would not pay the light dues, but because he had the charity to bring home a woman.

Mr. Thomson.—No, it occurred on account of the refusal to pay light dues.

Mr. Foster.—There is no evidence to that effect.

Mr. Thomson.—I will turn to the evidence, and we will see. I think that your Excellency and your Honours will recollect that it was the light dues which the officer wanted to collect. If Pattilo stated that it was for bringing home and landing a lady, who wanted to be landed there, I should say at once that you would not believe it. To suppose that any officer of any English or Dominion cutter would undertake to fire shots after him because he landed a lady to whom he had charitably given passage to some place in the Gut of Canso, is simply too ridiculous a supposition to be tolerated for a moment. Well, I will not take up your time now with this subject, but if my learned friend will turn to the evidence, and point out that I am mistaken in saying that the trouble arose with reference to the light dues, I will admit my error.

Mr. Foster.—Will you read these two paragraphs?

Mr. Thomson.—In the course of my cross-examination of this witness, the following evidence was given:—

"Q. Were you lying close inshore?—A. I was at anchor and not fishing.

"Q. Lying close inshore?—A. Yes, right close in, under Margaree for shelter. He did not attempt to take me; if he had I would have given him a clout, but he took another vessel, the 'Harp,' Captain Andrews. I kept a watch all night, but they did not come alongside; if they had, we would have given them grape shot, I bet."

I thought that I could not be mistaken at all about it.

"Q. Had you grape shot on board?—A. We had a gun loaded with slugs or something of that sort.

"Q. In fact then you were never boarded by a Customs or seizing officer?—A. I was boarded by an officer who came for light money, at Little Canso, that same year.

"Q. Did you pay the light money?—A. No.

"Q. Why?—A. Because this man was not authorized to receive it.

"Q. What did you do?—A. I hove him into his boat, of course, and got rid of him.

"Q. You knew that the light money was due?—A. Certainly, and I was willing to pay it, had the right man come for it.

"Q. Did he represent himself to be a Custom-house officer?—A. Yes.

"Q. Did you ask him for his authority?—A. Yes.

"Q. And did he show it?—A. No.

"Q. And then you threw him overboard?—A. I told him he had to leave, and seeing he would not go, I seized him by the nape of the neck and his breeches and put him into his boat."

There is an express distinction made in his statements.

Mr. Foster.—You want to read only what you please of the whole story. Read on.

Mr. Thomson.—If Mr. Foster seriously thinks that I am wrong in saying that this man refused to pay the light money, I will do so. The officer distinctly came to collect the light money, and this man put the officer overboard, and into his boat. I will continue the quotation: "He was bound to take me, because I had landed a poor girl."

"Q. Was this girl contraband?—A. Yes, I supposed they called her so at any rate. I do not know that she is now in town, but she became lawyer Blanchard's wife afterwards. I merely took her on board as a passenger, and landed her. Afterwards I was fired at and chased by three cutters.

"Q. For putting this officer overboard?—A. No, I did not put him overboard, but I put him into his boat.

"Q. In lawyer's phrase, did you gently lay hands on him?—A. I put him in his boat in the shortest way. He stripped off and said it would take a man to handle him, but I made up my mind that he should not stop, though I did not want to fight, still I was quite able to take my own part. I talked with him and told him that I had merely landed a poor girl with her effects, a trunk and a band-box, &c., but this would not do him; when he came on board he asked: 'Who is master of this vessel?' Says I, 'I am for lack of a better.' Says he, 'I seize this vessel,' and with red chalk he put the King's broad R on the mainmast. He wanted the jib hauled down in order to have the boat taken on board. We had not come to an anchor, but I told him that he would have to wait a while. Finally he came down below and I took the papers out of a canister, and being a little excited of course, in hauling off the cover, a receipt for light dues, which I had paid that year, dropped on the forecastle floor. He picked it up and said he would give me a receipt on the back of it. Says I, 'Who are you?' He answered, 'I am Mr. Bigelow, the Light Collector.' 'Well,' says I, 'where are your documents?' Says he, 'I have left them ashore.' 'Then,' says I, 'go ashore, you vagabond, you have no business here." Says he, 'Won't you pay me?' 'Not a red cent,' says I; 'out with you.' He cried out, 'Put the helm down.' Says I, 'Put the helm up;' but he came pretty near shoving us ashore, as we were within 10 fathoms of the rocks. Says he, 'Who are you?' I said, 'I am Mr. Pattilo.' Says he, 'You vagabond, I know the Pattilos.' 'Well,' says I, 'then you must know me, for there are only two of us.' Says he, 'I will take you anyhow: I will have a cutter from Big Canso. There will be a man-of-war there; and if there is not a man-of-war, there will be a cutter, and if there is not a cutter, I will raise the militia, for I am bound to take you.' I asked him if he meant to do all that, and he said he was just the man to do it. I seized him to put him back into his boat, and he stripped off and told me that it took a man to handle him; with that I made a lunge at him, and jumped ten feet. If he had not avoided me, I would have taken his head off his body. I then seized him and chucked him into his boat. Then three cutters came down and chased me."

Now, there is the whole story. It is perfectly ridiculous to suppose that the officer when he went down to collect the money, went down to seize the vessel.

Mr. Foster.—The whole of that recital is something which you introduced in your cross-examination.

Mr. Thomson.—I certainly introduced it in my cross-examination. There can be no doubt about that at all. There were a good many disagreeable things which I introduced into my cross-examination of American witnesses; I was probably here for that purpose. It was hard to get at all that this gentleman had done; but I wanted to discover it, and there is the story as told by himself. Taking his story, according to his own account it is this: He and the officer went down into the cabin, and the officer supposed that he was going to pay the light dues. This man opened a canister, and a former receipt for light dues fell out. The officer was going to give him a receipt on this paper, when Pattilo asked, "Where is your authority?" followed with "Get out you vagabond," when he found that the officer had not his papers with him. In reference to Mr. Dana's uncalled-for remarks reflecting upon the officers of cruizers, which from time to time have been engaged in protecting our fisheries against the trespasses of American fishermen, I deem it my duty to make a few observations. To the instructions issued in April 1866 by Mr. Cardwell, Secretary of State for the Colonies, to the Lords of the Admiralty, I have already had the honour to call the attention of this Commission.

The spirit of forbearance and courtesy in which they were written speaks for itself. No unprejudiced mind can fail to appreciate it. The instructions issued by the Dominion Government for the guidance of its own cruizers are nearly similar in form, and wholly similar in spirit to those issued by the mother country. And here I would remark that the Imperial Government does not appear to have entertained for Dominion Commissions the same contemptuous opinion which, unfortunately for us, has taken possession of Mr. Dana's mind.

You will see that each of the Imperial officers is advised to obtain, if possible, Commissions from the Dominion Government.

Mr. Cardwell says, "Any officer who is permanently charged with the protection of the fisheries in the waters of any of these Colonies may find it useful to obtain such a Commission."

Now, you will see that, under these instructions, no power of immediate seizure was given, although such power to seize existed under the Convention of 1818, and under a

Statute of George III, passed to enforce that Convention; yet so liberal was the British Government that they absolutely required cruizers, before seizing any one of these vessels which might be found trespassing over the lines, to give a warning of two or three days, and sometimes of twenty-four hours, as the case might be. You can see at once what was the effect of giving these instructions: Every American vessel unless she persistently remained in these waters, and fished contrary to law, must of necessity escape. If they were found fishing in prohibited waters, they were warned off, and told not to offend again, but they could not be seized, of course, unless they committed an offence contrary to that warning; and yet these officers are represented as if they were a body of naval freebooters. If you judge of their character from the language of Mr. Dana, you would imagine that they were a lot of pirates, who remained in their harbours, with fires banked and steam up, ready to rush out on unoffending fishing vessels, to catch and bring them into port, and then to divide the plunder. This is the most extraordinary language that, I think, was ever used to characterize a respectable body of men, or that will ever again be used, in any Court, and especially in a High Court of Justice, such as this. The instructions state that:—

"American vessels found within these limits, should be warned, that by engaging, or preparing to engage in fishing, they will be liable to forfeiture, *and should receive the notice to depart, which is contemplated by the laws of Nova Scotia, New Brunswick, and Prince Edward Island,* if within the waters of one of those Colonies under circumstances of suspicion. But they should not be carried into port, except *after wilful and persevering neglect of the warnings which they may have received,* and in case it should become necessary to proceed to forfeiture, cases should, if possible, be selected for that extreme step in which the offence of fishing *has been committed within three miles of land.*"

Mr. Foster.—What year is that?

Mr. Thomson.—1866, April 12th. This was just after the expiration of the Reciprocity Treaty.

Mr. Foster.—Vessels were seized without warning.

Mr. Thomson.—Eventually this was the case, simply because it was found to be of no use to treat these fishermen in this lenient manner. It had no effect on them, if they could in any way possibly avoid the cutters. They took these concessions rather as a right than as a favour, and in every instance in which they were tried, took the advantage they conferred without showing any gratitude at all. They endeavoured, at all hazards, to force themselves into these bays; and then eventually to force themselves into the prescribed limits; and so it was at last found necessary by the Dominion Government to give up the warning system. It was found that to warn these vessels was simply to give them the right, the moment that they received warning, to sail out, and then the moment that the cutter turned her back, to sail in again; that is to say, they saved themselves from being caught by a cutter at all. They received several warnings, I think, and even if they had only one, they had the chance to escape, and the result was that nothing at all was done towards repressing the evil. These instructions, therefore, had to be altered, and made more stringent; but, nevertheless, it was still required that vessels should not be seized, except when caught *flagrante delicto*, and actually fishing, or preparing to fish, within the prescribed limit. In truth, to preserve these waters, as they ought to be preserved, the moment that a vessel has once entered the limit, and incurred forfeiture, no matter where she sails to afterwards, she should be liable to be seized, and ought to be seized, in my humble judgment, and condemned, unless it could be clearly shown that the captain, when he entered such limit, supposed that he was not committing any breach of the law, and believed that he was four or five miles offshore, when, in fact, he was within the three-mile limit. In such case, of course, no harshness should be extended towards him. I will show you, however, before I get through, that the American Government itself, having heard of these complaints—I dare say very much in the language which Mr. Dana has thought proper to use on this occasion—sent down Commodore Shubrick to make inquiries into this matter; and you will find that Commodore Shubrick found that these stories were utterly unfounded.

A despatch dated the 9th September, 1853, was as follows:—

"[No. 23.] 'PRINCETON,' AT PORTSMOUTH, N.H.,
"*September* 19, 1853.

"SIR,—My despatches from the 1st to the 14th, inclusive, have informed the Department of the movements of this ship up to the 16th of August.

"After leaving Halifax, I ran along the coast of Nova Scotia to the Strait of Canso, which I entered on the evening of the 17th, and anchored at Sand Point. On the next day I anchored successively at Pilot Cove and Ship Harbour. At each of these places diligent inquiry was made of the masters of American vessels, and, at the last, of our Consular Agent, in relation to the treatment of our fishing vessels by the armed vessels of other nations, and no instance was learned of any improper

interference. Some cases were reported of vessels having been warned off who were found fishing or loitering within three miles of the shores.

"It was thought advisable to make particular inquiry in this strait, as it is the passage through which great numbers of vessels pass, and where wood, water, and other supplies are obtained; and although there were not many Americans in it at the time of our visit, I was informed by the Consular Agent that in the course of the last year eleven thousand vessels, of all kinds, were counted passing through both ways, and some must have passed in the night who were not counted.

"From the Strait of Canso I went to Pictou. This port is the residence of the Consul of the United States for the north coast of Nova Scotia, to whom complaints of interference would naturally be made, if any should be experienced within the limits of his Consulate; but he had heard of none.

"From Pictou I crossed over to Charlottetown, Prince Edward Island, and inquired into the case of the schooner 'Starlight,' seized by Her Majesty's steamer 'Devastation,' the official papers in relation to which were forwarded with my despatch No. 15.

"The 'Fulton' having joined me at Pictou, accompanied me to Charlottetown, that some slight repairs might be made to her machinery, under the direction of Chief Engineer Shock. She was despatched on the evening of the 29th August, under instructions, copies of which accompany this.

"Leaving Charlottetown it was found necessary to anchor in the outer harbour of Georgetown, in order to make some repairs to the engine of the 'Princeton'—the necessity of which was not discovered until after we had left Charlottetown, but which, fortunately, could be done by our own engineers.

"On the 2nd September, at meridian, we anchored in Gaspe Bay, Lower Canada, having, in the course of the night and morning, passed through many hundreds of fishing vessels, showing generally American colours. These were all fishing outside the bays. The ship passed slowly through them, with her colours set, but it was deemed best not to interrupt them in their fishing by boarding or running so near as to hail. If any one of them had complaint to make, communication could be easily had with the ship, and the slightest intimation of such a wish would have been immediately attended to, but none was made.

"The 'Fulton' was at anchor in the inner harbour. A copy of Lieutenant Commanding Watson's report of his proceedings under my orders of the 29th ultimo is with this.

"Soon after I anchored at Gaspe, I was informed that the anchorage, which I had taken by advice of my pilot, was unsafe, if it should blow a gale from the east—of frequent occurrence at this season. No pilot could be found to take so large a ship into the inner harbour, and, as night was approaching, I got under way and put to sea with both vessels. It had now become necessary to replenish our coal, and I determined to go to Sydney, in Cape Breton Island, for that purpose.

"I arrived at Sydney on the 4th, the 'Fulton,' in company, and, after taking on board a supply of coal for each vessel, put to sea again on the morning of the 9th.

"After a passage protracted by strong head winds, and a part of the time by thick weather, we anchored at St. John, New Brunswick, on the afternoon of the 13th.

"A large number of persons, estimated at fifty thousand, were congregated at this place to witness the ceremony of breaking ground for the European and North American Railway. The occasion had brought the Lieutenant-Governor of the Province, Sir Edmund Head, to St. John. We received from the Lieutenant-Governor, and the authorities of the city, the most cordial welcome, and every hospitality was extended to us nationally and individually.

"The absence from St. John of the Consul for the United States prevented my getting any official information on the subject of the fisheries; but from no source could I learn that there had been any occurrence of an unpleasant nature; and by all persons, official and private, here as in the other provinces, a most anxious desire was expressed that the rights and privileges of the citizens of the United States, and of the inhabitants of the provinces, in relation to the fisheries, might be so distinctly defined, and so authoritatively announced, that there should be no room for misunderstanding, and no possible cause for irritation on either side.

"I left St. John on the morning of the 17th instant, the 'Fulton' in company, and anchored outside of this harbour on the evening of the 18th, in a dense fog. This morning we have succeeded in getting to a good anchorage off Fort Constitution.

"It is with great diffidence that, from the experience of so short a cruize, prosecuted, as is known to the Department, under circumstances of unusual embarrassment, I offer a few suggestions as to the description of force most suitable for the protection of the fisheries, and as to the time most proper for its operations.

"Some of the most valuable fisheries, such as those in Miramichi Bay, Chaleur Bay, and north as far as Gaspe, are carried on in small vessels and open boats, and close inshore. If, therefore, the privilege to fish in those bays is to be maintained by us, the vessels for that service should be small steamers of light draught of water. The shores of Prince Edward Island abound with fish of all kinds. The mackerel strike in early in the season, and can only be taken close in-shore.

"The fishing season around Magdalen Islands through the Strait of Belleisle, down on the coast of Labrador, commences early in Jnne. The herring fishing commences in George's Bay, Newfoundland, as early as April, and continues about a month. After that, the fishing on that coast is only for mackerel and cod; and it is to be remarked, that where mackerel is found, cod is also abundant. These fisheries are carried on in vessels of larger size, but still of easy draught of water; and the vessels intended for their protection should also be of easy draught.

"The coasts of Nova Scotia, New Brunswick, the south side of Prince Edward Island, Cape Breton, Newfoundland, and Labrador, abound in good harbours, some of them capable of receiving and accommodating large navies; but there are numerous harbours to which the fishing vessels principally resort, which will not admit vessels of heavy draught; and where the protected go, the protector should be able to follow. The narrow passages, the strong and irregular currents, and the frequent

fogs and thick weather with which the navigator has here to contend, point emphatically to steamers as the best force for this service.

"One steamer of suitable size for the commanding officer, and two or three of smaller size and easy draught, having speed and power, with light armaments, would be sufficient for all the purposes of this station. Coal, at a low price, and of suitable quality, could be contracted for at Sydney or at Pictou, both within the limits of their station; and the commanding officer, having his headquarters at Portland or at Eastport, might control their movements, and make occasional visits to the different fishing-grounds himself.

"The establishment of such a squadron would, I know, give great satisfaction to the citizens of the United States all along the coast from Boston to Eastport; of this we had unequivocal evidence in our reception at every port where we touched. It would afford also an opportunity for the introduction into the Navy of numbers of the hardy sons of New England, who, from rarely seeing a vessel of war, have imbibed unfavourable impressions of the public service. An infusion into the lower ratings of persons drawn from such a population would elevate the character of the service, and enable it to maintain a discipline founded on good sense, moral rectitude, and patriotism.

"The smaller vessels should be—one on the coast of Labrador, about Newfoundland; one about the Magdalen Islands, Cape Breton, and the Strait of Canso; and the other from Pictou, Prince Edward Island, and up as far as Gaspe, Lower Canada—all to leave the United States by the first of June, and return by the last of September.

"It would not be advisable for any of the vessels to remain in the Gulf of St. Lawrence after the 15th September; the gales by that time become frequent and severe; sharp frosts commence, and the tops of the Gaspe mountains are generally covered with snow by the first of October. The north side of the Bay Chaleur has been known, I am informed, to be frozen to some extent by the middle of September.

"I should do injustice to the excellent officer in command of the 'Princeton,' Commander Henry Eagle, if I failed to make known to the Department the able and cheerful assistance in the execution of my duties that I have received at all times from him, and from the accomplished officers under his command.

"The 'Fulton,' Lieutenant Commanding Watson, has been most actively employed, a great part of the time under my own eye. She has been managed with great judgment; and I am under obligations to her commander and officers for the alacrity with which my orders have always been carried out.

"The 'Cyane,' and the 'Decatur,' though cruizing under my instructions, have not been with me. The reports of Commanders Hollins and Whittle are doubless before the Department; and from my knowledge of those officers, I feel that they will be perfectly satisfactory.

"Since writing the above, the report of Commander Hollins has been received, and is herewith inclosed.

"I have the honour to be, sir, your obedient servant,

"W. B. SHUBRICK,

"*Commanding Eastern Squadron.*

"Hon. J. C. DOBBIN, *Secretary of the Navy.*"

There is not one word in the whole of this Report which shows that anything had taken place for which there was cause for any complaint whatever; and Lieutenant Commanding Watson, of the United States' Navy, wrote the following despatch, addressed to Commodore Shubrick:—

"U.S. STEAMER 'FULTON,'

"*Gaspe, Lower Canada, September* 2, 1853.

"SIR,—In accordance with your instructions of the 29th ultimo, I have the honour to report that I received on board at Charlottetown, Prince Edward Island, Major-General Gore, Commander-in-chief of Her Britannic Majesty's forces in Nova Scotia, and staff, hoisted the English flag at the fore, and proceeded to Pictou, where I landed them. General Gore expressed himself much gratified at your having placed the 'Fulton' at his disposal.

"After parting from you off the Island of Pictou, I proceeded, according to your directions, along the north side of the island, in Miramichi Bay, Chaleur Bay, and to Gaspe, where I was in hopes of meeting you. It was my intention to have gone further up the Bay of Chaleur; but a heavy sea induced me to run for Gaspe. While there, Her Britannic Majesty's steam sloop-of-war 'Argus,' Captain Purvis, came in. Captain Purvis immediately came on board, and an interchange of civilities took place on the most friendly and courteous terms. Captain Purvis states that he has not had the least difficulty with our fishermen, with one exception, and that so slight as not to be taken notice of.

"On my way to this place I passed between five and six hundred fishermen; and in my conversation with those I spoke to there appears to be the greatest harmony existing between them and the inhabitants.

"On coming to anchor here, I waited on the Collector and authorities of the port; and their statements tend to confirm my previous reports, that so far from any dissatisfaction being felt at our fishermen, they are welcome on the coast, and nothing has yet transpired to alter my previously expressed opinion.

"Very respectfully, I remain, your obedient servant,

"J. M. WATSON,

"*Lieutenant Commanding, United States' Navy.*

"Com. WILLIAM B. SHUBRICK,

"*Commanding Eastern Squadron.*"

Now, these are American official documents, which certify as to the treatment that the American fishermen had received at the hands of the cruizers up to that time. In order to show further what this treatment was, I will mention the case of the "Charles," which was seized by the Captain Arabin, of the "Argus," at Shelburne on the 9th May, 1823. Although this happened a long time ago, I cite it to show how the British Government treated these matters then and ever afterwards. The "Charles" was actually seized in the very act of fishing; and there could be no doubt about the right to condemn her. But the midshipman who was put in charge of her, while in the course of his passage from Shelburne to St. John, according to the instructions of Captain Arabin, stopped some other vessels which were fishing, and, I think, brought one or two of them into St. John. The "Charles" was then put in the Admiralty Court and condemned; but when the British Government learned what had been done, inasmuch as Captain Arabin had exceeded his instructions by using the vessel as a cruizer while *en route* from Shelburne to St. John, before her condemnation, not only gave her up, but also paid the costs of the prosecution, and the other two vessels which had been so taken—whether they were liable to condemnation or not I do not know—were also given up. This was the treatment which American fishermen received at the hands of the British Government.

Again, at Grand Manan, two vessels were taken by cruizers in 1851 or 1852—I think they were called the "Reindeer" and "Ruby"—or before that, because the account of this affair is found in the Sessional Papers of 1851 and 1852. They were actually taken in one of the inner harbours of Grand Manan; a prize crew was put on board, and they were sent to St. Andrew's; but on their way up, as these two schooners passed Eastport, as they necessarily had to do, an armed force came out from Eastport, headed by a Captain of Militia, overpowered the crew, and took possession of them. Correspondence ensued on this subject—to which I call your attention—between the British Ambassador and the American Secretary of State, in which it was pointed out by the former that this outrage had been committed on the British flag; but through the whole of this correspondence, I cannot find any apology was ever made, or that the British Ambassador's remonstrances on that subject were even answered.

I only see, in looking over the correspondence—also as given in the American Sessional Papers—that a demand by the British Government for reparation was made; they did not demand the punishment of these men, or even the restoration of the vessel; but simply demanded some acknowledgment for the outrage which had been committed on the British flag; and yet that was never made.

This conduct, I think, may be contrasted pretty fairly with the treatment which the Americans received at the hands of Great Britain, when Great Britain could have enforced the laws against them. The official list of the vessels that were seized was put in evidence, I think. I now call your attention to it; you will find, in looking over it, that in every instance where condemnation took place, there was no doubt that a breach of the law by American fishermen had been committed. There is one matter in this connection to which I desire to call your attention; it is to be found in the official correspondence, No. 17, and it throws some little light, I think, upon the extraordinary charges which Mr. Dana, I consider, has somewhat too hastily made. It is No. 17 of the official correspondence put in; it is a return of American vessels detained and prosecuted in the Registered Court of Vice-Admiralty at Charlottetown :—

Registry of the Court of Vice-Admiralty,
Charlottetown, October 6, 1852.

A RETURN of American vessels detained and prosecuted in this Court for a violation of the Convention made between the Government of Great Britain and the United States of America, in the year A.D. 1818, and prosecuted in this Court.

Name of Vessel.	Date of Seizure.	Date of Condemnation.	Remarks.
Schooner "Florida," of Gloucester, United States of America	3rd August, 1852 ..	7th September, 1852	Detained by Her Majesty's schooner "Telegraph," Hon. H. Weyland Chetwynd, Commander, on the northern coast of Prince Edward Island
Schooner "Union," of Brooklyn, United States of America	20th July, 1852 ..	24th September, 1852	
Schooner "Caroline Knight," of Newburyport, United States of America	11th September, 1852.	*Not yet adjudicated ..	Detained by Her Majesty's steam-sloop "Devastation," Colin Yorke Campbell, Commander, on the northern coast of Prince Edward Island

* Subsequently condemned.

WILLIAM SWABEY, *Registrar.*

"In addition to this return, the schooner 'Golden Rule,' of Gloucester, United States, was detained by the 'Telegraph,' Lieutenant Chetwynd, and brought into Charlottetown. Before she was delivered over to the proper authorities, in terms of the Imperial Statute, Vice-Admiral Sir George Seymour arrived in Her Majesty's steam sloop 'Basilisk,' to whom the Master of the 'Golden Rule' appealed, stating he was part owner of the schooner, and would be ruined if she was condemned. The Admiral, on the 23rd August, left authority with the Lieutenant-Governor to direct Lieutenant Chetwynd to liberate the schooner, provided the Captain acknowledged the violation of the Convention, and that his liberation was an act of clemency on the part of the Commander-in-Chief. Bartlett, the captain of the 'Golden Rule,' left such an acknowledgment in writing, which was forwarded to Sir George Seymour, along with an addition on a question from the Lieutenant-Governor, that he had stood inshore to fish, mistaking the 'Telegraph' tender for one of his countrymen's schooners.

"A. BANNERMAN, *Lieutenant-Governor.*

"*Prince Edward Island, October* 11, 1852."

Here is the case of a man caught in the very act, but who made his appeal *ad misericordiam*, and was permitted to have his schooner back again simply because he said he would otherwise have been ruined. This is the treatment which American vessels have received at the hands of British officers. The treatment which British officers received in return is to be found recorded in the speech of Mr. Dana.

I will now pass to the next point. Mr. Dana, on page 74, says:—

"We were told that we were poisoning their fish by throwing gurry overboard, and for all that there were to be damages. Now, these inflammatory harangues, made by politicians, or published in the Dominion newspapers, or circulated by those persons who went about through the Dominion obtaining affidavits of witnesses, produced their effect, and the effect was a multitude of witnesses who swore to those things, who evidently came here to swear to them, and took more interest in them, and were better informed upon them, than upon any of the important questions which were to be determined. When we came to evidence to be relied upon, the evidence of men who keep books, whose interest it was to keep books, and who keep the best possible books—men who have statistics to make up upon authority and responsibility, men whose capital and interest and everything were invested in the trade, then we brought forward witnesses to whom all persons looking for light upon this question would be likely to resort."

A marked distinction is drawn, you will perceive, by Mr. Dana there, with regard to the witnesses called on behalf of Her Majesty's Government, as to credibility, and those heard on behalf of the United States. He refers to our witnesses in slighting terms, and says that they were brought here under the influence of inflammatory harangues, and articles published in Dominion newspapers, which Mr. Dana may have read, but which I never had the good or bad fortune to see. He states that they were brought here under that influence, and thus did swear to things which they appeared to know a great deal about. Now, I think that I can contrast the testimony given on the part of Her Majesty's Government with that given on the part of the United States, without fear of any damaging conclusion being drawn against our witnesses. And I put it to your Excellency and your Honours, whether during the long period that we have sat here, and witnesses on both sides have been called—a period extending over twelve weeks, at least—one single witness called on the part of the British Government broke down under cross-examination; and I ask whether it can be with truth said that this was the result of the cross-examination of the American witnesses.

I consider that in many respects a number of the American witnesses appeared to great disadvantage; and I am surprised not only at Mr. Dana's remarks in this respect, but I am also surprised at his following up his remarks on this point by saying:—

"When we came to evidence *to be relied upon—the evidence of men who keep books, &c.*"

Why, if ever there was a break-down of a witness in this world, it was the break-down of Mr. Low made under the cross-examination of my learned and clever friend and colleague from Prince Edward Island, Mr. Davies. That man came forward to represent the fishing-vessel owners of Gloucester, and the fish-dealers of Gloucester; and he brought forward their books—or at least such books as they were pleased to show, and not the books we required to have, but their trip-books; and he put in statistics—to which I will have the honour hereafter to call the attention of your Excellency and your Honours—for the purpose of showing very small catches made in the Bay, and very large catches off on the American shore; and also for the purpose of showing that the catches in the Bay resulted almost in the ruin of those who sent vessels there, while they made large sums of money out of their catches taken on the American shore; but when under cross-examination by Mr. Davies, what was the result? It was this: that those figures which were intended to establish, and which were brought forward here for the purpose of showing that state of facts, showed conclusively and proved directly the opposite.

Mr. Low, under Mr. Davies' cross-examination, entirely broke down, and was compelled to admit that his figures proved the exact reverse of that which he had previously said and undertaken to prove; and the exact reverse of the pretended state of facts which his clients or his principals sent him here to prove. I am not mis-stating this matter at all. I will show you when these statistics come to be considered, and from the figures themselves, and from the very admission of Mr. Low himself, that this was the result. If there ever was a man who was utterly destroyed on cross-examination, it was Mr. David Low, the great statistician from Gloucester, who came up here intending to defeat us by cooked statistics and manipulated figures.

My learned friend, Mr. Trescot, in the course of his observations, made a very humorous allusion to a time during the Revolution, when a schooner came down to Prince Edward Island, captured the Governor and Council, and took them off and presented them to General Washington, who looked at them as curiosities, and then, as Mr. Trescot says, "Treated them as young codfish are treated, threw them back into the water and told them to swim home again." Well, time brings its revenges, and the Premier of Prince Edward Island, I think, revenged that insult to his island and his Government, for the great Low from Gloucester came down here, prepared to destroy, and bent upon destroying, Her Majesty's case; but when he fell into the hands of my learned friend, Mr. Davies, he captured Mr. Low, turned him inside out, and utterly destroyed his testimony; and taking him to the water—if I may use Mr. Trescot's figure of speech, said, "Now, Mr. Low, I drop you down, and you had better swim back to Gloucester;" and he swam back to Gloucester as fast as he possibly could. But I will show that after he got there, he endeavoured to retrieve his fallen reputation by sending here affidavits, which were probably thought to be beneficial to the American case, but which, I will have the honour to show, conclusively prove a precisely opposite state of facts to that set forth in the affidavits which were filed by the American Government in the earlier part of the case. If that be supporting the American case in any respect, I am quite ready to give my learned friends on the opposite side all the advantage that can accrue to them from this last set of affidavits.

Tuesday, November 20, 1877.

The Conference met.

The closing argument delivered on behalf of Her Majesty's Government, was resumed by Mr. Thomson as follows:—

When I left off last evening, may your Excellency and your Honours please, I had not the book in which the decision of the Queen *v.* Keyn is reported. I have that book now, and, as I supposed, I find that my learned friend, Mr. Dana, was in error in intimating that the Common Law lawyers in that case were entirely afloat. I thought, from my recollection of the case, that the Judges who decided it were all Common Law lawyers, as I said yesterday, except Sir Robert Phillimore, a Judge of the High Court of Admiralty. I hold in my hand a report of the case, and I find that my recollection of it was accurate.

Mr. Dana, also, in his remarks, referred to the decision of the Judicial Committee of the Privy Council, given in the case of the Direct United States' Cable Company *v.* the Anglo-American Telegraph Company. It is reported in Law Reports, Second Appeal Cases, 394. It was an appeal from the Supreme Court of Newfoundland to the highest Appellate Court in the realm on matters either connected with the Admiralty jurisdiction of England, or with Colonial matters. This Court is composed of the Lord Chancellor for the time being, and of all ex-Chancellors, and there may be a number of them—and of several paid Judges, and quite a number of other eminent men besides—all or nearly all of them great lawyers. The judgment in this case was delivered by one of the ablest men on the English Bench. I mean Lord Blackburn, who was transferred from the Common Law Bench to the House of Lords, under a new Act which authorizes Peers to be created for life.

Mr. Dana appeared to think that Lord Blackburn, in delivering this judgment, merely spoke for himself; but this was not simply his own judgment, it was also the judgment of the other Judges who were associated with him. He simply pronounced it, that is all; and he undoubtedly wrote it, but all the Judges agreed with him. He said—I cite from page 421:—

"There was a Convention made in 1818 between the United States and Great Britain relating to the fisheries of Labrador, Newfoundland, and His Majesty's possessions in North America, by which it was agreed that the fishermen of the United States should have the right to fish on part of the coasts (not including the part of the Island of Newfoundland on which Conception Bay lies)."

I may mention here that the simple question at issue was whether Conception Bay was a British bay, and I think that it is twenty or thirty miles wide at the mouth.

"And should not enter any 'bays' in any part of the coast except for the purpose of shelter and repairing and purchasing wood and obtaining water, and for no other purposes whatever. It seems impossible to doubt that this Convention applied to all bays, whether large or small, on that coast, and consequently to Conception Bay. It is true that the Convention would only bind the two nations who were parties to it, and consequently that, though a strong assertion of ownership on the part of Great Britain, acquiesced in by so powerful a state as the United States, the Convention, though weighty, is not decisive. But the Act already referred to, 59 Geo. III, cap. 38, though passed chiefly for the purpose of giving effect to the Convention of 1818, goes further. It enacts not merely that subjects of the United States shall observe the restrictions agreed on by the Convention, but that persons not being natural-born subjects of the King of Great Britain, shall observe them under penalties."

Now, I think in regard to this case that if my learned friend had really taken time to read and consider this decision he would have seen that it goes further than he supposes.

Mr. Dana.—I did read it.

Mr. Thomson.—Then you are labouring under a misconception in reference to its scope.

Before I pass to Judge Foster's argument—and in point of fact this is part of his argument—I want to call your attention to a complaint that was made—it struck me, very unnecessarily—by the Counsel of the United States with reference to a law of 1836, contained in the Statute Book of Nova Scotia, which law shifts the burden of proof from the Crown to the claimant of any vessel seized. At first sight it appeared to be unfair, but I believe that the revenue laws of every country—certainly the revenue laws of England from time immemorial—have contained that clause, and I think that the same is true of the revenue laws of the United States, as I will have the honour of pointing out hereafter. These laws in effect enact simply this: that with regard to any seizure made by a public officer in his public capacity, the burden of proof must lie on the claimant, and you must recollect that this provision applies not only to the seizure of a vessel, but also to the seizure of any goods liable to forfeiture and condemnation. The law enacts that when the claimant comes into Court, he shall be compelled to prove that all that may have been done has been done legally. Well, that is fair enough, is it not? for within his cognizance lie all the facts of the case. He knows whether everything has been fairly done, and whether he has honestly paid the duties; and he knows—if we take, for instance, the case of a vessel which has entered the limits here—very well for what purpose she entered, and he can prove it. He knows that under this Convention fishing vessels can enter for certain purposes British waters; that is to say, for the purpose of getting wood and water, for the purpose of repairs, for shelter in case of stress of weather, and for no other purpose whatever. He knows that, and he can show therefore that although his vessel was seized within the limits, he was really in there for no other purposes than those prescribed by the Convention of 1818. Thus there was no great injustice put upon him. Besides this all public officers, while acting in the discharge of their duties, are supposed to have no private interests involved, and it would be very hard to subject them to the annoyance of actions, if even *primâ facie* grounds are shown for acting as they did; the law, therefore, declares that no action shall lie under such circumstances, and even if it turns out that the seizure was strictly speaking illegal, nevertheless, if the Judge certifies that there was reasonable and probable cause for the seizure being made, the plaintiff shall not recover costs. There is nothing unfair in that, is there?

Mr. Dana.—It is also prohibited to sue.

Mr. Thomson.—Well, they may be virtually prohibited from suing at all, but I do not think that the Act says so. I am, however, quite willing to admit that this clause is just as bad as a clause prohibiting from suing at all, because as the party cannot recover damages or costs on such certificate being given, it practically prevents him from suing at all. I am quite satisfied, however, that he could not get the question before a Court, unless he had the right to sue.

Mr. Dana.—I believe that you are right about that. This is decided by the Court of First Instance. The Court tries the question of seizure and gives the certificate.

Mr. Thomson.—That is it, and it certainly practically prevents suing at all; otherwise a person acting in the discharge of his duty would not be for a moment safe from

annoyance. The moment the Judge grants a certificate stating that there was reasonable and probable cause for the seizure, no suit can be further maintained.

Mr. Foster.—Where there is probable cause for seizure, he cannot bring any action to recover any costs, nor any damages. What I would like to call your attention to is this: I think that you will be unable to find any Statute of Great Britain or of the United States where this seizure by an executive officer is made *primâ facie* evidence of the liability to forfeiture.

Mr. Thomson.—Well, we will see about that before I get through.

Mr. Dana.—The owner is not a party to that suite in which such certificate is given.

Mr. Thomson.—It is a proceeding *in rem* and the owner is clearly a party to it. I may explain to your Excellency and Honours who are not lawyers, that the proceeding *in rem* is one directly against *the property* and not against the person of the owner. He gets formal notice of the libel filed by the serving officer, and has the right to appear and defend. If he does not, his property will probably be condemned. I say, therefore, that it is idle to assert that he is no party to the suit Should he elect to bring a suit against the seizing officer he is, of course, the party plaintiff.

Mr. Dana and Mr. Foster have both pointed to the bond for costs required to be given by a claimant of property seized, and characterizes the law requiring it to be given as oppressive and unjust. Let us see why this bond is required.

The proceeding *in rem*, as I have already stated, is not against the owner of the goods *personally*, but against his *property*. If he chooses to contest the legality of the seizure by resisting a condemnation, he ought to be made liable for costs in case of failure. But he cannot be made so liable unless he gives his bond to that effect. Where is the oppression or the injustice of this rule? Without it the Government would be forced to contest at its own expense every seiznre made by its officers.

I am surprised at this objection to our law being raised by legal men, and your Excellency and your Honours will no doubt be surprised when I assure you that the law of the United States on this subject is similar to our own, as I shall proceed to show, to the entire satisfaction, or dissatisfaction, of my learned friends on the other side.

I will now read from the Revised Statutes of the United States at page 171, section 909:—

"In suits of information brought where any seizure is made pursuant to any Act providing for or regulating the collection of duties on imports or tonnage, if the property is claimed by any person, the burden of proof shall lie upon such claimant."

Here is the United States' Statute; and I am surprised, I must confess, at United States' lawyers making any charge against British legislation when their legislation on the same subject is in no wise different. The clause thus concludes:—

"Provided that probable cause is shown for such prosecution, to be judged of by the Court."

There is no difference whatever between our law and theirs on this subject.

Then again on page 182 of the same volume, section 970, it says this:—

"When in any prosecution commenced on account of the seizure of any vessel, goods, wares, or merchandize, made by any collector or other officer under any Act of Congress authorizing such seizure, judgment is rendered for the claimant, but if it appears to the Court that there was reasonable cause of seizure the Court shall cause a proper certificate thereof to be entered, and the claimant shall not in such case be entitled to costs, nor shall the person who made the seizure, nor the prosecutor, be liable to suit or judgment on account of such suit or prosecution; provided, that the vessel, goods, wares, or merchandize be, after judgment, forthwith returned to such claimant or his agent."

This clearly proves what is done in case the seizing officer is in the wrong, and when consequently the property seized has to be restored, and if that enactment is not on all fours with ours I do not know what is.

Mr. Foster.—There is no such provision for the return of the property in your Act.

Mr. Thomson.—I am really surprised at Judge Foster saying so. What is the result of a proceeding *in rem?* Can there be any doubt about it at all? It must result in a judgment one way or the other. There are only two judgments possible in a proceeding *in rem;* judgment of condemnation, or judgment of acquittal, which restores the property at once; while it is transferred to the Government in case of condemnation. I have not time to look for the matter in this immense volume, but I have here another book which shows that a bond must be given in these cases in the United States as well as here. I think that the United States look after their interests about as well as any other nation; and I believe that in the volume which I now hold in my hand it will be found that a bond has to be given. This volume contains the Customs Regulations of 1874, and epitomes

of the different Acts as I presume for the guidance of the Customs officers. In Article 842, page 397, it says that "seizures may be made by any private person, but at the peril of responsibility in damages in case the seizure is not adopted by the Government." Well, this is a most extraordinary law, and it altogether eclipses the English or our law on the subject.

In case the act is adopted by the Government such person is secure from action, or, in other words, any American citizen who chooses to make a raid against any person who has committed any infraction of the Customs or other laws of the country, can do so, and the latter cannot bring an action against him if the Government chooses to adopt his case. It is further stated on page 398 :—

"From that danger officers of Customs are protected by law in all cases where reasonable cause of seizure shall appear.

"It is immaterial who makes the seizure, or whether it was irregularly made or not, if the adjudication is for a sufficient cause."

On page 402, Article 859, it is stated, and there is cited in the margin an Act of July 18, 1866; so you see that this "inhospitable legislation" is of very recent date :—

"Any person claiming the property so seized, or any part thereof, may within the time specified file with the collector a claim, stating his or her interest in the articles seized, and deposit with such collector or other officer a bond to the United States in the penal sum of 250 dollars with two sureties, to be approved by such collector, conditioned that in case of the condemnation of the articles so claimed, the obligors shall pay all the costs and expenses of the proceedings to obtain such condemnation."

And Article 860 says:—

"But if no such claim shall be filed nor bond given within the time specified, such collector shall give not less than fifteen days' notice of sale of the property so seized by publication in the manner before-mentioned, and at the time and place specified in such notice, he shall sell at public auction the property so seized, but may adjourn such sale from time to time for a period not exceeding thirty days in all."

Now I think that I have conclusively shown for the benefit of my learned friends opposite that had they looked at the "inhospitable laws" of their own country, they would have hesitated before making the attack which has been directed against ours. I said last night that it would be my duty to point out to you some extraordinary discrepancies which are to be found between the two sets of affidavits which have been filed by the United States; and the pledge which I then gave I shall now proceed to redeem. I shall be glad indeed—I say it in all sincerity—if my learned friends opposite can, as I am pointing out these discrepancies, get up and say that I am mistaken, and show me how they can be reconciled, for I am desirous of not making one single statement which is not borne out by the facts. If, therefore, the learned Agent of the United States, or either of the learned counsel who are associated with him, can say that I am wrong, before I get through, I shall be quite willing to permit them to interrupt me and point out my error; I will then at once withdraw my statements and apologize, if necessary, for having made them; but at present I cannot see how they can be explained at all.

In order that I may be understood on this point, I think that it would be advisable that your Excellency and your Honours should have before you the two statements, Appendix (M) and Appendix (O). Appendix (M) contains the set of affidavits which was first filed by the United States, and Appendix (O) contains the later body of affidavits which they filed in this case.

In Appendix (O) you will find—towards the middle of the book—a set of statements, which purport to have been taken from the books of Gloucester firms, they were produced by Mr. Babson, and filed by Mr. Foster, on October 24th, 1877.

Now, I take the finished statement made by David Low and Company, and this David Low is the Major Low who made such a pleasant figure before the Commission.

Mr. Foster.—He is an entirely different person, Mr. Thomson.

Mr. Thomson.—Are you sure about that? I think not.

Now, if you look at page 110, Appendix (M), you will find affidavit No. 70, made by the firm of David Low and Company. They state that the number of trips made to the Bay of St. Lawrence in 1872 was five; and that the number of barrels of mackerel taken was 1,250. In 1873, they say that there were five trips made, and that the number of barrels of mackerel caught was 750. In 1874, they swear that two trips were made, and that 440 barrels were taken. In 1875, they say only one trip was made, and 200 barrels caught, while in 1876, no trip was made at all.

Now, let me turn your attention to the statements filed concerning the years

1872, 1873, and 1874, for this firm in the second set of affidavits contained in Appendix (O). What do they here say for 1872? David Low and Company have been pleased to declare here that in 1872 they had three vessels in the bay, and took 460 barrels of mackerel. In 1873 they had eight vessels which took 1,944 barrels. In 1874, four vessels, which took 1,328 barrels. In 1875 one vessel, which took 205 barrels; showing a discrepancy between the two affidavits of 1,297 barrels. I regret to say that this is no solitary instance, as you will see if you will kindly follow me while I state the result of these conflicting depositions.

I objected, as your Excellency and your Honours recollect, at the very outset on behalf of Her Majesty's Government, against the system of putting in affidavits at all. I have no faith in them—no, not the slightest. I wanted the matter to be tried by living witnesses, who should go on the stand there, tell their story and be cross-examined; and then if they came out of the ordeal of cross-examination untouched and unscathed, their evidence would be entitled to weight; but these deponents can sit down and make up what statements they like, they have not to submit to any cross-examination. No eye can see what they are about except the eye of the Almighty.

Now, I have shown by the figures which appear in the affidavit No. 70, and the statement in Appendix (O), that a discrepancy of 1,297 barrels exists between these statements, the latter of which was filed by Mr. Foster in October last, only last month; and I say that these figures cannot be reconciled in any way—or, at least, if this can be done, I will be very glad to hear it.

Mr. Foster.—You know all that is to be said about that is this, the last statement is more favourable to you than the first one, and it was prepared with great care.

Mr. Thomson.—It is an extraordinary fact that both of these statements were produced from the books of David Low and Company, and I can only say that when persons file two statements, one of which is diametrically opposed to the other, that it is very little to the credit of the person who filed them to say that the last statement is more favourable to the persons they were intended to injure than the first.

Mr. Trescot.—There was no intention to injure.

Mr. Thomson.—If a statement was put forward with a view of making a correction it would be another matter, but this is not the case, and the next one to which I will call your attention is to be found in letter L, Appendix (O), affidavit No. 75, both made by same parties, which says that the number of trips which were made by the vessels of John F. Wonson and Company in the Bay of St. Lawrence, in 1872, was three, in which trips they got 500 barrels, while in this statement in Appendix (O) they say that in 1872 they took in the Bay of St. Lawrence 475 barrels, showing a discrepancy of 25 barrels. You may say this is a small number, but recollect, it is said that these two statements were taken from the books of the firm; and these are the books which we were asked to go to Gloucester and examine, and this matter I beg to call to the attention of your Excellency and your Honours.

In 1873, they say, in this affidavit, that two trips were made, and 450 barrels of mackerel taken, while in this statement, Appendix (O), they say that in 1873, four trips were made, and 980 barrels taken.

In 1874, according to affidavit No. 75, they say that 510 barrels of mackerel were taken in two trips, and in this statement, Appendix (O), they say that three trips were made, and 620 barrels taken.

In 1875, they say, in the affidavit No. 75, that one trip was made, and 120 barrels taken; and, in 1875, according to the statement contained in Appendix (O), two trips were made with a catch of 203 barrels; or, in other words, there exists a discrepancy of 83 barrels between these two statements. One or the other of them must be untrue.

Mr. Foster.—That gives the same result; the latter statement was more carefully prepared, and is more favourable to you than the former.

Mr. Thomson.—You will find that some of these statements are just the other way, so that argument will not help you. My object is not to show which set of affidavits is more adverse or more favourable to the United States, or which is more favourable to Canada or England, but it is to show that these statements cannot be relied upon. They have been put in here for a purpose, but what that purpose is, of course I do not know.

I will now pass on and examine the next statement to which I propose to call your attention. If you look at the statement which appears on the next page of Appendix (O), and the corresponding affidavit, which is No. 54, you will see that it is stated in the latter that, over the signature of Samuel Haskell, that in 1872 four trips were made into the Bay of St. Lawrence, and 1,100 barrels of mackerel taken; while, in the statement contained in Appendix (O), it is represented that they got none at all in the Bay of St. Lawrence.

This is an instance where the idea which Mr. Foster has mentioned is reversed.

In 1873, it is stated in the affidavit No. 54, that two trips were made and 420 barrels of mackerel taken; and, in 1873, they are pleased to say in the statement, Appendix (O), that four trips were made in the bay, and 672 barrels taken. Here the catch of 672 barrels is admitted, while in the other affidavit that catch is represented as having been 420 barrels.

In 1874, they say in affidavit No. 54 that they took 383 barrels in the Bay of St. Lawrence, while they admit in the last statement, Appendix (O), that the catch in the bay that year was 720 barrels, taken in two trips. In 1875, they say none were taken, and in 1876 also none. Now there is a discrepancy of 911 barrels between these two statements, which are utterly irreconcilable.

If you will now pass over to Appendix (O), letter R, to the statement of Dennis and Ayer—the corresponding affidavit is No. 59—you will find that Dennis and Ayer say that "since the Washington Treaty, so called, has been in effect, our vessels have been employed as follows:" since 1871, they state that they made six trips in the Bay of St. Lawrence, and caught 1,800 barrels of mackerel;, while, in 1871, according to this statement, Appendix (O), they took 2,585 barrels of mackerel in the Bay of St. Lawrence. In 1872, they say in this statement, Appendix (O), that the catch in the Bay of St. Lawrence was 2,287 barrels; in 1873, 2,504 barrels; in 1874, 2,455 barrels; in 1875, 116 barrels, and in 1876, 136 barrels, contrasted with the catch of 1,800 barrels, according to affidavit No. 59. If the figures are rightly given, your Honours will see that, for that period, their catch was 10,083 barrels—that is to say, they caught in the Bay of St. Lawrence 10,083 barrels of mackerel according to this statement, which was filed last October, while they swear in their affidavit No. 59 that the catch amounted to 1,800 barrels.

Mr. Trescot.—This number was put in for six trips.

Mr. Thomson.—Oh, no; if you look at the head of the affidavit, you will observe it is stated that—

"Since the Washington Treaty, so called, has been in effect, our vessels have been employed as follows."

And again, they swear to having made six trips during that time.

Mr. Trescot.—During which they got 1,800 barrels.

Mr. Thomson.—But it turns out that they made a great many more trips during this period, and caught 10,083 barrels of mackerel.

Mr. Trescot.—They are only credited with having made six trips.

Mr. Thomson.—Then Mr. Trescot wishes your Excellency and your Honours to understand that, although the heading of this affidavit is that it purports to be a statement of all the trips made since the Washington Treaty up to the time when the affidavit was made, it is, in fact, a *suppressio veri*, and that they only swear to six trips.

Mr. Trescot.—I do not say anything about it. I have not, as yet, had a chance to look at it.

Mr. Thomson.—A discrepancy, at all events, exists between the number 1,800 barrels and the number 10,083 barrels, and a difference of 8,283. That is against us this time; and, moreover, this is a pretty large sum. The first affidavit was entirely against us, as they say in it that their catch in the bay was only 1,800 barrels.

Mr. Foster.—I have already called your attention to the fact that the last statements are more correct than the earlier ones.

Mr. Thomson.—What must be the character of these books, when this gentleman who sends this last statement swears that it was taken from them? What can be the character of these books, or the character of the men who have made up this statement from the books, and sent in such an affidavit as No. 59, from which I have just read. It is either a gross attempt to deceive the Commission, or else the books are wholly inaccurate and unreliable.

If your Excellency and your Honours will now look at letter T, to which I call your attention, you will find the statement of James Tarr and Brothers. The corresponding affidavit in Appendix (M) is No. 72. It is stated in affidavit No. 72 that the number of trips made in the Bay of St. Lawrence in 1871 was four, and the catch 1,287 barrels of mackerel; while, according to this other statement in 1871, they made three trips with a catch of 1,054 barrels. In 1872 two trips were made according to the affidavit No. 72, and 888 barrels were taken; while, in 1872, two trips were made according to this statement, Appendix (O), with a catch of 727 barrels only. In 1873, according to the affidavit, four trips were made, and 672 barrels were caught; while in 1873, according to this last statement, the catch of mackerel in the Bay of St. Lawrence was only 660 barrels. In 1874 three trips were made according to affidavit No. 72, with a catch of 1,124 barrels;

while, in 1874, according to this last statement, they only caught 774 barrels in the Bay of St. Lawrence, thus cutting down the former statement very materially. In 1875 they say they got nothing in the Bay of St. Lawrence, and in 1876 they say in the affidavit that they caught 190 barrels of mackerel; while, in the statement, Appendix (O), they state that in 1876 their catch in the bay amounted to 197 barrels. Now these two affidavits cannot be reconciled; the discrepancy is too great.

The next one in the list to which I will direct your attention is letter U, and the corresponding affidavit is No. 74, made by Clark and Somes. They say that "since the Washington Treaty, so called, our vessels have been employed as follows:" and then state that the number of trips which they made in the Bay of St. Lawrence in 1872 was four, with a catch of 812 barrels of mackerel; while, in this statement, they declare that, in 1872, they made nine trips to the bay, and got 2,189 barrels—2,189 *against what they are pleased to put down in affidavit No.* 74 *as* 812. They swear, in fact, in the affidavit—which was sworn to on the 6th July last, that they only caught 812 barrels of mackerel in the Bay of St. Lawrence in 1872; while, in this affidavit they swear that their catch during that season in the bay amounted to 2,189 barrels; the discrepancy is tremendous.

Then in 1873 they say that they made four trips to the bay and took 680 barrels, while in 1873 they admit in this other statement that they made seven trips and absolutely got 2,333 barrels. In 1874, they say in affidavit No. 74, they made two trips to the bay and obtained 300 barrels, while in 1874, according to the statement in Appendix (O), they made four trips and got 1,407 barrels. In 1875 they say that they got none in the bay, and in 1876 sixty barrels, while in this other statement they represent that their catch in the bay in 1876 was fifty-one barrels. Now, the discrepancy between these two statements amounts to 4,128 barrels; and this is the kind of testimony on which the United States expects to get an award!

Mr. Trescot.—It is still in your favour.

Mr. Thomson.—We will now turn to the very next page, letter V, Appendix (O). The corresponding affidavit is No. 55. Joseph Friend here makes the same statement which I have already cited, that "since the Washington Treaty, so called, has been in effect, our vessels have been employed as follows:" and he states that the number of trips made in the Gulf of St. Lawrence in 1872 was four, and the catch 1,500 barrels of mackerel, while in 1872 only one trip was made and only 163 barrels taken, according to the last statement found in Appendix (O). Evidently that was not done with the intention of helping the British case much. Then we find it stated that in 1873 three trips were made to the bay, according to affidavit No. 55, and 1,200 barrels taken, while in 1873, according to this last statement, one trip was made, when only 145 barrels of mackerel were taken, cutting down everything. In 1874 they admit by the first affidavit getting 220 barrels in the bay, while here they admit taking that season 201 barrels. There is a discrepancy between these two statements of 2,411 barrels—the number represented in this last statement being so much less than what they admitted in the first affidavit.

While I am upon this subject of these first affidavits, I will call your attention to one feature which runs through the whole of them, and which may possibly account for the very extraordinary testimony which has been given on the part of the American Government by the American witnesses with reference to the value of our in-shore fisheries. *They swear that these in-shore fisheries are worth nothing.* You may recollect that during my cross-examination of Mr. Pattilo, I asked him the question, What do you mean by saying that they are worth nothing? I suppose that this is the case because the fish are uncaught? and he answered—Yes, that is the reason. In other words, he meant that swimming fish are of no value; and that was put forward in fact by some of the opposite counsel, I think, in the course of their argument.

Through all their affidavits this very same doctrine is maintained. I think that there is not one of them which does not contain the same statement. Select any of them and you will see it is stated that the actual value of the fish in the water before they are taken is nothing. This is placed near the bottom of the statement; and it is contained in every one of those affidavits. It is declared—"the actual value of the fish in the water before they are taken is nothing," and "the actual value of the mackerel in the water before they are taken is ditto."

We will now look over, if the Commission pleases, to B.B., the statement of Leonard Walen, the corresponding affidavit is No. 66. I do not mean to say that I have noticed all the discrepancies which are contained in these affidavits, I do not think that I have done so, as we have not had the time to examine them with sufficient attention. Leonard Walen, in his affidavit, No. 66, states that the number of trips made to the Bay of St. Lawrence in 1872 was two, and in 1873 one; and that on the trips made during these two seasons—1872 and 1873—he took 900 barrels of mackerel. Now on looking at his

statement which is filed here in Appendix (O), I find that for 1872 and 1873 he absolutely swears that no trips were made to the bay during these two seasons, and that no mackerel were caught there at all by him. How do you think that this gentleman would figure if he was brought up here and put to the test of cross-examination on that stand?

Taking the next statement, C.C., the statement of William S. Wonson—the corresponding affidavit is 64. He states that the firm of Wonson and Company "since the Washington Treaty, so called, has been in effect, have employed their vessels as follows."

In 1872 they made two trips to the bay and caught 350 barrels of mackerel according to affidavit No. 64, while in 1872, according to this last statement, not a single trip was made to the bay by any of their vessels, as you see. In 1873, they say that two trips were made, when they got 400 barrels; while in 1873, according to the last statement, they caught in the Bay of St. Lawrence 923 barrels. In 1874, according to affidavit No. 64, 325 barrels, and according to Appendix (O), 885 barrels. In 1875 they swear in their first affidavit they made two trips to the bay, and got 300 barrels; and in 1875, they declare in this last statement, that they made but one trip and caught 156 barrels. In 1876 they made one trip to the bay, as they swear in their first affidavit, and caught 150 barrels of mackerel, while in this last statement they say that they got none at all in the bay in 1876.

I think I might go on if I chose, but it seems to be running them almost to the death to follow up this subject. These are affidavits obtained from persons whom they took care not to bring here to be examined.

There is another matter to which I wish to call your attention, in connection with these affidavits, to show how peculiarly they have been prepared. I do not at all seek to quarrel with the decision which was given by this Commission some time in September last, by which you exclude from the consideration of the Court the question of the value of the privilege which the Americans enjoyed, of buying bait and ice, and of transshipping cargoes. It was contended with great force by my learned friends on the other side that those privileges did not fall within the provisions of this Treaty; and I contended on behalf of Her Majesty's Government, that at all events in the view of that Government they did fall within the provisions of this Treaty; but of course if the American Government put a different construction upon it, and accepted the exercise of these rights at merely our will and pleasure, I thought that the consequences would be worse to them than to us. Your Excellency and your Honours adopted the view of the American Government on this point and ruled that those privileges did not fall within the province of this Treaty. As a matter of interest, now, perhaps, only historic because I do not ask you to reverse your decision on that subject I wish to call your attention to the fact that the United States at one time held a very different opinion from that which was here put forward by my learned friend Judge Foster, and his able coadjutors. If you look at question No. 29 in all these affidavits, you will observe a peculiar fact—a great number of these affidavits are prepared by question and answer, and they were taken a number of years ago, for some of them are dated as far back as 1873 and 1872, and possibly previously.

Mr. Foster.—Those were taken in reply to a series of questions propounded by the Treasury Department.

Mr. Thomson.—Now, the Treasury Department is a governmental department of the United States; and this question No. 29 is repeated in each affidavit. Wherever in these affidavits you find that number, you find the same question, although you will find divers answers given to it. The question is as follows:—

"Do American fishermen gain, under the Treaty of Washington, any valuable rights of landing to dry nets and cure fish, or to repack them, or to transship cargoes which were not theirs before? if so, what are those rights, and what do you estimate them to be worth annually in the aggregate?"

And the answer of this particular witness in the first affidavit is:—

"I do not know how valuable the privilege granted by the Treaty of Washington may prove."

That is the question which is put throughout, and I say that this is the best evidence you can have in support of the view that the United States entertained at the time when these questions were framed; a very different opinion from that which they entertain now with reference to the privileges which they obtained under this Treaty.

I made in an earlier portion of my address some remarks with respect to the little value that is to be attached to affidavits as a rule; and I think that I have exemplified the validity of my contention tolerably well.

Let me now turn your attention to two American affidavits, numbered 18 and 19 (Appendix M.) Look at question 11 in No. 18. It is as follows:—

"Q. Will the admission of Canadian fishermen to our inshore fisheries cause any detriment or hindrance to the profitable pursuit of these fisheries by our own fishermen; and if so, in what manner, and to what extent annually?—A. It will probably be a detriment to our markets to the amount of 200,000,000."

On page 45, No. 19, the same question is put, and it, with the answer, is as follows:—

"Q. Will the admission of Canadian fishermen to our inshore fisheries cause any detriment or hindrance to the profitable pursuit of these fisheries by our own fishermen; and if so, in what manner, and to what extent annually?—A. It will. Probably a detriment to our markets to the amount of 200,000,000."

We assumed at first that this answer was probably a misprint, but on referring to the originals which I hold in my hand, I find that this estimate, *two hundred millions*, is not only here in black and white, but also that it is not put down in figures, it is set down in plain legible handwriting; that such admission will be "probably a detriment to our markets to the amount of Two Hundred Millions."

Now, if we only value our fisheries at the same rate, I presume that they must be worth, for the twelve years in question, 2,400,000,000. So much at present for these affidavits.

I will next turn my attention to Judge Foster's argument. The argument of the counsel opposite upon all the salient points of the case of necessity had to be the same; though they were clothed in different language, and viewed from different stand-points, they were substantially the same; and I select Judge Foster's argument, not because these arguments were not put forward with great force by Mr. Dana and Mr. Trescot, but I select Judge Foster, simply because he is the accredited Agent of the United States; and therefore, in that respect and in that sense, his arguments are entitled, I suppose, to greater weight.

I think the first point I will have to call attention to is on page 37 of Mr. Foster's affidavit, in which he says:—

Mr. Foster.—You speak of my affidavit; I did not make any affidavit.

Mr. Thomson.—I intended to say Mr. Foster's speech. I should be very sorry to suppose Mr. Foster would make an affidavit such as this. It is an admirable argument on behalf of a very bad cause, but I don't think he would like to swear to it. Mr. Foster stated, in speaking of the affidavit of the British witnesses from Prince Edward Island, that they had been made on the assumption that the three-mile line was a line outside a line drawn from East Point to North Cape. Now, there is no evidence of that. There is no evidence that the Bend of Prince Edward Island was ever claimed to be a bay from East Point to North Cape.

Mr. Foster.—Yes, there was.

Mr. Thomson.—At all events you can find in no official correspondence any such view, and I do not, as Counsel for Her Majesty's Government, present any such view now. I refer to this matter because, based on that theory, Mr. Foster made what I think was an unfair charge against the Prince Edward Island affidavits. He says in his speech, page 37: "The affidavits from Prince Edward Island were drawn upon the theory that that is the rule, and in two or three of these I find it expressly stated, 'that all the mackerel were caught within the three-mile line, that is to say, within a line three miles from a straight line drawn from East Point to North Cape.'"

But there were only two affidavits that could by any possible construction be made to bear such a meaning.

Mr. Foster.—Look at McLean's affidavit, page 42.

Mr. Thomson.—Yes, you referred to him by name. Now let me see what he says, although even if one of them did make his affidavit upon that assumption it would not be a very important matter.

Mr. Foster.—My argument was that they were all made in answer to the same series of questions, and the only possible interpretation of those questions is that such was the view entertained.

Mr. Thomson.—These affidavits were drawn up in answer to no questions whatever. There were no questions put to these people. They were substantive affidavits, drawn up not by one man or by one hand.

Mr. Foster.—Compare them, and you will see that every man answers in the same paragraph of the affidavit to the same question.

Mr. Davies.—No, that is not the case.

Mr Foster.—Try them.

Mr. Thomson.—I will try McNeil. He says, in section 4 of his affidavit :—

"4. That the fish are nearly all caught close to the shore, the best fishing ground being about one and one-half miles from the shore; in October the boats sometimes go off more than three miles from land. Fully two-thirds of the mackerel are caught within three miles from the shore, and all are caught within what is known as the three-mile limit, that is within a line drawn between two points taken three miles off the North Cape and East Point of this island."

He draws the distinction at once. He says two-thirds were caught within three miles of the coast, that is, following the contour of the shore ; but if you are going to draw a line from point to point, and take the three-mile line as a line outside of that, then they were all caught within that line. But you see that, for the purpose of our case, the fact that two-thirds were caught within three miles of the contour of the coast, is all that is necessary. There were only two affidavits, I think, that had any allusion of this kind.

Mr. Foster.—See McLeod's affidavits, page 218.

Mr. Thomson.—In the 6th section of McLeod's affidavit he says :—

6. That nine-tenths of our mackerel are caught within one and one-half miles from the shore, and I may say the whole of them are caught within three miles of the shore. There may be an odd catch of mackerel got more that three miles from shore, but that does not often happen. The greater part of the codfish caught by hand-line are caught at from two to five miles from the shore, and all the codfish caught by the trawl or set-lines are caught within three miles from the shore. There are no mackerel or codfish at all caught by the boats outside of the three-mile limit—that is, outside of a line drawn from points three miles off the headlands; while the herring are all caught close inshore, within two miles of the shore."

There is nothing in that. It has been very honestly put by the witness. He says nine-tenths of the fish were caught within three miles of the shore.

It is a pure assumption on the part of Judge Foster that this line he refers to is a line drawn from the headland formed by East Point to the headland formed by North Cape.

Mr. Foster.—What other headlands are there ?

Mr Thomson.—There are headlands formed by the indentations along the coast; and he refers to them. It will be found, as I have stated, that the witnesses referred to draw a clear distinction. They say that two-thirds or nine-tenths of the fish, as the case may be, are caught within three miles of the shore, but that, if you draw a line three miles outside of the line from North Cape to East Point, they are all caught within such a line.

At page 39 Judge Foster introduces the inshore fishery question in this way :—

"We come then to the inshore fishing. What is that? In the first place there has been some attempt to show inshore halibut-fishing in the neighbourhood of Cape Sable. It is very slight. It is contradicted by all our witnesses."

I take leave to join issue with him on that statement, and I call attention to page 439 of the British testimony, where he will see what the evidence is. I am obliged to call the attention of the Commission to this, because Mr. Foster treated it as a matter of course, as he did the case of Newfoundland. On page 439 William B. Smith, of Cape Sable Island, is asked and answers as follows :—

"Q. With regard to halibut-fishing—is there any halibut-fishing carried on near Cape Sable Island ? —A. Not by British people. The Americans fish there.

"Q. Every year ?—A. Every year regularly.

"Q. What is the number of the fleet which come there to fish for halibut ?—A. I have seen as high as nine sail at one time. I should suppose there was from forty to sixty sail.

"Q. Are the vessels cod-fishers at other times of the year ?—A. I think they are. During the latter part of May and June they fish for halibut; then they fish for cod until October, and then for halibut.

"Q. In the spring and fall they fish for halibut, and in the summer for cod ?—A. Yes.

"Q. Where do you live ?—A. On Cape Sable Island.

"Q. Can you see the fleet fishing for halibut ?—A. Yes.

"Q. Are they right within sight from your door ?—A. Yes. I can count the men on deck with an ordinary glass. I counted at one time nine sail at anchor fishing there."

At page 440 he is asked, just at the top of the page :—

"Q. How far from the shore are those halibut caught ?—A. From one mile to two and a-half or three miles perhaps off.

"Q. They are caught inshore ?—A. Near my place they fish within one mile and a-half of the shore in eighteen fathoms water."

Now here is the evidence of a credible witness, a very respectable man, whose testimony was not shaken in the least by cross-examination.

Cunningham gave evidence, which will be found on page 407, to the same effect.

Mr. Foster.—Have you got through with these gentlemen?

Mr. Thomson.—Yes, except that I am going to show how you attempted to answer the whole of that testimony.

Mr. Foster.—Shall you not want an observation upon the one you have referred to? It is this: If you follow the testimony through you will see that this witness, William B. Smith, testified that there was one spot where there was eighteen fathoms of water, and that was the spot where they caught the halibut. It turned out that upon the chart that depth could not be found. In reply to the question whether he could name any person who had caught halibut there within the distance he had named in eighteen fathoms of water, he gave us the name of one vessel, the "Sarah C. Pyle," Captain Swett (as it is in the report), of Gloucester; and being asked if he is a halibut fisher, he says he thinks he is.

Mr. Thomson.—When Smith was under cross-examination the question was put to him whether there was eighteen fathoms of water in the place where the halibut was caught, and he said there was. A chart was placed in his hand, and whether he looked at it or not I do not know, and I do not care. It was said to him by the Counsel for the United States, "Look at that chart and you will find no such depth as eighteen fathoms." He said, "I have known it all my lifetime; I know there are eighteen fathoms there." And while the American case was going on, and while one of the witnesses, who had been brought for the purpose of contradicting Smith, was on the stand, I, myself, took the British Admiralty chart, and on the identical spot which Mr. Smith had referred to I found eighteen or twenty fathoms of water. I think Mr. Foster must have forgotten this incident when he interrupted me.

I now turn to the evidence of Cunningham, page 407. The following passage occurs in his evidence:—

"Q. How much within three miles do these vessels which fish for halibut within that distance from the shore come?—A. I could not say; some, perhaps, fish within one and a-half miles of the shore. Where I am engaged in prosecuting the fisheries, some of the American vessels fish within one and a-half miles, and others within two miles of the shore and so on.

"Q. Are any cod and halibut taken outside of the three-mile limit?—A. Oh, yes! but this is not so much the case with halibut as with cod.

"Q. Do many American fishermen fish there, outside of three miles from shore?—A. Undoubtedly: some seventy-five American sail do so around the shores of the county of Shelburne."

The word "outside" in the last question but one must be a misprint for inside. My question was: "Do many American fishermen fish there inside of three miles from the shore?" And the answer was, undoubtedly, "Some seventy-five American sail do so around the shores of the county of Shelburne."

Now I will turn the attention of the Commission to the evidence of Patillo.

Mr. Foster.—Do you understand Cunningham as having left his testimony that seventy-five sail of halibut fishermen frequented the shores of the county of Shelburne?

Mr. Thomson.—No; American fishermen.

Mr. Foster.—He said he could not tell how many fished for halibut.

Mr. Thomson.—I dare say if he had been an untruthful witness he would have fixed the number at once.

I now turn to the evidence of Thomas R. Patillo—not the Patillo of pugnacious reputation—and I want to refer specially to the remarks of my learned friend in reference to the evidence of Mr. Patillo, because it is a warning to the Commissioners to scrutinize the argument of my learned friend very closely. It is wonderfully ingenious, and unless you watch it very closely it will possibly mislead you. This is what Mr. Foster said, page 39 of his argument:—

"So much for the inshore halibut fishery. I will, however, before leaving it, refer to the statement of one British witness, Thomas R. Patillo, who testified that occasionally halibut may be caught inshore, as a boy may catch a codfish off the rocks."

Now he puts it as if Mr. Patillo had said that occasionally a halibut might be caught, as a boy might catch a codfish off the rocks, but that it was not pursued as a business. There is just enough truth in his statement to make it a little dangerous. This is the way the question is put:—

"Q. Occasionally a halibut might be caught inshore, as a boy might catch a codfish off the rocks, but pursued as a business halibut are caught in the sea?—A. Yes, in deep water."

Now, surely this answer is not an assent to the proposition that halibut are merely caught occasionally, as "*as a boy would catch a cod off the rocks.*" It is an answer to the last branch of the question, namely, that the halibut are caught in the sea. The witness says, "Yes, they are caught in deep water." Now, surely it was not fair on the strength of this answer to quote Patillo as saying that occasionally halibut might be caught "as a boy would catch a cod off the rocks."

Mr. Foster.—Now, wait a moment. I had previously asked, "To what banks do the fishermen whom you supply with bait resort?" and the witness had answered, "They chiefly go to the Western Banks and to Banquereau, and to our own offshore banks. The halibut is a deep-water fish, and it is taken in 90 fathoms of water and upwards." Then I said, "You don't know of any inshore halibut-fishing done by the Americans which amounts to anything?" In answer to which the witness said, "Not inside 90 fathoms of water." Then I asked, "Do you understand that the halibut-fishing is substantially everywhere a deep-sea fishery?" to which he answered "Yes." Then I put this question: "Occasionally a halibut may be caught inshore as a boy may catch a codfish off the rocks, but, pursued as a business, halibut are caught in the sea?" And the witness answered "Yes."

Mr. Thomson.—No; the witness, honestly enough, says that the halibut-fishery is usually a deep-sea fishery; but the words describing it as merely an occasional thing to catch one inshore are Mr. Foster's; and the witness does not assent to these words, but to the statement that halibut are caught in the sea, to which he replies "Yes, they are caught in deep water."

I only refer to this as an illustration of the dangerous power possessed by my learned friend in the twisting of evidence. "So much," he says in his speech, "for the inshore halibut-fishery; and that brings me to the inshore cod-fishery, as to which I am reminded of a chapter in an old history of Ireland that was entitled 'On Snakes in Ireland,' and the whole chapter was, 'There are no snakes in Ireland.'"

Now, that is a very amusing way of treating the cod-fishery, but, unfortunately, it is not justified by the facts. If there is no more truth in the statement that there are no snakes in Ireland than there is in the statement that there is no inshore cod-fishery, I am very much afraid that island is overrun with vipers. Now I will show you distinctly that we have the most conclusive testimony on the subject of the inshore cod-fisheries, and it is a very singular thing that my learned friend should have dismissed the subject so summarily as he did. I refer to the evidence of the British witness named Nicholson, page 207. Let us see what he says. By the same token, this is the very man that speaks of the halibut also. In the cross-examination by Mr. Dana, on page 207, the following passage occurs:—

"Q. Well, cod are often caught inshore, but would not you say cod was a deep-sea fishery?—A. Yes.

"Q. And halibut is the same?—A. Yes.

"Q. I believe one witness, a Mr. Vibert, of Perce, in the county of Gaspe, said that the halibut were altogether caught within the three-mile limit, without any exception. He says, 'that is I believe what I have understood from our fishermen; they have told me that halibut could not be caught in deep water.' (Reads from page 110 of the evidence). Should not you say that was a mistaken statement?—A. Yes. The Gloucester folks go every winter. In fact they go the whole year round to catch them. In the summer they get halibut in shallow water, but in the winter they have to fish in 100 fathoms of water.

"Q. So they are a deep-water fish as a fish, but you can catch them inshore?—A. They may be caught inshore.

"Q. Do the Americans themselves pursue the halibut-fishing except as a deep-sea fishery—A. Oh, yes. They take them anywhere where they can get them.

"Q. Do you think that on this coast the Americans fish for halibut?—A. Yes.

"Q. They take them as they find them, but do they undertake as a business the fishing for halibut inshore?—A. Certainly, the Treaty allows it. They will take them in our harbours if they can."

Now, if you look at page 413, the evidence of Mr. Ruggles, you will find some evidence upon this point:—

"Q. What kind of fish are caught here?—A. Codfish, haddock, hake, pollock, halibut, herring, and some mackerel when they strike our shores.

"Q. Is it an inshore fishery?—A. With the large proportion of the inhabitants it is an inshore fishery in small boats.

"Q. Do you know where Cape Split is?—A. Yes.

"Q. Now, does this fishery extend up the north coast of the island and off Digby Neck as far as Cape Split?—A. Yes. It is quite an extensive fishery up to the Isle of Haute, and that is well up to Cape Split.

"Q. From Cape Split it extends all the way to your island. Around the shores of the bay, are there fisheries there?—A. Yes.

"Q. Around both sides of the bay?—A. That is Digby Neck side and Clare.

"Q. And down the coast as far as Yarmouth?—A. Perhaps on the south side of St. Mary's Bay on the French shore or the township of Clare it is not so extensive.

"Q. It is not so extensively carried on, but is the fish as good?—A. I could hardly say it was as good on the south side, but still there are a number that prosecute the fisheries there. It is increasing annually. The inhabitants are turning their attention more to the fishery business."

You will recollect that this evidence is wholly uncontradicted, and the same is true of the testimony of Mr. Payson, on page 399. He is Fishery Overseer for Long Island and Brier Island, residing at Westport, Digby County, Nova Scotia. His evidence is as follows:—

"Q. You are Inspector of Fisheries there?—A. Yes, up to Tiverton and Petit Passage.

"Q. What do you consider to be the value of the fisheries there?—A. Last year the fishermen exported about 200,000 dollars' worth of fish.

"Q. What parts of the coast does that include?—A. The two islands.

"Q. From the two islands which constitute about seven miles of the thirty miles of the Neck on one side of the bay, the fish exported amounted to 200,000 dollars?—A. Yes.

"Q. The other portion of the fishery is as good as yours?—A. Well, perhaps not quite. They are not as fully carried out.

"Q. Fish are as plentiful?—A. There is fishing all along the coast.

"Q. The people on those islands live almost exclusively by fishing?—A. Pretty much altogether.

"Q. For a number of years your district has been frequented by small American schooners?—A. Yes.

"Q. What kinds of fish do they catch?—A. They catch the same kinds as we do—cod, halibut, pollock, and herring.

"Q. They catch their own bait?—A. The small vessels catch their own bait.

"Q. Besides these small American schooners, your district is frequented by other American fishing vessels?—A. A great many other vessels come in mainly for bait, sometimes for ice, and go out again.

"Q. How often do they come in for bait?—A. I have known some vessels to come three times in a season.

"Q. Where do the small American vessels take their fish?—A. To where they belong, I suppose. They come from along the coast down to Mount Desert.

"Q. It is a business that is increasing?—A. Yes.

"Q. Do the American vessels fish there during the season?—A. The small fishing vessels fish there during the season, and the other vessels come in for bait. There are fisheries at Whale Cove, and White Cove from one to three miles above Petit Passage, and quite an extensive fishery about five miles above. The people there complained of the small American vessels coming there and interfering with the fishery. I told them I could not do anything because the Americans are allowed the same privileges as we are. I also heard complaints of the Americans transgressing the law by Sabbath fishing and throwing gurry overboard. In two cases I issued a warrant, but they got out of the way and it was not served upon them.

"Q. Why do the American schooners come over to your district, and not fish on their own coast—A. They said the fishery on their own coast has failed, and they gave me as a reason that they thought it was a good deal due to the trawling practices.

"Q. During how many years have they been coming there?—A. Three or four years.

"Q. They gave you that as the reason why they come to your coast?—A. I talk to a great many masters of American vessels. My son keeps an ice-house, and they come there for ice, and I have talked with them about the fisheries, and they told me the trawling had, in a measure, broken up their fishing.

"Q. How far from the shore do they catch cod, pollock, and haddock?—A. From half-a-mile to a mile. The large vessels fish mostly outside the three miles, but the small vessels fish on the same ground as our fishermen. The small vessels fish within half-a-mile or a mile of the shore. They anchor the vessels in the harbour, and go out in boats to fish; they fish close inshore."

Now, they did not contradict that evidence at all. I do not know what the extent of coast is from Cape Split to Digby Neck.

Mr. Foster.—What counties does it include?

Mr. Thomson.—Kings, Annapolis, and Digby.

There was an attempt to contradict this evidence by the evidence of Sylvanus Smith, page 338 of the American testimony. As the Counsel for the United States have not the privilege of replying, it is only fair that I should cite the pages of the American testimony that were presented in attempted contradiction of the evidence of our witnesses.

The evidence of Sylvanus Smith is as follows:—

"Q. How near shore to any place have you known of the halibut being fished?—A. 150 miles may be the nearest point.

"Q. These are banks, but haven't you known it to be done, or attempted near shore?—A. I have.

"Q. Where have you known them?—A. On the Labrador coast they have caught them large near the shore. I have known them catch them in thirty miles or twenty-five miles, around Cape Sable. I fished there quite a number of years—around Seal Island and Brown's Bank.

"Q. How near land there did you ever fish?—A. I have fished in sight of land. I could see it.

"Q. Did you ever fish within three miles?—A. No; I don't think anyone could fish in there because it is not a fishing ground.

"Q. You don't know of anyone?—A. No."

That is all he could give in the way of contradictions, if I recollect right. On page 340 this question is put to him:—

"Q. You cannot speak of the places where halibut have been caught since that time from practical knowledge?—A. No.

"Q. Previous to 1864 you were engaged. How many seasons were you engaged catching halibut?—A. I think some six or eight.

"Q. When you were then engaged did you go into the Gulf of St. Lawrence at all for halibut?—A. Never.

"Q. Are you aware that there is a halibut-fishery around Anticosti?—A. I never was aware of any.

"Q. Well, the fact that two vessels were seized there while inside trying to catch would be some evidence that they believed the halibut were there?—A. Well, they look for them everywhere.

"Q. Don't you think they must have had reasonable grounds?—A. I don't think it. They are in the habit of looking everywhere where they may be.

"Q. Do you stand by the full meaning of your answer that you don't think they had reasonable grounds for believing the fish to be there?—A. Well, a man might have reasonable grounds for believing they were in the water anywhere."

Mr. Foster.—Have you the evidence where he says that one of his vessels strayed into the Gulf of St. Lawrence after halibut? Look also at Swim's affidavit, page 238:—

"*Gloucester, October* 10, 1877.

"I, Benjamin Swim, of Gloucester, Mass., on oath depose and say, that I was born at Barrington, Nova Scotia, am twenty-seven years of age, and am now master of schooner 'Sarah C. Pyle,' of Gloucester, and have been since April of this year engaged in cod-fishing, during that time have landed 150,000 lbs. of codfish and about 3,000 lbs. of halibut, and caught them all, both codfish and halibut, on Western Banks. The nearest to the shore that I have caught fish of any kind this year is at least forty miles.

"BENJAMIN SWIM, *Master of schooner 'Sarah C. Pyle.'*"

Mr. Thomson.—This is what Swim says: Mr. Smith gave the name of the "Sarah C. Pyle," of Gloucester, Captain Swett, as one vessel that had fished near shore in eighteen fathoms of water.

Mr. Foster.—It is not Sylvanus Smith who speaks of that.

Mr. Thomson.—No; it is William B. Smith. The question is as follows:—

"Can you give us the name of any of these vessels that you say have been fishing within that distance of the shore in eighteen fathoms of water?—A. I can give the name of one, the 'Sarah C. Pyle,' Captain Swett, of Gloucester. I supplied him in the summer with 2,800 mackerel."

But whose affidavit have we? Not the affidavit of Captain Swett, but of Benjamin Swim, of Gloucester.

Now there is no word that during the whole of this season he commanded the "Sarah C. Pyle." This evidence was given a long time ago, while the affidavit which purports to be a contradiction is sworn on the 10th October—months after he had given the evidence. Captain Swim had the printed evidence, I presume; at all events some person must have had the printed evidence and communicated to him its purport. He must have read the statement that it was Captain Swett who commanded her, and that the witness William B. Smith sold her 2,800 mackerel. Now this affidavit is altogether silent as to Captain Swett. If it was intended to be a contradiction of the witness's statement, there should have been a statement that there was no such a person as Captain Swett in command of that vessel. Captain Swim does not undertake to say that he commanded the vessel during the whole time since April last. He says:—"I am now master," &c.; "have been since April." He may have sent another man out as captain, and himself remained master upon the register. It would be quite consistent with anything that he has stated in his affidavit.

Mr. Foster.—The affidavit is dated the 10th October, while the evidence was given on the 28th September. So there is not such a great while between.

Mr. Thomson.—But it is undoubtedly made for the purpose of contradicting William B. Smith, and I say that it is a most singular circumstance that they produced no affidavit from Captain Swett.

Mr. Foster.—There is no Captain Swett. Probably the short-hand reporter got the name wrong.

Mr. Thomson.—If this affidavit was intended as a contradiction, it should have con-

tained an allegation that there was no Captain Swett, that there was no other "Sarah C. Pyle," and that this deponent had been in command of her during the whole time. Even had all that been done, there would have been this important question, whether a man who comes here and subjects himself to cross-examination, and whose evidence is substantially unshaken, can be, or ought to be, contradicted by an affidavit made in a chamber by some interested person behind the back of the person to be affected by it, and absolutely protected against any hostile cross-examination. I say that any writing produced under such circumstances to contradict such a witness is not worth the paper it is written on, and ought not to be. What is the reason he did not come here? If he was intended to contradict our witness, why, in common fairness, didn't he either come here or show some reason that prevented him from attending as a witness in person? Shoals upon shoals of witnesses have come here from Gloucester and been examined. What is the reason that Swim did not come as Smith did and subject himself to cross-examination? Smith was not afraid of cross-examination. Why was Swim? I dismiss his affidavit as no contradiction whatever.

Mr. Foster.—Don't dismiss it until I call attention to the fact that further on in the cross-examination of Smith he says he does not know where the "Sarah C. Pyle" caught her halibut at all, and that all he knows is that he supplied the bait.

Mr. Thomson.—Where is that?

Mr. Foster.—Read right along in Mr. Dana's cross-examination. His statement on cross-examination is as follows:—

"Q. You have with you a memorandum concerning this vessel to which you sold these mackerel?—A. Yes.

"Q. What did they do with the mackerel?—A. They put the fish in ice on board. I do not know what became of the latter afterwards.

"Q. What did the vessel do then?—A. She went out to fish.

"Q. Did you see her do so?—A. Yes.

"Q. Did she continue fishing with 2,800 fresh mackerel on board?—A. The captain took them for part of his bait. We did not supply him altogether with bait.

"Q. Did you go on board of her after she left the harbour?—A. No.

"Q. Do you know what she caught?—A. No.

"Q. Whether cod or mackerel?—A. No.

"Q. It might have been cod?—A. Yes.

"Q. Why did you say it was halibut?—A. I said that we supplied him with bait, but I do not know that she caught halibut.

"Q. As to those vessels, can you tell with your glass at that distance whether what they haul on board is halibut or cod?—A. I do not know what they catch, but they say that they come there to fish for halibut. I frequently converse with them."

Mr. Thomson.—He says this Captain Swett is a neighbour of his, that the "Sarah C. Pyle," of which Captain Swett was master, fished for halibut, that he supplied him with 2,800 mackerel, that she went out to fish, and in answer to the question why he said it was halibut she caught, he says, we supplied her with bait; and in answer to the next question, he says he does not know what they catch, but that they say they come there to fish for halibut. Captain Swett told Mr. Smith that he came there to fish for halibut, and Smith believed his word, and I say that his evidence stands entirely uncontradicted; and in view of what I have seen of his evidence, I shall dismiss the affidavit of Swim as being entirely irrelevant, and having no bearing whatever upon the matter.

But there is another man that was brought forward to contradict Mr. Smith. Confronted with the maps, and shown that the soundings were there that he had undertaken to say were not there, he was obliged to admit that he had not been there for eleven years, while Mr. Smith had given evidence referring to a period within a couple of years.

There is another witness that they put forward to contradict Hopkins' testimony. On page 417 of the British evidence, Hopkins testifies as follows:—

"Q. Are you aware that halibut is taken inshore by boats, as well as cod and pollock?—A. By our boats? Yes, it is taken inshore.

"Q. I think you said you had heard of Americans coming in within three miles, but you did not know?—A. I do not know. Mr. Cunningham will know more than I do. It is a little aside from where my business takes me. I have understood that they have been in a good deal around St. John Island, just west of where I am.

"Q. That is within three miles?—A. Close in."

In this connection I will turn your attention to the evidence of Joseph Coutoure, page 280. He says:—

"Q. I am 42 years of age. I live at Cape Despair, in the county of Gaspe. I am a fisherman, and at present employ men in the fishing business. This fishery is carried on along the coast, from one

to three miles from shore, and also on Miscou Bank. The Americans fish there. I have seen as many as forty sail fishing there at a time."

Mr. Foster.—That was in 1857?

Mr. Thomson.—Yes; I want to show that the fish were there. The whole evidence shows that the codfish do not fall off.

Now on page 293 we have the evidence of Louis Roy, of Cape Chatte, Gaspe, fish merchant, formerly fisherman. His evidence is this :—

"Q. Is the cod as abundant now as it was thirty or forty years ago? Do you get as much?—A. Oh, yes, as much as thirty or forty years ago. I am sure of it."

I will not read, but simply refer to, the evidence of James Horton, James Jessop, and the Hon. Thomas Savage, which is all to the same effect as to this question of the cod-fishery, and therefore I submit that this was not a part of our Case to be summarily dismissed upon the principle that there are no snakes in Ireland.

Now I pass from the cod-fishery to the question of bait.

Upon that subject I want to be distinctly understood. I will just refer you in general terms to the question. Under the decision of this Commission the bait which the Americans, who come into our harbours, purchase cannot be taken into consideration. The point, therefore, that I have to make in view of that decision is this, that so far as the evidence shows that the Americans have gone in for the years that are passed, and have themselves fished for bait or employed others to fish for it, that must be taken into consideration, upon the principle that the man who employs another to fish for him in point of law fishes himself. I presume that will not be disputed. In reference to the years that are to come, the proposition that I submit is this :—That this Commission having decided that under the Treaty of Washington the privileges of buying bait and ice, and of transshipping cargoes, are not given by that Treaty. American vessels have no right to exercise them, and if they do so, they are liable to forfeiture, under the Convention of 1818. Therefore, as regards these rights, we go back to that Convention, and American vessels exercise them at their peril. In reference, therefore, to the future of this Treaty, American fishermen must be presumed to bow to your decision and obey the law. That being so, what will they do? They must get bait; they cannot do without it; and they will therefore have to fish for it themselves. In any case, you must assume that they will get whatever bait they require from our shores during the next eight years, according to law, either by fishing themselves or going and hiring persons to fish for them, which, under the Treaty, they undoubtedly have a right to do.

Then arises the question, is this bait absolutely necessary for them or not? Now the whole evidence shows that without the bait they cannot prosecute the fisheries at all. Even their own cod-fisheries it is really impossible for them to carry on, unless they get our bait. That this must be thoroughly understood by American fishermen, is indicated by the extraordinary efforts made to get rid of the difficulty. That is clear, because Professor Baird was put upon the stand to give evidence that a new process had been discovered by which clams could be kept fresh for an indefinite length of time, and that these could be used for bait. They were so fresh when preserved, I don't know for how many weeks by this process, that the Centennial Commissioners made up their minds (and bold men indeed they must have been) to eat them.

But Professor Baird omitted to tell this Commission a matter which was very essential to the inquiry, and that was what was the chemical process and *what was the cost of that process* by which bait which would become putrid and useless under ordinary circumstances within the usual time, was prevented from becoming in that condition; and I think until that fact is made clear, your Honours must dismiss it from your minds. I only refer to it to show that the American Government felt that upon that subject it was in a very difficult position. It is clear therefore to my mind, and I think it must be assumed by this Commission, that without fresh bait American fishermen cannot get on.

The next question is, can they get a supply of fresh bait on their own shore? There is a consensus of evidence given by witness after witness who went on the stand and stated that he came once, twice, three times or four times during one season for fresh bait into ports of Nova Scotia, along the Cape Breton shore. I did not examine as to the Grand Bank fishing vessels, for that part of the case I left to my learned colleague, Mr. Whiteway; but as to the George's Banks fishery, the supply of bait is obtained from our own shores. It is one of the matters your Honours must take into consideration, that if American fishermen were kept out of our waters so that they could not get bait,

not only their mackerel-fishing in the bay would go down, but their cod-fishery would go down also. According to the evidence, if your Honours will examine it, we hold the keys in our hands which lock and unlock the whole North American fisheries, I mean the North American fisheries for cod, halibut, mackerel, and herring, in fact for all those fish which are ordinarily used for food.

Mr. Foster.—Do you say mackerel?

Mr. Thomson.—Yes, in regard to mackerel, I will show that we hold the keys. It is probably forestalling my argument a little; but Mr. Foster, in the course of his speech, asserts that because the larger proportion of mackerel, as he says, comes from the American coast, our mackerel does not have any effect on the market.

Mr. Foster.—I thought you were speaking about bait and the bait question.

Mr. Thomson.—So I was. Even for mackerel, it is not much of pogie bait they use, and at all events they use other bait as well; but pogie is not necessarily an American bait, it is a deep-sea fish, as has been shown by different witnesses.

Now, in regard to the quantity of bait, I refer you to the evidence.

John F. Campion, of Souris, Prince Edward Island, pages 36, 37, and 45, says:—

"There are large numbers of American trawlers off Cape North. They catch their bait around the coasts of Newfoundland, sometimes at St. Peter's Island, and at Tignish Bay. I have seen them catch herring for bait this spring. *Three or four were setting nets right in our harbour.*"

John James Fox, Magdalen Islands, at page 114, says:—

"Americans catch bait largely in our neighbourhood; the chief place for catching it is at Grand Entry Harbour; they set their nets on shore; they want this bait for cod-fishing."

Angus Grant, Port Hawkesbury, Cape Breton, at pages 184, 185, says:—

"Americans both purchase and fish for squid; they catch squid by jigging; large quantities are taken at Hawkesbury. They buy and catch bait at Crow Harbour and those places."

James Purcell, Port Mulgrave, at page 197, says:—

"United States' vessels get their bait in our harbour; they sometimes buy it, and sometimes catch it. I have seen them catching it. I have seen eighteen vessels taking squid as fast as they could haul them in, at Hawkesbury."

John Nicholson, Louisburg, Cape Breton, at page 205, says:—

"Americans both fish for their bait and buy it. I have seen them fishing for squid close to the shore."

John Maguire, Steep Creek, Nova Scotia, at page 213, says:—

"American cod-fishing vessels sometimes catch squid for bait."

James Bigelow, Wolfville, Nova Scotia, at page 222, says:—

"Americans frequently catch bait on our shores."

John Stapleton, Port Hawkesbury, Cape Breton, at pages 228, 229, says:—

"I have seen numbers of Americans catching squid in Port Hawkesbury; this year I suppose fifteen or twenty sail; last year about twenty-five or thirty. They cannot carry on the Bank fishery without procuring fresh bait."

Hon. Thomas Savage, Cape Cove, Gaspe, at page 264, says:—

"I have seen Americans come in and catch bait themselves, or rather set their nets to do so; among our fishermen they seine for it; they would do very little at cod-fishing without the privilege of getting fresh bait."

James Baker, Cape Cove, Gaspe, at page 270, says:—

"Americans fishing at Miscou Bank come in to different places along our coast for fresh bait; they principally catch it themselves, taking squid, mackerel, and caplin; they took it close inshore."

James Jessop, Newport, Gaspe, at page 277, says:—

"American cod-fishers run up to Shippegan and Caraquette and fish for herring for bait, with nets; they also take mackerel and squid; they could not carry on the fishery profitably without coming in to get fresh bait."

William Flynn, Percé, Gaspe, at page 278, says:—

"There are annually about 400 cod-fishers in the bay; they get a great deal of their bait inshore along our coast by setting nets for it, and sometimes by buying it. I have seen them seining herring

and caplin, and have heard that they jig squid and bob mackerel. I don't believe they could carry on the cod-fishery profitably without coming inshore for fresh bait."

John Short, Gaspe, at page 284, says:—

"American codfishers get a great quantity of their bait from the inshore fishery. I have seen them set nets, and have no doubt of their catching their bait inshore; they often draw seines to shore for caplin and small fish. Without the right of coming inshore they could not successfully carry on the deep-sea cod-fishery."

Abraham Lebrun, Percé, Gaspe, at page 288, says:—

"I have heard from United States' captains that there are 500 cod-fishers in the bay. They get their bait on the coast. They take herring in nets. They also catch squid, and seine caplin. They take mackerel as well. They bring their nets with them. They had either to procure fresh bait or go without fish."

John F. Taylor, Isaac's Harbour, Nova Scotia, at page 296, says:—

"United States' cod-fishers in the gulf run inshore for bait—they go in boats to get them. Without the right of getting fresh fish inshore, they could not carry on the fishery with success."

George Romeril, Percé, Gaspe, at page 309, says:—

"Most of the United States' cod-fishers come inshore for bait; they get it with nets and by purchase; they take chiefly herring; they bring their nets with them, and catch the bait themselves close inshore. The cod-fishery could not be carried on successfully without access to the shores for bait."

James Hickson, Bathurst, New Brunswick, at page 341, says:—

"United States' vessels come inshore and fish for bait when they can, and buy it when they can; they take squid inshore. They couldn't carry on the fishery without coming in for bait."

John Dillon, Steep Creek, Nova Scotia, at page 360, says:—

"Some United States' vessels come inshore and set their nets for bait."

Thomas R. Pattilo, Liverpool, Nova Scotia, at page 376, says:—

"American vessels have this season been taking mackerel for bait in the harbour."

Peter S. Richardson, Chester, Nova Scotia, at page 390, says:—

"I have known plenty of men catching their own squid in Newfoundland or Canso."

Holland C. Payson, Westport, Nova Scotia, at page 399, says:—

"The small American schooners fishing in our vicinity catch their own bait."

John Purney, Sandy Point, Nova Scotia, at page 421, says:—

"The other day Americans were fishing for bait inside of Shelburne lights. One of the captains of the vessels told me he had taken three barrels that day in the harbour, of small mackerel for bait. The United States' vessels could not carry on their deep-sea fishery without getting fresh bait."

That is an epitome of some of the evidence—not the whole of it; and your Honours will find on examination that the evidence is strong on the point, and that nearly all the witnesses agree that they cannot get on without the fresh bait. I am not going to touch on that point at length, because it was successfully dealt with by my learned friend, Mr. Whiteway, who, I think, effectually settled the question of salt bait. It is admitted on all hands that it cannot for a moment compete with fresh bait.

The next point to which I turn your Honours' attention is a part of our case which has been made the object of attack on the other side—the Grand Manan fishery. I mean the fishery round the Island of Grand Manan, Campobello, and Deer Island, and adjacent islands, and on the main shore of Charlotte County opposite. I do not intend to call your attention to the evidence, for the time which has been given me in which to close my argument will not enable me to do so. I therefore pass it over, by calling your Honours' attention simply to the result of that evidence. It is proved by Mr. McLaughlin, who is admitted on all hands to be not only an able man, but an honest, straightforward man—a man who had a practical knowledge of the fishing business, and is a personal friend of Professor Baird, that the British catch was in value over 500,000 dollars on the Island of Grand Manan alone. He had especial reasons for knowing it, because he was Fishery Warden, and it was his business to find out what the catch was; and he says the catch put on paper was below the actual catch, for this sufficient reason, that the men to whom he went (and he went to every person engaged in the fishing business) were afraid of being taxed

to the extent of their full catch, and therefore gave him an under-estimate of the quantity. When he explained to them that in point of fact he was only Fishery Warden, they said they knew he was something else, and that he was a County Councillor, and they were afraid he would carry the information he obtained as Fishery Warden to the County Council. Mr. McLaughlin says that the figures are entered under the mark. He then says that the catch of the Island of Campobello and Deer Island is as large as the catch of Grand Manan. He says, in regard to those three islands of Grand Manan, Campobello, and Deer Island, and the adjacent islands, that the American catch round those islands is as great, or greater, than the British catch, that is to say, there are 2,000,000 dollars' worth taken round those islands. Upon the main shore, he says, from all he can learn —and he has talked with different men engaged in the business on the main shore, from Lepreau to Letite—there is as great a catch as that which is taken round the islands. That statement of Mr. McLaughlin, which was a matter of opinion, is corroborated as a matter of fact by Mr. James Lord and Mr. James R. McLean, who were not only practical fishermen, but were personally engaged in the trade, and own fishing vessels. Mr. Foster says: "If you admit the statement to be true, look what follows. A larger quantity of herring is taken round Grand Manan than the whole foreign importation of the United States." We have nothing to do with that. The American Counsel have undertaken to show that away out in the Bay of Fundy, on some ledges far beyond the three-mile line, at what they call the "Rips," they catch a great many herring, as also at different places along the coast; but it does not appear by the returns. The United States do not import a great many herring. There is no pretence for saying that we make use of the United States' market for our herring. A number of witnesses have proved (I have not time to read their testimony, but I state it as the fact) that the large market for salt herrings is to be found in this Dominion, in the different cities and towns from St. John to Toronto, and one witness stated that he had at Toronto met American salt herrings coming over the border, and competing with him in the market. And our herrings are also shipped to Sweden and elsewhere. Therefore the remark of Mr. Foster, though true in fact, really has no bearing on the case.

How was this evidence sought to be met? It was sought to be met by Eliphalet French, who is a merchant living at Eastport, a man who, if I recollect aright, had never been on the Island of Grand Manan. He said he had knowledge of the fishery there, and he put his second-hand information against the personal knowledge of McLaughlin, Lord, and McLean, because, said he, the whole trade comes through Eastport. There happens to be a division in the American camp on that point, for Pettes, who was another witness brought to contradict the statements made by British witnesses regarding Grand Manan, swears that very few herring go to Eastport. Whether he told the truth or not I do not know and do not care. They are not our witnesses, and it is not my business to reconcile their statements. It is curious that when those people were brought to contradict our evidence they could not agree. They not only undertook to contradict the British witnesses, but they contradict each other. Then we had Wilford J. Fisher, who formerly lived at Grand Manan, but afterwards became a naturalized citizen of the United States, and now resides at Eastport. For eleven years back—for a number of years, at all events—his foot had never been placed on Grand Manan; he had no personal knowledge as to what the fisheries were for the last eleven or twelve years. Another witness was Pettes, who, after having stated that he was largely engaged in the fishing business, it turned out, caught about 200 dollars' worth of herring in a year, was a boarding-house keeper in winter, and at other times ran a packet to St. Andrew's. This is the man who contradicted French as to the herring trade with Eastport, and said none went there. And these are the men brought up to contradict McLaughlin! Asked if McLaughlin was an honest and respectable man, they acknowledged that he was; but Pettes, having no personal knowledge, undertook to say that his judgment in regard to the catch off the mainland and the islands was just as good as the judgments of those three men whose particular business it was to make themselves acquainted with it in every particular.

I never heard more reckless swearing—with great deference to the other side —in my life, except, indeed, the extraordinary affidavits may perhaps have out-Heroded it. For living witnesses I never heard much more reckless swearing than was done by those gentlemen to contradict those whom they were obliged to admit were honest men, and whom they ought to have admitted possessed better means of knowledge. This is all I have to say on this point, except this: one of the witnesses, I believe Pettes, absolutely said he had never heard of the American fleet coming down there for herring.

Mr. Foster.—I think not.

Mr. Thomson.—Then it was one of the others.

Mr. Foster.—I think not.

Mr. Thomson.—It is not very important, except for the purpose of arriving at the conclusion as to whether this man told the truth or not. That is the only manner in which it is important. That the American fishing fleet comes down here every year is a settled fact. But there is an important point connected with this fleet, to which I respectfully call the attention of the Commission. It is a confessed fact that the American fleet does come down there, that very large quantities of herring are taken, and have been taken yearly, and will be taken for all time to come, I suppose; but not one single captain of all that fleet—and the names of the captains and vessels they commanded are known—has been put on the stand for the purpose of contradicting the British evidence in regard to the fisheries of Grand Manan, and the adjacent shores of New Brunswick to the north of it. That is a most extraordinary circumstance, that not a single man of all that fishing fleet has been called for the purpose of giving evidence on that point.

Mr. Foster.—You are entirely mistaken about that. Here is Ezra Turner, and Sylvanus Smith had been there.

Mr. Thomson.—He had not been engaged in the fishery for eleven years back, if my memory serves me right. We will take Ezra Turner first. I am speaking now of within the time covered by the testimony of those witnesses whom the four witnesses were called to contradict. If you say Ezra Turner comes within the reference, I am quite willing to be shown that such is the fact.

Mr. Foster.—What time do you say is covered by the witnesses?

Mr. Thomson.—I say it was during the time of the Reciprocity Treaty, and possibly a few years later.

Mr. Foster.—If you look at Ezra Turner's evidence, on page 227, you will find the following:—

"Q. In regard to the herring fishery at Grand Manan, have you been in that neighbourhood after herring?—A. Yes, I suppose I was the man who introduced that business.

"Q. How many years ago was that?—A. That is twenty-five years ago, I guess.

"Q. Did you go there to catch herring or to buy them?—A. That is the way all our vessels do; they go and buy them from the inhabitants there, who fish the herring and freeze them.

"Q. When were you there last?—A. I was down there last year, last winter. I only stopped a little while."

Mr. Thomson.— Was he down there as captain of one of the vessels?

Mr. Foster.—He is a man who has been captain all his life.

Mr. Thomson.—What I said was, that of all the fishing fleet coming there, not one of the skippers had been called for the purpose of contradicting the evidence given by McLaughlin, Lord, and McLean, and they could not contradict it unless they were down there as captains during the period over which the testimony of these men runs. Now, as far as I remember, Turner has not done so.

Mr. Foster.—Here is the evidence of Lawrence Londrigan, who was there last winter in the "J. W. Roberts." He does not come within the terms of the statement, because he was not captain. P. Conley was captain of the vessel. Londrigan, in his evidence, says:—

"Q. What were you doing last winter?—A. I left to go in a vessel for frozen herring.

"Q. What is the name of the vessel?—A. 'J. W. Roberts.'

"Q. Where did she hail from?—A. From Rockport, Me.

"Q. Who was her captain?—A. P. Conley.

"Q. When did you start from Rockport?—A. Sixteenth December.

"Q. How long were you gone?—A. We were at Beaver Harbour and around Grand Manan about two weeks.

"Q. Were other vessels there?—A. Yes.

"Q. How many?—A. 'Electric Flash,' 'Madawaska Maid,' 'Mary Turner,' 'Episcatawa.'

"Q. How many frozen herring did you get?—A. Some were bought frozen and some were bought green, and took ashore, and some we froze on the deck of the vessel.

"Q. What did you pay for them?—A. For most of them 50 cents a hundred, for about 25,000, 45 cents a hundred."

Then I can quote from affidavits.

Mr Thomson.—I believe I am making an admission, which is not borne out by the evidence, when I say I admit you can turn out twenty such cases as this, which is no contradiction, nor does it fall within that to which I called attention. I said not a captain had been called as a witness—and I am willing to treat this man as a captain—for the purpose of contradicting the British witnesses. Our witnesses swear that the Americans come down and get an immense quantity of fish there, to the value of 1,000,000 dollars yearly. This man (Londrigan) comes down and partly bears out that evidence. He comes down to tell you how many herring the captain of the vessel bought and paid for.

Is that any contradiction? It is a direct affirmative. But if half-a-dozen captains were put on the stand and said they had been acquainted with the fisheries all their lives, and for the last two years that no such catch of herring, as was alleged, was ever made by the American fleet, which we know from our experience is not possible, that would be no evidence in contradiction. So far from this evidence, to which Mr. Foster has called attention, being contradiction, it is direct evidence in confirmation.

Mr. Dana.—Is your position that we caught the herring?

Mr. Thomson.—I say you either caught them or went down and hired people to get them, and by the rule *qui facit per alium facit per se,* you caught them yourselves.

Mr. Foster.—Do you say we caught them or bought them?

Mr. Thomson.—I say you did both. I say that a large portion of them, according to the evidence, you bought. This man comes down and buys. Suppose 500 people did buy, does it prove that 900 people did not come down and catch.

Mr. Foster.—We had Gloucester vessel-owners here who testified that they fitted out their vessels, carrying no appliances to catch herring; that they carried money and brought back herrring, leaving the money behind them.

Mr. Thomson.—With great deference for Gloucester merchants—I shall have to deal with their evidence by-and-bye—those who have appeared before the Commission in affidavits do not stand so well that much attention can be given to their evidence. I want the evidence of men on the spot, of men who came down and fished. It was quite possible for some of the captains, of whom there is a large body, to have been brought down; they could have been produced. We have produced positive affirmative evidence that they come down and catch fish, while no evidence has been given against that, and it is a significant fact in regard to the Grand Manan fisheries that not a single tittle of contradictory evidence of such a character as to diminish one pin's weight from the British evidence has been advanced.

Mr. Dana.—Your statement was not that you did not believe the evidence, but that there was no such evidence.

Mr. Thomson.—I am not going to say I do not believe the witness. I take the witness to whose evidence Mr. Foster called attention, and I say I am willing to admit you could produce twenty such witnesses, and so far from their testimony being contradictory it is affirmatory. The American Counsel have not shown that every man who obtained herring bought them; they could not prove their proposition in that way. It did not prove that because somebody bought therefore nobody caught any.

I pass from that to a principle which is laid down by Mr. Foster at page 41 of his speech, in which he says: "You must look at this case as you would at a mere business matter, pencil in hand, and figure up how much to charge against the Gloucester fishermen." This is the error, the fallacy that underlies the whole American defence to our case—that the question to be decided is one between Great Britain and Gloucester fishermen. It is no such thing. It is a question between the United States and Great Britain, and not whether these fishermen have been injured or the reverse. The question is whether the United States have got a greater benefit by the advantages which have been given them under the fishery clauses of the Treaty than we have by the advantages given to us.

What is the effect of free fish going into the United States? Is not the effect that the consumer gets it cheaper? and the consumers are inhabitants of the United States. It is alleged that the business is going to be broken down. When that happens it is time enough to talk about it. It is said that the fresh fish business is going to entirely destroy the trade in salt fish, for fresh fish can be packed in ice and sent over the Dominion, and as far as Chicago and St. Louis. I do not doubt but that that may be done to some extent, but it will be very expensive. I doubt whether fresh fish can be carried as cheaply as salt fish; it must be very expensive to carry it in the refrigerator cars; besides, fresh fish of that description can only be purchased by large hotels and by people who have plenty of money; but the ordinary consumer cannot afford to eat fresh fish, which is much more costly than salt fish. The trade in fresh fish must be confined to the line of railroads; it cannot be taken by carts into the country, while barrels of salt fish could be rolled off at any station. Therefore, this point is entirely out of the argument. But the principle laid down is entirely incorrect.

The question is what benefit is the Treaty to the whole United States? I will show you by figures, which cannot possibly be mistaken, that previous to the Reciprocity Treaty the price of mackerel in the United States was at a pretty large figure. The moment the Reciprocity Treaty threw open the American market and there was a large influx of our fish, the prices fell. That state of things continued from 1854 to 1866. In 1866, when by the action of the United States' Government the Reciprocity Treaty became a dead letter, the same state of things as existed before the Treaty again existed. Fish, which during those

years had been cheap to the consumer, rose in price. I will show that the moment the Treaty of 1871—the Washington Treaty under which this Commission is now sitting—was passed and went into operation, the same result again followed. The prices of mackerel and other fish which had been high, fell. What is the argument which necessarily flows from that? It is that the consumer thereby gets his fish a great deal cheaper; there can be no doubt about that. But there is another view which must be taken. If it be true, as has been contended in evidence, that Gloucester merchants could not carry on their fishing operations without having access to our shores, and I think it is clear and conclusive that they cannot carry on the mackerel fishery, in the bay, for instance, without going within the three-mile limit, there is an end to the question. They cannot carry on a large business in their own waters without the assistance of our fisheries; they cannot carry on the fishery in the bay—the great mass of the testimony shows that—unless they get access to the shore line. To concede, for the sake of argument, that large schools of mackerel are to be found in the body of the Bay of St. Lawrence, and sometimes taken by seines and sometimes by hook and line; those schools, in order to be available to the fishermen, must be followed by them, and if they undertake to follow the schools they must make up their minds to go within three miles of the shores or lose the fish. The whole evidence shows that, and that the fishermen came into the inshore waters, even when the cutters were there, and ran the risk of seizure, and that was to them a dreadful occurrence, for it involved the forfeiture of the vessel. They knew the danger, and yet they ran the risk. These men knew their business, and would not incur the risk to their property without obtaining a return. And what was the reason? They could not do without the inshore fisheries, and rather than go home without a catch they ran the risk of seizure and condemnation.

It is said, on behalf of the United States, that during the last few years, notwithstanding the American fishermen have been free to go into any portions of the bay, they could not make catches. Let me dispose of that at once. If it be true that the Americans have gone into the bay since the Treaty went into operation, and failed to get large catches, it has resulted from the ruinous system of purse-seining, a system which has destroyed the fisheries on their own coast, and will do so everywhere else. The effect, as has been graphically described by a number of witnesses, has been such that all the fish which can be gathered in the net, which is swept round for a mile or more, are taken in that tremendous seine—thousands of barrels at a time; they can only take out so many at a time, in the interval a large portion die and are unfit for food. It is a most disastrous and ruinous mode of carrying on any fishery; and I hope, for the sake of the United States themselves, and the fishermen who carry on the fisheries, that the day will come, and soon come, when the destructive purse-seine fishing will be prohibited by legislative enactment.

There is one requisite, without which purse-seining in our own waters is an utter failure—there must be deep water, or if there is not very deep water, there must be a smooth bottom. In the gulf there is not very deep water, and the bottom is exceedingly rough. Because some among American fishermen got exceptionally large catches with purse-seines off the United States' shores, they persist in using purse-seines in the gulf. What follows? The fishermen do not dare to approach the shores for the purpose of using the seines. They would be quite useless near the shores, and are nearly so in the body of the bay. What is the result? They come back without catches, and then undertake to say that there is no fish in the Bay St. Lawrence. The truth is, they go with appliances utterly unfit to take the fish there. That is the truth about the matter. I say it is the purse-seining that makes the whole difficulty; and if they had stuck to hook and line they would have had all these years back as good fishing in the bay as they could get anywhere.

But, under all the circumstances, can they get on without the right to enter the shore fisheries? The moment they get into the shore fisheries they get full fares. There is no conflict of testimony upon that point. We have shown, by a mass of testimony, that there are no large catches to be made without the right to go inshore. What is the evidence brought to contradict that? It is the evidence given by men who have not caught any fish inshore because they never fished there. Very few have undertaken to say that they have gone inshore and failed. The whole testimony has shown that the American fishermen cannot get along without the inshore fisheries.

In estimating the value, if it be true that their own cod-fishery cannot be carried on without our bait; if it be true they cannot supply their own market with mackerel from the American shores without getting a supply from the Gulf of St. Lawrence; and that they cannot get mackerel in the gulf without going inshore, we make out our case, do we not? It is not a question as to what each fisherman sailing out of Gloucester is to be charged; the question is this, whether the United States must not pay for the privilege that enables Gloucester to maintain its present state of prosperity. Every nation has said,

every nation has considered, that the fisheries form the nursery of its fleet. It is a business which has been nurtured by large bounties by the United States and other countries. The class of fishermen is a favoured, privileged class. Theirs is the most ancient calling in the world. And can it be said it is nothing to the United States to keep up that class? Is it nothing that they have there the nucleus out of which their naval force must be kept up? The United States cannot get on without her navy; she must have a great navy. It is not sufficient that she should be a great Power on land; she intends to be, and I hope always will be, an important and great Power on the sea. And how can she be a formidable naval Power unless she has some means of nurturing her marine; and how is that to be nurtured, except through the fisheries? It is one of the most important schools she can possibly have. I shall have to call your attention to speeches on this point in which it is shown to be one of the benefits accruing to the United States. I therefore say, that when Mr. Foster laid down the extraordinary rule that your Honours must approach the consideration of the question of value as a common matter of business, with "pencil in hand," he took a narrow and erroneous view of the matter, based upon the fallacy underlying their whole case, that it is a question between the fishermen of Gloucester and Great Britain, when it is nothing of the kind.

Upon the question of the value of the two fisheries, alluded to by Mr. Foster, tables were put in by Major Low, to which I wish to call your Honours' attention. In Major Low's evidence, page 402, he gives two statements of Mr. Steele's transactions, showing the average of monthly earnings of Mr. Steele's fleet each year, from 1858 to 1876, in each department in which they were employed, after paying stock charges and so forth. In 1858, the number of vessels was eight. I am reading now from an analysis of Major Low's tables, made up very carefully by Mr. Miall, of Ottawa, a very able man in statistics, who has given me a great deal of assistance in this matter, and who is very accurate in his figures.

Mr. Foster.—Let Mr. Miall be put on the stand as a witness.

Mr. Thomson.—All you have to do is to refer to Major Low's evidence. I want to call your Honours' attention particularly to this, because a large portion of the evidence submitted by the United States was for the purpose of showing that the cod-fishing was an important business, and the mackerel-fishing was not. But that evidence proved the opposite. This is the sum total of Major Low's own figures, as put in for the years from 1858 to 1876, that the average earnings of each vessel in the cod-fishing business per month was 393 dollars, while the average earnings of each vessel per month in the bay mackerel business was 442 dollars, and on the American shore only 326 dollars. These are Mr. Low's own figures, and the results which they prove. Here is the statement:—

ANALYSIS of Statement of Messrs. Steele's Transactions, put in evidence by Major Low, a witness on behalf of the United States—showing the monthly earnings of Messrs. Steele's fleet, each year from 1858 to 1876, in each department in which they were employed, after paying stock charges and crews' wages:—

Year.	No. of Vessels.	Cod Fishing.			Bay Mackerel Fishing.			Shore Mackerel Fishing.		
		Time Engaged.		Vessel's Share.	Time Engaged.		Vessel's Share.	Time Engaged.		Vessel's Share.
		Months.	Days.	Dols.	Months.	Days.	Dols.	Months.	Days.	Pogies. Dols.
During Reciprocity Treaty—										
1858	8	31	7	215	33	22	318	..	1	..
1859	10	33	9	271	42	13	246	..	..	..
1860	11	42	15	211	33	18	273	7	24	427
1861	11	55	3	158	22	3	202	6	14	235
1862	9	59	8	243	14	16	326	2	27	190
1863	9	39	14	392	20	7	659	1	24	209
1864	8	37	6	407	27	25	800	..	..	..
1865	8	26	24	836	34	9	736	..	..	..
During Dutiable Period—										
1866	10	36	6	551	43	9	617	..	..	..
1867	10	52	9	410	34	13	464	..	18	130
1868	10	66	6	488	17	16	301	..	..	..
1869	8	48	21	545	19	3	392	..	..	..
1870	7	37	26	404	..	..	..	17	18	426
1871	6	35	17	383	..	..	..	14	9	299
1872	10	56	9	416	5	5	513	7	13	209
During Washington Treaty—										
1873	8	57	11	482	13	8	483	..	..	..
1874	9	63	25	466	11	25	290	..	..	..
1875	9	61	27	430	9	16	546	..	..	..
1876	13	74	11	360	17	21	231	..	..	..
Average	$9\frac{1}{10}$	..	..	..	..	..	..	..	..	..
Time engaged annually ..	..	48	..	..	21	3	..	3	3	..
,, per vessel ..	..	5	8	..	2	10	..	..	$10\frac{1}{2}$	..
Vessels earnings per month, per vessel	..	..	..	393	..	..	442	..	..	326

Mr. Foster.—I understand that this paper will be put in, that we will have an opportunity of examining it, and of replying to it, if justice is done.

Mr. Thomson.—We will have no mistake about that matter. I am quoting from a paper what the result of Major Low's evidence is.

Mr. Foster.—Here is a table of statistics presented, and held in the hand, and we are told with what care and by what skilful hands it has been prepared, and yet they do not propose to give even the details from which the result is made up.

Mr. Thomson.—I will hand over the figures, and you can look at them.

Mr. Foster.—I say we are entitled to have it to examine, and we are entitled to reply to it. If the learned counsel is allowed to read anything prepared by Mr. Miall, whom he has had at work all summer, and did not see fit to call as a witness, we certainly are entitled to examine it and reply to it.

Mr. Thomson.—If you will look at page 402 A of the American evidence, you will find the table. You will find by that, which contains Major Low's figures, that, from 1858 to 1876, Mr. Steele's vessels made an average of 393 dollars per month during the time they were cod-fishing. That is what the statement shows; whether it is true or false, I neither know nor care. These figures also show that, in American waters, the earnings per month, per vessel, while mackerel-fishing, were only 326 dollars, while in the bay mackerel-fishery, the vessels made per month, during the summer season, an average of 442 dollars. That table was put in for the purpose of showing the comparative values of the several fisheries —the cod-fishery by itself, the mackerel-fishery on the American shore, and the mackerel-fishery in the bay—and the result is just what I state.

Sir Alexander Galt.—The statement, I think, must be made as part of your argument.

Mr. Thomson.—There is no intention to offer the statement as evidence; it is argument; but I think it would be very unfair if I did not point out where the result stated was to be found. Surely it is easy to see what the result is.

Mr. Foster.—We do not object to your assertion as to that being the result.

Sir Alexander Galt.—It is now, I judge, the business of the Commission to say whether the evidence bears out the statement. The time has passed for receiving evidence.

Mr. Foster.—I assent to that, with a certain qualification. That is the ultimate business of the Commissioners; but when, at the end of the last argument, a statement of that sort is brought forward, of which no previous notice has been given, although ample notice might have been given, then common justice and the rules that apply before all tribunals that I ever heard of, give to the parties who have not the last word the right of making an explanation. It is just what we gave notice would happen, if, after all our arguments were made, the other side were allowed to reply, and sometimes in derision, and sometimes sportively, the phrase that fell from me that I believed masked batteries would be opened, has been repeated during the investigation. It is just what I meant by the phrase; it is bringing out at the end something that requires explanation, and then trying to cut off the opportunity of giving that explanation. I never knew that attempt to succeed in a court of justice, and I do not mean that it shall succeed here till we have done our utmost to prevent it. So, then, the learned counsel puts in these statements at this time; we will have overnight to examine them, and if we require an opportunity to make an explanation, we expect to be heard upon it to-morrow.

Mr. Thomson.—I can only say that not one figure has been referred to by me on this point that is not to be found in Major Low's statement, put in a long time ago. But he absolutely admitted it himself, in so many words, in his cross-examination. I call attention to his evidence on page 389, given on 5th October, more than a month ago. At the bottom of that page, you will find his cross-examination by Mr. Davies, as follows:—

"Q. Dividing the number of the vessels into the results, what will it leave you?—A. 623 dollars.

"Q. *So that the average catch per month of the vessels employed in the American shore fishery from* 1858 *to* 1865, *amounted in value to* 623 *dollars, while the average catch per month of the vessels engaged in the Gulf of St. Lawrence fishery realized* 998 *dollars*?—A. Yes.

"Q. And the average value of the catch of the vessels engaged in the gulf fishing for the same period of time was 998 dollars?—A. Yes."

Now, how can my learned friend say that we are springing any new matter upon them? Here is their own testimony, given by the man of statistics from Gloucester, the great man who came here literally shielded by *Steele.* It is the most extraordinary thing I ever heard in my life.

Now, I want to follow this matter up a little. These statistics were put in for the purpose of proving two results, viz., that the mackerel catch on the United States' shores was a first-rate one, and the catch in the bay was a very bad one; but it happens that

by their own showing, they prove just the contrary. I repeat what I said yesterday, that Mr. Davies captured that gentleman morally by his own confession.

We will now turn to another portion of his testimony. I call your Honour's attention to a statement put in by Major Low, at page 338 of his evidence. He is asked by Mr. Dana as follows :—

"Q. Have you ever made up any statistics relative to the shore and gulf fisheries, showing the difference between the American shore fishery and the Gulf of St. Lawrence fishery?—A. Yes, and the statement is as follows :—

Number of Fishing Vessels in Gulf of St. Lawrence Mackerel Fishing and the American Shore Mackerel Fishery.

1869.	194 vessels in gulf, average catch 209 barrels	40,546	barrels.
„	151 „ offshore „ 222 „	33,552	„
	Mackerel caught by boats and some Eastern vessels packed in Gloucester	19,028	„
	Mackerel inspected in Gloucester	93,126	
1875.	58 vessels in gulf, average catch 191 barrels	11,078	barrels.
„	117 „ Am. shore „ 409 „	47,853	„
		58,921	

"The average catch is based on the average catch of eighty-four vessels from seventeen firms in 1869; and twenty-eight in bay and sixty-two vessels off American shore from twenty firms in 1875. These firms have none better than the rest."

I desire particularly to call your attention to this extraordinary statement. They select as a specimen of the catches on the American shore, not a series of years, say from 1869 down to the present time; but they select 1869, which, according to the evidence, was the worst year of the fishery in the gulf, and 1875, which happened to be the best year the American fishermen have had on their own coast, and put the statement before this Commission as a fair average of the result of the two fisheries. Now, this man was under oath, when this statement was put in, and if I can show you from his testimony that he afterwards had to admit that it was not a fair way of submitting the matter, and the average was totally different, I say I am justified in characterizing this piece of conduct on the part of Major Low as a gross attempt to deceive the Commission.

Mr. Foster.—Major Low had made a collection of statistics in 1869 for the purpose of a report, as Town Clerk of Gloucester, long before the Treaty was made, and wholly without reference to it. In 1875 he made another, for the purpose of the Centennial, both of them wholly aside from the purpose of this investigation. Now, in seeking for light, we sought from him only the statistics he had made. As to 1875 being the best year on our coast, that is a very great mistake. If you will turn to Table B, Appendix O, which shows the number of barrels of mackerel packed and inspected in Massachusetts, from 1850 to 1876, you will perceive that 1875 was a very bad year, and far below 1876 and 1874, and the shortest years. So the statement that 1875 was selected as a good year is quite out of the way.

Mr. Thomson.—In view of what I showed this morning to be the contents of Appendix O, I think Mr. Foster is very bold to refer to it.

Mr. Foster.—It shows that the catch in 1875, even that of Bay St. Lawrence, was a very small one.

Mr. Thomson.—Let us see what Major Low says about this table at page 389.

Mr. Foster.—It is given at page 329. Four questions and answers contain an explanation of how they were made up, only you do not happen to read them. Just read them.

Mr. Thomson.—This question is put to Mr. Low by Mr. Dana.

"Q. In order that the Commission may understand whether these Gloucester merchants, when making these statements here, are guessing at what they say, or have absolute data to go upon, and know what they are about; you have, at our request, made an examination of the books of one of the firms?—A. I have examined the books of the most successful firm engaged in the Bay mackerel fishery.

"Q. That is the firm of Mr. Steele?—A. Yes, I did this of my accord, because I wanted the Commission to see how these books are kept.

"Q. Will you produce these books?—A. I have the trip book, which I have numbered one, for the years since 1858 and 1859; their previous books were burned in the great fire at Gloucester in 1864. I have the trip books for the years extending from 1858 to 1876 inclusive, nineteen years."

Mr. Foster.—Go back to what you were upon.

Mr. Thomson.—It is as follows :—

"Q. You do not, I suppose, include in this statement any but vessels—it has nothing to do with boat-fishing ?—A. No.

"Q. Will you state from what source you have made up these statistics ?—A. The information concerning the vessels which fished in the gulf, and those which fished off our shore, I obtained and tabulated for the information of Gloucester, when I was Town Clerk, in 1869, and the report for 1875 was procured for centennial purposes—not by myself, but by some one who did his work well.

"Q. Can you say, as a matter of belief, that these statistics were made up for centennial purposes, and not with reference to this tribunal ?—A. Yes, I believe that is the case.

"Q. From what sources were those for 1875, for instance, taken ?—A. The catch was taken from the reports of the number of firms I mentioned.

"To how many firms do you refer ?—A. These include the most successful firms, George Steele, &c.

"Q. Those are firms that had been the most successful, whether on our shore or in the Gulf of St. Lawrence, which are to be considered the most successful firms in Gloucester ?—A. George Steele, Leighton and Company, Dennis and Ayer, Smith and Gott.

"Q. These are generally considered to be the most successful firms ?—A. Yes.

"Q. Were they all included in this return ?—A. Yes.

"Q. The tonnage of the vessels was somewhat larger in 1875 than it was in 1869 ?—A. I think not. I think it was about the same."

What does that amount to ? That he made up the statement for 1869 for the Centennial, and the other for some other purpose ; but he brings them both here for the purpose, as I charge upon him, of deceiving this Commission.

Mr. Trescot.—He tells you what they are.

Mr. Thomson.—I say again, that when a witness puts in evidence statements such as these, because there was no object in showing what the catches were in 1869 and 1875, unless it was intended as a fair specimen of the average years, and has the information in his own breast by which directly opposite results would be shown ; a witness who comes here and makes such a statement does so deliberately to deceive the Commission.

Your Honours will recollect that nothing but the trip books were produced ; though we gave notice to produce the other books they did not do so. Look at page 385 and and see what Major Low says on this subject, and then say whether he is a gentleman whose testimony can be depended on. At page 385, towards the bottom, there is the following :—

"Q. In the first place, is George Steele a charterer of vessels ?—A. No.

"Q. Then this statement, which assumes to relate to George Steele's business, as his name is mentioned as the charterer of the vessel, does not represent an existing state of facts, but is merely a theory which you put forth ?—A. I supposed I had mentioned on the account that it was an estimate."

At page 368 and 369 of Major Lowe's evidence, a statement is handed in entitled : "Number of vessels engaged during seventeen years, from 1858 to 1876 inclusive, in the Gulf of St. Lawrence Mackerel Fishery, excepting the years 1870 and 1871, when none were sent, by George Steele, of Gloucester—107 ; average time employed yearly for seventeen years—15." In regard to that, I desire to call attention to the evidence on page 385, your Honour bearing in mind the fact that Mr. Dana put to Major Low the question that he had examined the books for the purpose of giving a statement which could not lie—no guess work but absolute verity, so far as the books were concerned. Mr. Davis, on cross-examination elicited the following :—

"Q. The owner would suffer no loss though the charterer would. It seems singular, does it not ? You say this is where a man charters a vessel ?—A. Yes.

"Q. In the first place, is George Steele a charterer of vessels ?—A. No.

"Q. Then this statement, which assumes to relate to George Steele's business, as his name is mentioned as the charterer of the vessel, does not represent an existing state of facts, but is merely a theory which you put forth ?—A. I supposed I had mentioned on the account that it was an estimate.

"Q. That is the real fact, is it not ?—A. Yes. The real fact is that I made a mere estimate in this regard."

Now, that is a most extraordinary statement.

Mr. Foster.—In what regard ?

Mr. Thomson.—In regard to this, that Mr. Dana put forward Major Low, as a man who had examined the books of Gloucester merchants for the purpose of getting an absolutely correct statement, and no guess work ; yet we find him coming forward with a deliberate piece of guess work.

Mr. Foster.—He made a statement from the books, and then made a supposititious hypothetical case of one voyage, to show what the result would have been.

Mr. Thomson.—At page 386, your Honours, still bearing in mind that this was to be

no imaginary matter, but absolutely made up from the books, a number of questions are put by Mr. Davies :—

"Q. How did you get these thirteen or fourteen trips ?—A. I saw the trip books. I asked Mr. Steele for permission to show them to the Commission.

"Q. You then had the opportunity of examining the books ?—A. Yes, as to his trip books, but not as to his ledger.

"Q. Did you ask for his ledger ?—A. I did not.

"Q. I suppose if you had done so you would have obtained access to it ?—A. Probably I should.

"Q. Therefore you do not know what his books show as to actual profit and loss sustained by him during this period ?—A. I do not.

"Q. And the actual state of facts may be at variance with the theory you advance ?—A. I hardly think so.

"Q. Supposing that George Steele stands in the position you assume in this statement, he would be bankrupt, beyond all redemption ?—A. Yes.

"Q. You have proved him from theory to be bankrupt beyond all redemption, when in fact he is a capitalist worth 45,000 dollars, which exhibits the difference between the practical statement and the theory ?—A. Yes, but he had capital when he went into the business.

"Q. Do you state that he brought it in with him ?—A. One-half of it was made in the sail-making business.

"Q. Where was the other half made ?—A. In the fishing business, during nineteen years, but that is only 1,000 dollars a year, and he ought to make that.

"Q. The actual loss on each vessel, for 107 vessels, you place at 167 dollars ?—A. Yes.

"Q. Will you make that up and tell me for how much he ought to be a defaulter ?—A. His loss would be 17,869 dollars.

"Q. And that is not consistent with the facts—he is not a defaulter to that amount ?—A. He has made it up in other parts of his business ; but as far as his vessels are concerned, he has probably lost that sum.

"Q. You did not get access to his profit and loss ledger ?—A. No.

"Q. That would show exactly how it is, and this is an imaginary conclusion ?—A. Yes, I could not make it up without the actual bills for expenses for his vessels. I thought it was already understood that this was imaginary."

Now, this is the testimony that is given to Mr. Dana's request that the statement should be perfectly true.

Wednesday, November 21, 1877.

The Conference met.

Mr. Thomson continued his closing argument is support of the case of Her Britannic Majesty.

Your Excellency and your Honours :—When we adjourned yesterday I was referring, I think, to a statement produced by the American witness, Low, the figures of which were prepared to show the respective values of the fisheries on the American shore and in the Bay St. Lawrence for a period of years, from 1858 down to 1876 inclusive. It appeared, however, on cross-examination that the earnings of the vessels engaged in codfishing averaged each 393 dollars per month after paying off the crews and liquidating the "stock charges" ; the vessels mackerel fishing on the American shore made 326 dollars per month ; while those mackerel fishing in Bay St. Lawrence averaged each 442 dollars per month. These figures as determining the relative values of these fishing grounds, to which I will hereafter call your attention, are I conceive, conclusive. While Low was on the stand he put in statements from the books of George Steele and Sinclair and Low. The statement of Steele, which is to be found on page 402 of American evidence, shows when the figures are examined that the bay catch from 1858 to 1876 was 33,645 barrels of the value of 403,832 dollars. It shows that the catch extending over the same period of time on the American shore was but 5,395 barrels, of the value of 43,101 dollars. The average price of the bay catch per barrel was 12 dollars, and of the shore catch 7 dols 99 c. Now that, your Honours will see, is important, for it comes from Major Low, who came here for the purpose of proving directly the opposite. He came here to sustain the extraordinary view that was presented in the American Answer and by Aemrican witnesses, namely, that the fish caught on the American shore were more valuable than the fish caught in Bay St. Lawrence. Unfortunately the figures by which it was attempted to prove that, proved directly the reverse. Your Honours have only to take up the American Evidence at page 402, and take the statement (A.) to find the result. The statement of Sinclair and Low, which is found at pages 380 and 381, shows that in the

years 1860, 1861, and 1862 the bay catch was 3,645 barrels, bringing 23,059 dollars, or an average of 6 dols. 32 c. per barrel, whilst the catch on the American shore was 1,024 barrels, bringing 5,532 dollars, or an average of 5 dols. 42 c. per barrel. Sylvanus Smith, an American witness, when on the stand, produced a statement, or his evidence will establish, that from 1868 to 1876, his bay catch was 10,995 barrels, realising 111,703 dollars, averaging 10 dols. 16 c. per barrel; whilst the United States' shore catch was 19,387 barrels, bringing 176,998 dollars or 9 dollars per barrel, 1 dol. 16 c. less per barrel than the bay catch. Procter's statement shows that his bay catch from 1857 to 1876, for 19 years, was 30,499 barrels, realising 345,964 dollars, or an average of 11 dols. 57 c. per barrel. Procter gives no American shore catch, I suppose he has good reason for not doing so; I presume that the figures would not have compared favourably.

It is remarkable that the statement of Sylvanus Smith (which is to be found at page 330 United States' evidence) is taken for the period from 1868 to 1876, when the American Fisheries were said to be at their best, I think. But be that as it may, he shows—although he came he came here for a different purpose—that his bay catch was 10,995 barrels, realizing 111,703 dollars, or an average of 10 dols. 16 c. per barrel; whilst his catch on the American shore was 19,387 barrels, realizing 176,998 dollars, or an average of 9 dollars per barrel. Now these statements are put in by Mr. Low, with the exception of those of Sylvanus Smith and Procter, who, though brought here for another purpose was obliged, in cross-examination by Mr. Davies, to admit the facts which I have shown. It is sufficient also that Low was put forward by Mr. Dana as a gentleman who would put in statements direct from books in order to insure accuracy, and Mr. Dana himself takes this view in his speech, for he says, after commenting somewhat severely on the British evidence, "Now, let us turn to evidence that can be relied on"—the evidence of books. Yet Low, though he had full access to the books, did not care to take the whole of the contents, such as they were, but he chose only to take certain figures and hold back those on the other side of the account in favour of the Gulf Fisheries; and he is obliged to admit that he made the statement up merely as an estimate. This is sufficient, because at first it was put forward that all these were accurate statements. Why the man who came here professedly to give the contents of the books of the Gloucester merchants engaged in the fishing business, should give an estimate instead of the actual facts, passes my comprehension.

Mr. Foster.—You are entirely incorrect—the statement he came here with was an estimate. He made an estimate for one voyage, after putting in the result of the analysis of the trip books, and after the whole trip books were before you.

Mr. Thomson.—I say that the trip book only shows certain expenses connected with a particular voyage, not the whole expenses of the vessel. There was no record therein as to what was paid for provisions, for coal, and a number of articles. And while I am on that subject I may mention that hard coal was charged in one of the accounts—I forget which, but your Honours will recollect—at the rate, I think, of 10 dollars a ton. It struck me as an exceedingly high price, when it can be bought in St. John for 5 dols. 50 c. and perhaps less. It struck me as very odd.

Mr. Foster.—It depends on the year.

Mr. Thomson.—Well, this year. Cordwood, for what purpose it is required I do not know, is entered at 8 dollars or 10 dollars a cord, while Mr. Patillo said in cross-examination that he had bought it at 2 dols. 75 c. per cord. These are all little straws on the current showing which way it is running.

Mr. Foster.—He never said that in the United States he could buy it at that price.

Mr. Thomson.—He got it at Canso. He said the American fishermen all got their wood at Canso; and I then asked him how much they paid for it. It is wholly absurd to suppose that shrewd American fishermen would buy their wood in the United States and pay a high price, when they could get it at Canso, which was directly on their route, at 2 dollars 75 c. a cord.

Mr. Foster.—He has been out of the business since the end of the war, and Steele's books are for later years.

Mr. Thomson.—I apprehend that Steele's trip books do not show what was paid for wood, and the other books have not been produced. It is true the extraordinary offer was made to us that we should go down and examine all the books of the Gloucester merchants. I greatly doubt whether the learned agent of the United States could have borne me out if I had gone into one of the Gloucester houses and asked to see their books.

Mr. Foster.—You had better come and see.

Mr. Thomson.—And besides, judging from the two sets of affidavits which have been

filed, both professing to come from one set of books, it appears as if these were different sets of entries in the same books relating to the same subject, or that they were taken from different books.

Mr. Dana.—Do you mean that the offer was not made in good faith ?

Mr. Thomson.—I do not mean to say that the offer was not made in good faith. It was also rejected in good faith. We knew exactly where we were. I apprehend that the Agent and Counsel of the United States could have no possible authority to enable us to go into the stores of Gloucester merchants and search their books. I think that, like Patillo, they would have asked for our authority.

Mr. Dana.—It is very well to make sport out of it, but you are calling in question the honour of persons.

Mr. Thomson.—If Mr. Dana thinks I am calling in question the honour of Counsel, I must say I am doing nothing of the kind. I would be very sorry to be misunderstood. We have got along so far very pleasantly at this Commission, and I hope we will do so to the end. I state most distinctly that I have not the slightest idea of charging any dishonourable motive on the part of the United States' Counsel; but I mean to say, that, though the offer was made in good faith, it was rejected in good faith, and for the reason which I have stated.

These are the last observations I have to make in regard to Low. He certainly was a most preposterous failure, coming here as he did, paraded as a man of figures and statistics, having the title of Major in the army, and having filled the office of Postmaster, and I don't know how many more offices. He was brought here to destroy our case, and by his answers and cross-examinations he really benefited it as much as a witness could possibly do. I think that the only parallel case to that of Low (and it may be a parallel case) occurred some thousands of years ago on the hills of Moab. I can imagine Mr. Collector Babson, who appeared to have charge of a great number of witnesses, and marshalled them in and out, saying to Low, after he had given his evidence, in the same language as was used by the King of Moab to the Prophet Balaam, " I brought you here to curse mine enemies, and ' Low ' you have blessed them altogether these three times ; now depart into your own country." And I presume he departed.

There has been some difference of opinion as to the catch taken within the limits. It has been put down by a large number of witnesses as being at least a two-thirds catch ; some of them have said it was a nine-tenths catch. Mr. Foster has based his argument on the assumption that it was a one-third catch. The evidence on our side is overwhelming on this point. I called your Honours' attention yesterday to the fact that the evidence produced to answer our case was given by *witnesses who had not been on the ground themselves at all;* they fished, they said, elsewhere, and did not value the inshore fisheries, simply because they did not choose to use them.

Let us refer to the testimony of some of our witnesses :—

" Mr. Simon Chivirie stated that two-thirds at least of the mackerel caught off Prince Edward Island is taken within three miles of the shore, and some seasons none could be caught outside. (He spoke from an experience of thirty years,) the reasons being that mackerel come inshore to feed. In the Bay of Chaleur the fishing is all inshore, the reason being that in the centre it is deep water, with a strong current. On the south side are banks where fish food abounds.

" Mr. McLean stated that he himself had seen vessels among schools of mackerel, as far as the eye could see either way along the coast, right inshore. He had seen mackerel taken with jigs in two fathoms of water. Mackerel, he said are only taken when shifting, except in shoal grounds, or on banks. When he was in the habit of fishing all the mackerel he took was within three miles of the shore.

" Mr. Campion said he did not fish outside the limit, because there were no fish there. Some vessels used to drift off the land, but they would have to sail in again—they could get no fish beyond the three mile limit.

" Mr. Campbell stated that two-thirds of the fish taken by the fishing vessels in the Bay of Chaleur are taken within the three mile limits. The American fleet, he said, caught mackerel from two to two and a-half miles from the coast. There was not much fishing doing outside three miles.

" Mr. Poirier stated that he could safely say from an experience of forty years, that he had never caught mackerel more than two miles from the shore.

" Mr. Sinnett, of Gaspé, stated that he had seen American skippers fish two miles from the shore, and inside a mile for mackerel. He had never seen them further than that; they generally fished, said he, in by the shore. Codfish, said he, is caught in his neighbourhood at from one and a-half to two miles from the shore.

" Mr. Grenier stated that he had seen some fishing for mackerel beyond three miles, but the majority fished within the limit. More than two-thirds or the whole catch of Americans is taken inside three miles.

" Mr. MacLeod stated that Americans fishing vessels fished mostly within three miles in the Bay of Chaleur. He himself had taken fish off Miscou and Shippegan within half-a-mile of the shore.

"Mr. A. McKenzie stated that the American fleet took two-thirds of their catch inshore, but he added that *some skippers got all their catch in deep water, perhaps one vessel in twenty.*

"Mr. Angus Grant spoke of the trips he had made, all inshore or close inshore, for one half-mile to one and one-half miles.

"Mr. Brown made a statement to the same effect.

"Mr. MacKay spoke of the catches he had made inshore off Cape Breton, so close that he would sometimes be anchored among the boats.

"Captain Hardinge, R.N., stated that the best fishing was without a doubt within three miles; there could be no two opinions on that point. From his experience and observation on his fishing station, and from information he had obtained, he stated it as his opinion that the outside fishing for mackerel was of no account whatever. He had never received any information to the contrary.

."Mr. Nicholson stated that with regard to the mackerel he had seen taken, all the catch was within three miles of the shore.

"Mr. McGuire stated that most of the United States' captains with whom he had conversed, said that they caught their mackerel inshore.

"Mr. Stapleton considered, as a result of his conversations with American fishermen, that three-fourth of the fish are caught inshore. In 1851 he had fished with fifty American vessels close inshore near Margaree and around Cheticamp, and all got full fares within a quarter of a mile of shore.

"Mr. Baker stated that three-fourth of the mackerel taken by the Americans on the Gaspé coast and in the Bay of Chaleur was taken within the three mile limit.

"Mr. Jessop of Gaspé had seen Americans fishing in his district right along the shore, and within one mile or two miles of the shore.

"Mr. Coutoure stated that he had taken cod in an American vessel on the Cape Breton coast, from one mile to one and a-half miles from the shore, and had made good catches of mackerel off Prince Edward Island, within two miles of the shore.

"Mr. William MacDonnell stated that all the fish he had taken at Margaree and Cheticamp were within three miles of the shore.

"Mr. Paquet likewise spoke to large catches taken inshore. The fish, said he, taken near Margaree, Cheticamp, Broad Cove, and Limbo Cove, on the Cape Breton shore are all caught within the limit. About Prince Edward Island he said the fish were taken within half-a-mile and two miles of the shore. On the New Brunswick shore within two and a-half miles and three miles of the shore. In the Bay of Chaleur within a-half mile and two and a-half miles of the shore; but a few might be caught, he said, in the centre of the bay. Along the south side of the River St. Lawrence fish were caught about 150 yards from shore.

"Mr. MacIsaac stated that about two-thirds of the entire catch of mackerel was taken inshore.

"Mr. Tierney spoke of large catches of mackerel taken from within a mile to a mile and a-half of the shores of Prince Edward Island. He had fished for eleven years around the island, and had taken three-fourths of his catch within that distance.

"Mr. McPhee stated that during the whole period of his fishing from 1862 to 1874 three-fourths of the fish he had caught had been taken within three miles.

Mr. John MacDonald also spoke to the large quantities of fish taken during a period of nearly 20 years, the greater proportion of which were taken inside the three-mile limit.

"Mr. John R. and Mr. John D. McDonnald spoke to a similar experience.

"Mr. Richardson who had fished in American vessels from 1850 to 1874, stated that nine-tenths of the fish he had caught while in them had been taken within three miles of the shore.

"Mr. Clement McIsaac stated that he had never caught 100 barrels of mackerel outside of three miles.

"Mr. McInnis who had fished in American vessels from 1858 to 1873, stated that two-thirds of the catches he had made were within the three-mile limit.

"Mr. Benjamin Campion, speaking from an experience of seven years fishing, said that two-thirds of the catch had been taken within the three miles."

Many other witnesses testify to the extreme value of the inshore fisheries, but I think I have quoted enough for my purpose.

Let us now examine the testimony as to the number of United States' vessels frequenting Canadian waters:—

"Mr. Chivirie estimates the number of United States' mackereling vessels in the Gulf annually from 1848 to 1873 at about 400; since 1873 not over 200 or 300.

"Mr. James R. McLean states that in 1858 the American fleet was 600 or 700 sail. He counted 400 anchored under the south shore at East Point.

"Mr. John Campion places the number from 1862 to 1866 at from 600 to 700.

"Mr. Joseph Campbell estimates the number at from 450 to 500 in 1866 and 1867, and 400 in 1869, 1870, and 1871.

"Mr. Poirier stated that he had seen 300 sail come into the waters between Cascumpeque and Mimnigash; all fishing very close to shore.

"Hon. Mr. Howlan, of Cascumpeque says:—I have seen 340 United States' vessels annually in my harbour; generally when there was a gale of wind.

"Gregoire Grenier states that he has seen more than a 100 sail in a season, and more than twenty came to an anchor in front of his place.

Mr. Foster.—Grenier's evidence all refers to what passed more than seven years ago.

Mr. Thompson.—Well, even so; the mackerel have not changed their habits.

Mr. Foster.—I thought that they had.

Mr. Thomson——

Mr. McLeod says:—

"During the season of 1852, there were from 460 to 470 American vessels in the Gulf—mackerelers. In 1854, from 200 to 300 American vessels were fishing in the Bay of Chaleurs. In 1855, from 200 to 300 in that quarter; probably 600 in the Gulf. They told me that there were about 600 inside of Canso, In 1856, about the usual number. In 1857 the same, and up to 1862, about the same thing; also in 1864, 1865, and 1866 the same. In 1867, there were from 300 to 400 inside the Bay Chaleurs. I have seen in 1867, 250 lying at anchor in Port Daniel Bay, and as many more at Paspebiac on the same day, three fourth Americans."

Mr. Philip Vibert, of Perce, Gaspé:—

"Of late years few United States vessels have visited our district for mackerel, but I have seen 200 or 300 in sight at one time. Not more than four or five years ago I counted 167 from my house. I have seen 300 in Bay Chaleurs and steaming up to Quebec; have seen as many more on the way up. The average number from the Gut of Canso upwards, I should put at not less than from 350 to 400, averaging seventy to seventy-five tons. Skippers come ashore and are communicative; in fact, in many instances they are interested in other vessels, and they look after the catch, and can tell pretty well what it is. There is no difficulty in arriving at a general estimate of the take of boats."

"A vessel may come into Georgetown with a broken spar, and the captain state that there are seventy-five vessels at the Magdalen Islands, another vessel would report 100 vessels in Bay Chaleurs—that is the only way in which you can get at the number of vessels in the bay."

Mr. George Harbour, of Sandy Beach, Gaspé:—

"Three hundred is about the average. Have seen as many as fifty at one time in the harbour. In 1872 there were at least 300 sail."

Mr. Wm. A. Sinnet, of Griffin's Cove, Gaspé:—

"Has been told by American captains that there were 300 sometimes, as high as 500. Did not see all that number at one time, but has counted as many as sixty odd sail at one time at Madeleine River."

The testimony of Angus Grant, Port Hawkesbury, will be found on page 180. He says:—

"From 1854 to 1856 average between 500 and 600 within the bay. Has seen 400 sail in Port Hood at a time. The number increased from 1856 to 1869, and of larger tonnage. Since 1869 down, 600 to 700 sail. Quite a large fleet in 1873; about 500 in 1874; not so many in 1875; and 1876, perhaps not quite half of that. This year there is quite a large fleet coming. Has seen them coming every day. Lives on Strait of Canso, and can see them cross. Average number of United States' codfishing fleet, from 200 to 300 sail."

I want to see whether he gives the proportion of the catches made inshore.

Mr. Foster.—The bulk of your witnesses did so.

Mr. Thomson.—Yes, they did do so. Now, let me see what the Americans state in their own affidavits. My learned friend, Mr. Foster, assumes the catch taken inshore, for the purpose of argument, to be one-third; but I am going to show you that a number of his own affidavits (affidavits which were made by a number of his own men), give this catch *as about one-half*, interested as they were; some of our witnesses placed it at *nine-tenths*, and consequently I think that this Commission may fairly assume, that *at least three-fourths* of these catches are taken inshore.

I will take affidavit No. 201, contained in Appendix M.

Mr. Foster.—Read the whole of it.

Mr. Thomson.—It runs as follows:—

"I, Roderick McDonald, of Low Point, N. S. do declare and say on oath as follows:—I am living at Low Point, Inverness, county Nova Scotia, am over thirty years old, have been fishing for about twelve years until three years ago, when I knocked off, because mackerel was scarce in the bay, and it did not pay—The mackerel fishing has much fallen off during the last six or seven years—during these six or seven years the average yearly catch has not been over half of what is was eight or ten years ago—during some seasons they will be much more off the shore, at other seasons more inshore—during hot weather they will work more off shore—the best place for mackerel I have ever seen is on Bradley Bank about twenty miles from North Cape, Prince Edward Island—sometimes the Americans, when mackerel is plenty, will catch about two-thirds of their entire catch outside a line three miles from shore; but striking an average I think that during a season when mackerel is plenty, Americans will catch about one-half outside and the other half inside a line three miles from shore."

That is the only part of this affidavit which I need read at present.

Mr. Foster.—Remember that Mr. McDonald is a Nova Scotian.

Mr. Thomson.—So is Pattilo a Nova Scotian.

Mr. Foster.—McDonald lives there, and his affidavit was taken down there.

Mr. Thomson.—No matter where the affidavit is taken, the affidavit is here among those submitted by the American Government, and they must adopt it as they have put it in. Having obtained this statement, if they did not like to put it in they need not have done so; but having put it in they are bound by it.

Mr. Foster.—That is a fair argument.

Mr. Thomson.—George Critchett, being duly sworn, says:—

"I am living at Middle Milford, Guysboro' County, Nova Scotia—I am 37 years old, from my eighteenth year until four years ago, I have been out mackerel and cod-fishing mostly in American vessels—I left off fishing because the mackerel fishing had been poor for several years, and is still; whenever mackerel get to be plenty again I will be out fishing in vessels. I think that in former years, say from ten years ago and longer, the average number of the American mackerel fleet was upwards of 300 during the season—during the same period about thirty or forty Provincial vessels were in the Gulf of St. Lawrence—the number of American vessels above referred to, is intended as the number in the Gulf of St. Lawrence—during the years previous to the last ten years, the average catch of mackerel was two trips for each vessel—during the last six or seven years they have scarcely averaged one full cargo during the season—I think that mackerel go where they find the best and largest quantity of feed, and that when the wind is off shore it drives the small fish on which mackerel feed into deeper water, and the mackerel follow them, and whenever there is a big fleet off shore and heave over much bait, the mackerel will follow the fleet—during the years I was out fishing we did better outside a line three miles from shore than inside that line—on an average, I am of the opinion, about from half to two-thirds of all mackerel caught by vessels in the Gulf is caught outside of a line three miles from shore."

This deponent states that from one-half to two-thirds of the catches were made outside, and thus virtually admits that one-half were taken inside of the three mile limit; this is about as favourable as our own testimony. We all know that the language which appears in most affidavits is the language of the man who draws them up; and this is true in nine instances out of ten; and undoubtedly the most that they could get out of this man was that from one-half to two-thirds of the trips were made outside of the limit.

Mr. Foster.—He says that during seven years past the vessels have not averaged a full cargo during the season.

Mr. Thomson.—That makes no difference. I only want to see what the catch is. I am not at present discussing any other question.

Mr. Foster.—He also states that until the present season only two or three vessels seined in the gulf.

Mr. Thomson.—That is another point, and I am only touching on one point at the present moment.

In affidavit No. 177 (Appendix M) George Bunker says:—

"I, George Bunker, do solemnly declare that I am 31 years old—that I am living at Margaret Bay, twenty-four miles from Halifax. I have been employed as a fisherman ever since I was a boy—for ten seasons I have been master of a fishing vessel, fishing in the waters off the American coasts and those of Nova Scotia, the Gulf of St. Lawrence, and Magdalen Island, for cod, and mackerel, and herring—codfish is not at all caught by the American fishermen within three miles from the shore—about half of the mackerel caught by the Americans is caught within three miles from shore."

Mr. Foster.—He states that the catch of mackerel has largely fallen off during the last five or six years.

Mr. Thomson.—I cannot read all through this affidavit. They are very interesting reading, I dare say, but they take time.

In affidavit No. 192, Appendix (M) I find that Philip Ryan says:—

"I, Philip Ryan, do solemnly declare that I am living at Middle Milford, I am 42 years of age—I think I was about 16 years of age when I first went out fishing in the Gulf of St. Lawrence in fishing vessels—I have mostly been mackerel fishing, although some seasons I have been cod-fishing in the bay—I left off going in fishing vessels in 1872; the American fishermen don't dry their nets nor cure their fish on our coasts, as far as I know—during the last eight or ten years mackerel fishing has much fallen off, and during the last two years as far as I can hear, mackerel fishing has almost been a failure—porgies and clams as far as I know, is universally used in the bay as bait, although a few Provincial vessels may occasionally use herring—porgies and clams got all from the States, as far as I am aware—I should think that about one-half of all the mackerel caught by vessels is caught outside a line three miles from shore."

Now that is what he says. This you see is contained in the American testimony, and I say that it is conclusive against the case of the American Government. If they did not like these affidavits they need not have put them in, but being in, I say that they are conclusive against the American case. Besides there is another matter which sets this question at rest. When Professor Hind was on the stand, he gave evidence which was not only very interesting, but, as I submit, conclusive, in view of this conflict of testimony. I have no doubt that it was so to the Commission, as certainly it was to us. He pointed out the scientific reasons why the fish, such as the cod, mackerel, halibut, and other fish of that description which are useful for food, inhabit the Bay of St. Lawrence. He says that these fish must necessarily live in water of the temperature of 37 or 40 degrees, or even of a temperature colder than that. He states that the great Arctic current which brings down from the north those immense icebergs that make our climate so excessively cold and inhospitable, quite as "inhospitable" as many of the statutes of which my learned friends opposite have complained, also brings with these icebergs an antidote to the poison, in the shape of these fish of commerce. He says that this cold stream of water enters the Gulf of St. Lawrence, and the fish with it; and he points out that on the American coast there can of necessity be but very little fish of this description. He also points out—and I am not going to take up your time by referring to his evidence *in extenso* at all—that on three or four points on the American coast this great Arctic current impinges; that it remains there for a certain period of the year, and in the spring that the fish go with it, and remain on the shore there until this cold current of water recedes; but that the great Ocean River, as it is called by Lieutenant Maury, the Gulf Stream, in its summer swing approaches very near the American coast in some places, and, touching it in other places, separates the surface current from the colder waters beneath, where these fish feed, and thus drives them from the American shore to colder regions. He further pointed out that even in the Gulf of St. Lawrence there are many places where these fish do not live; that zones of water of different temperatures are found there, some warmer and some colder than others; and that in the colder zones these fish live, whilst in the warmer zones they are unable to live. You will recollect, no doubt, without my calling your attention particularly to the evidence, that a number of witnesses, American and British, testified that every now and then, after having tolled the fish out from the inshore waters by throwing porgie bait, they would suddenly disappear, and be lost to them; and this is accounted for at once by Professor Hind's evidence. The cause is this, that the fish then suddenly find themselves in a zone of warmer water, in which they do not care to live; consequently they at once dive to a greater depth for the purpose of finding a zone of water more congenial to their habits of life; and by-and-by they find their way back to the shore. Another piece of evidence which Professor Hind gave struck me as being of great importance in this case. He pointed out one extraordinary phenomenon which is observable in the great Bay of St. Lawrence. He says that the tides come in through the Straits of Belle Isle, and are divided by the Magdalen Islands into two portions. One portion runs away along the southern coast of Labrador, around the island of Anticosti, and up the northern bank of the River St. Lawrence, while the other portion passes down to Prince Edward Island and into the Strait of Northumberland. He says that in consequence of the great distance which one portion of the tide has traversed, while the other has travelled a shorter distance, the tide coming down from the northern coast meets the ebb tide about the middle of the island, and as a consequence of that there is really high water always found about the centre of the island; and for that reason the island presents the peculiar appearance it does, having been hollowed out year after year by the action of these tides. The effect of that phenomenon is—and it is a phenomenon which I think Professor Hind stated only occurs in one or two other places in the habitable globe—that the whole of the fish food is carried inshore. The cold water which is necessary to the existence of these food fish of commerce, such as the mackerel and the cod and the halibut, is carried inshore in the bight of Prince Edward Island; it is carried inshore along the southern coast of Labrador; it is carried inshore along the northern bank of the River St. Lawrence. All this he points out as being the necessary result of that tide. These fish are thus brought inshore, and they necessarily have to remain inshore in order to get the food which they most desire to feed upon.

I then put this question to Professor Hind:—

"If there should be two classes of witnesses here, each of them being a numerous class, and if one class swears that the catch of mackerel off the Prince Edward Island shore is very slight within the three mile limit, and the other that this catch is very good within the three mile limit, which would you say, in a scientific point of view, is telling the truth." "Undoubtedly," he replied, "those who swear that a very great portion of the catch is taken there within the three-mile limit, because science says that this must be the case."

So you see that, supposing these witnesses came here and honestly told what they believed to be the truth, we have Science stepping in and deciding the question, and, moreover, deciding the question entirely in favour of the British case. I shall, therefore, not trouble your Excellency and your Honours any further with the evidence upon that point, but pass to another branch of my argument. I believe that I stated yesterday in the course of my argument, that were we to assume the American account of the inshore catch of mackerel in the gulf to be correct, and fix it at one-third, that even then it would be quite impossible for them to prosecute successfully mackerel fishing in the gulf, without having access to the inshore fisheries. The business would not pay. They would eventually be compelled to abandon the Gulf of St. Lawrence altogether, and in that case their market would not be supplied with mackerel.

The evidence shows that although an exceptional catch may be made in the bay without going near the shore at all, yet that no man in his senses would fit out vessels and send them into the bay, unless he had the privilege of following the shoals of mackerel to the shore. There is a consensus of evidence on that point, I submit.

There was a statement made with reference to this fishery by Mr. Foster, in his speech, in connection with the evidence of George Mackenzie, which I think I can convince Mr. Foster was erroneous. No doubt he unwittingly misrepresented Mr. Mackenzie's statement.

Mr. Foster.—What is it about?

Mr. Thomson.—You put in his mouth this language; it is quoted in your speech:—

"There has not been for seven years a good vessel mackerel fishery, and for the last two years it has been growing worse and worse."

Now, he did not say anything of the kind; and I want to show that this is the case. I will read you what you said:—

"We have the statement of one of the Prince Edward Island witnesses, George Mackenzie, on page 132 of the British evidence, who, after describing the gradual decrease of the American fishery by vessels, says, 'There has not been for seven years a good mackerel fishery, and for the last two years it has been growing worse and worse.'"

I wish to call the attention of the Commission to this matter to prevent their being misled by this statement. I do not, of course, charge any wilful mis-statement upon my learned friend, and consider that he has fallen into an unintentional error. Such language was never used by the witness in question: he never said—"and for the last two years it has been growing worse and worse." If my learned friend will turn up the evidence and point such a statement out, I will withdraw this assertion; but though I have carefully gone through his evidence I cannot find it.

Mr. Foster.—Do you think that I am quoting that expression of opinion?

Mr. Thomson.—It is printed with quotation marks. You put forward this statement as having been made by him; and I undertake to say that this statement in that respect has never been made.

Mr. Foster.—I am put down as having quoted that continuously. I may say that I did not correct that portion or a great portion of my speech.

Mr. Thomson.—You say that this statement is to be found on page 133?

Mr. Foster.—The following portion of his examination is to be found on page 133:—

"Q. The fisheries failed pretty suddenly, did they not?—A. For a good many years they were failing.

"Q. Which was the last good year?—A. We have not really had a good year during the last seven years."

I think you are right. I do not think that the exact words of the expression which is placed in quotation marks is to be found there; but that statement contains the spirit of his evidence.

Mr. Thomson.—On page 128 he gives an opposite view.

Mr. Foster.—I have just read from page 133. I must compare the statements, and see how they correspond. I should hate to be responsible for the accuracy of the printing.

Mr. Thomson.—I will not take up any more time about this matter, further than to say to the Commission that I have carefully gone through this evidence, and I cannot find it.

Mr. Foster.—I say that the substance of this statement is there.

Mr. Thomson.—I differ from you on that point; but if you show that it is there, I will withdraw what I have said about it.

Mr. Foster.—I have already pointed out the substance of it on page 133.

Mr. Thomson.—And I say that the substance of the statements which appear on page 128 is exactly the opposite.

Mr. Foster.—I dare say. Mr. Davies was then examining; but the statements from which I quoted were made in cross-examination.

Mr. Thomson.—The following statement appears on page 44 of Mr. Foster's argument:—

"That would make 24,404 barrels caught in British territorial waters the first year of the Treaty. What were these mackerel worth? Mr. Hall tells you that he buys them landed on shore for 3 dols. 75 c. a barrel."

This is the point to which I wish to call your attention. I cannot comprehend why Mr. Foster should assume the *value* of the privilege of taking these fish to be fixed by the cost of procuring them. It seems to me quite clear that the value of fish in the water, is just their value in the market—*less* the cost of procuring them and transporting them thither.

However, taking his own method of valuation, this calculation is based on the statement which Mr. Hall makes, that he bought up these mackerel for 3 dols. 75 c. a barrel. I have looked over Mr. Hall's evidence, but it is very difficult to say whether he meant that he paid 3 dols. 75 c. a barrel by reason of having his men in his employ on particular terms, or that he got them at that price; but George McKenzie, who was also a witness, states on page 132 of his evidence, that he paid 6 dollars a barrel for mackerel this year. Now, these two statements are entirely at variance, if Mr. Hall meant that such was the actual value of the fish when they were taken out of the water and transferred to him.

Mr. Foster.—Mr. McKenzie testified as follows on page 132:—

"Q. Then do you pay as high as 6 dollars a barrel for fresh fish?—A. Yes.
"Q. How much did you pay last year?—A. We did not then pay higher than 1 dol. 50 c.
"Q. That would be 4 dol. 50 c. a barrel?—A. Yes.
"Q. And the year before last?—A. The price then was the same as it was last year.
"Q. How much did you pay four years ago?—A. About the same, from 1 dol. to 1 dol. 50 c."

Mr. Thomson.—As you will perceive, Mr. McKenzie states, as I said, that he has given 6 dollars a barrel for these fish this year, as against the price which Mr. Hall chose to say he only pays, or 3 dols. 75 c. a barrel. Mr. McKenzie says that these fish cost him 6 dollars a barrel. Mr. Foster's calculation is based on the statement made by Mr. Hall, and this is here confronted with the evidence of Mr. McKenzie.

If your Excellency and your Honours believe that the evidence given on this point by Mr. McKenzie is correct, and you must judge between the two, the calculation of Mr. Foster is necessarily at fault.

Mr. Foster.—Mr. McKenzie buys his fish by the hundred, and he estimates the number of fish contained in a barrel; that is the way in which he makes out the price as being 6 dollars a barrel.

Mr. Thomson.—Mr. Foster says: "That would make 26,404 barrels caught in British territorial waters that year," which was 1873. Now I take Mr. Foster's own figures in this matter. He further says on page 44:—

"That was the first year of the Treaty, and there were imported into the United States from the British Provinces 90,889 barrels, on which the duty of 2 dollars a barrel would amount to 181,778 dollars. The value of the fish that our people caught is 99,000 dollars, and the British fishermen gain in remission of duties nearly 182,000 dollars."

This is the only year which Mr. Foster has selected.

Mr. Foster.—I have taken the figures for every year since the Washington Treaty went into effect.

Mr. Thomson.—Even allowing, as the United States' affidavits affirm, that the part of the gulf catch which is taken by them within the three-mile limit only amounts to one-half, we have 40,000 barrels. To this quantity you have to add the quantity imported from Canada, which is nearly all taken inshore, amounting to 91,000 barrels, the total is 131,000 barrels, and consequently it appears from these figures that there were taken from British territorial waters about 45 per cent. of the entire consumption of the United States. And if the proportion of the voyages made in the gulf, and taken within the three-mile limit be two-thirds, then these figures are increased to 150,000, or to over 50 per cent., and this is the result which follows from Mr. Foster's own figures.

Mr. Foster.—That is, you add the catch of your own people to the catch of our people in the gulf, and say that is such a percentage of the total amount that went into the United States' market. I dare say it may be so.

Mr. Thomson.—So, as United States' fishermen obtained in the gulf that year 80,000 barrels, and there were imported into their market from the British Provinces about 91,000 barrels, that makes a total catch in the Gulf of St. Lawrence of 171,000 barrels, that is to say, the catch on the United States' coast was 130,339 barrels, or 43 per cent., and the catch in the Gulf of St. Lawrence 171,000 barrels, or 57 per cent., this makes a total of 301,339 barrels. Now, these very figures themselves are about the very best evidence that can be advanced as to the relative value of these two fisheries.

With reference to the value which the United States themselves put on our fisheries, I want to cite some of their own figures; and the value which the Americans themselves have set on these fisheries is very conclusively shown by admissions of their own public men.

Sir Alexander Galt.—Before you take up that point, Mr. Thomson, will you be kind enough to tell me what the proportion of the catch you claim as taken inshore, bore to the whole American consumption; 50 per cent. you have made it, and I think it was 33 per cent.?

Mr. Thomson.—I say that if the proportion of the voyages taken inshore within the three-mile limit be two-thirds, there were taken in British territorial waters about 50 per cent.

Sir Alexander Galt.—50 per cent.?

Mr. Thomson.—Yes. I will read the proposition again. Now, allowing, as the United States' affidavits affirm, that one-half of the catch was taken inshore, viz., 40,000 barrels, add importations from Canada, 91,000 barrels, which makes 131,000 barrels; and therefore there have been taken in British territorial waters 45 per cent. of the entire consumption of the United States. That is what I said.

Mr. Foster.—That is assuming the whole of your catch to have been taken inshore.

Mr. Thomson.—Yes; and if the portion vouched for as taken from within the three mile limit be two-thirds, then these figures would make 152,000, or over 50 per cent. of that consumption.

Mr. Foster.—I hope that the Commission will not charge us for the privilege possessed by British fishermen of catching mackerel.

Mr. Dana.—Some of the British catch is taken eight miles from land.

Mr. Thomson.—In order to show the value, as stated by the Americans themselves, of these fisheries, I will quote the language of Mr. Secretary Seward, which is quoted on page 16 of the British Reply to the United States' Answer. Mr. Secretary Seward said:—

"Will the Senate please to notice that the principal fisheries in the waters to which these limitations apply are the mackerel and the herring fisheries, and that these are what are called 'shoal fisheries,' that is to say, the best fishing for mackerel and herring is within three miles of the shore. Therefore, by that renunciation, the United States renounced the best mackerel and herring fisheries. Senators, please to notice also, that the privilege of resort to the shore constantly to cure and dry fish, is very important. Fish can be cured sooner, and the sooner cured the better they are, and the better is the market price. This circumstance has given to the colonies a great advantage in this trade. That stimulated their desire to abridge the American fishing as much as possible; and indeed they seek naturally enough to procure our exclusion altogether from the fishing grounds."

Mr. Foster.—What year was that?

Mr. Thomson.—1852. Touching the mode in which the Treaty of 1818 as regards large bays shall be construed, Mr. Secretary Seward said this:—

"While that question is kept up, the American fisheries, which were once in a most prosperous condition, are comparatively stationary or declining although supported by large bounties. At the same time, the Provincial fisheries are gaining in the quantity of fish exported to this country, and largely gaining in their exportations abroad.

"Our fishermen want all that our own construction of the convention gives them, and want and must have *more*—they want and must have the privilege of fishing within the three inhibited miles, and of curing fish on the shore."

Certainly the circumstances which induced Mr. Secretary Seward to use that language in 1852 have not changed in such a manner as to authorize the United States, or any of her public men, to use different language to-day.

Senator Hamlin, after describing the magnitude and importance of the American fishermen as the greatest fountain of their commercial prosperity and naval power,

declared that if the American fishermen were kept out of our inshore water, an immense amount of property thus invested would become useless, and the fishermen would be left in want and beggary, or imprisoned in foreign jails.

And in the House of Representatives Mr. Scudder, of Massachusetts, referring to this subject, said :—

"These fish are taken in the waters nearer the coast than the codfish are. A considerable proportion, from one-third to one-half are taken on the coast, and in the bays and gulfs of the British Provinces."

Now, upon that question, not only as to the value of our fisheries, but also as to the proportion of the catch which is there taken, this seems to be very strong testimony coming from an American statesman. He continues :—

"The inhabitants of the Provinces take many of them in boats and with seines. The boat and seine fishery is the more successful and profitable, and would be pursued by our fishermen, were it not for the stipulations of the Convention of 1818, betwixt the United States and Great Britain, by which it is contended that all the fisheries within three miles of the coast, with few unimportant exceptions, are secured to the Provinces alone."

Mr. Tuck, of New Hampshire, said :—

"This shore fishery which we have renounced, is of great value, and extremely important to American fishermen. . . . From the 1st of September to the close of the season, the mackerel run near the shore, and it is next to impossible for our vessels to obtain fares without taking fish within the prohibited limits. The truth is, our fishermen need absolutely, and must have the thousands of miles of shore fishery which have been renounced, or they must always do an uncertain business."

He may well call them thousands of miles, because we have shown by evidence here that they amount to no less than 11,900 square miles. He further says :—

"If our mackerel men are prohibited from going within three miles of the shore, and are forcibly kept away (and nothing but force will do it) then they may as well give up their business first as last. It will be always uncertain."

This is a significant observation. We find through all these speeches allusions made to the trouble which the course that had been adopted under the provisions of the Treaty of 1818 towards the body of American fishermen coming on our shores to fish would continue to bring upon the two countries, and that war was imminent. Why was this? Surely if the fishery on their coast is so valuable they can stay there, and if the fisheries on our coast are so valueless they can stay away! We have not asked them to come into our waters. And it does appear to me that it comes with extremely bad grace from these people to make complaints that harsh measures are used to keep them out of them. What right have they at all? They have renounced all right. They have have solemnly, as far back as 1818, renounced any right to enter these waters, and that Convention is in full force still, save as temporarily affected by the Washington Treaty. We have no right, except temporarily, under the same Treaty, to enter their waters. But, according to the argument of Mr. Dana, we have the right to enter them, because he says there are no territorial waters belonging to any country. In that sense you cannot be prevented from fishing in any waters, if I understand his proposition correctly; and we therefore have the right to go there and fish. But what do the United States say? They hold to no such construction of the law of nations. So far from that being the case, their own shore fisheries cannot be touched by foreign fishermen, and even under the Treaty, by virtue of which your Excellency and your Honours are now sitting, our fishermen have only the right to fish on their shores from the 39th parallel of north latitude northward, not one step—not one mile to the southward of that parallel can they go. The strongest possible proclamation of sovereignty which one country can possibly hold out to another is here held out by the United States with regard to their territorial waters to England and to the world; and, yet, for the purpose of getting into our waters, we are told that, under the law of nations, American fishermen can come and demand complete freedom of access to them; but when it comes to their own waters that doctrine will not do at all. This is the *reductio ad absurdum* with a vengeance! Who ever heard anything like it! Here is a solemn agreement which has been entered into between two countries, and yet we have complaints—complaint after complaint—regarding the means which our Government have exercised in order to keep these people from fishing in our waters, from which they are inhibited by a solemn Treaty. Why, it does not seem to me to be fair—not to use any stronger term than that, and using the mildest possible term to characterise it—to adopt this tone. On the contrary, it is most unfair; and here Mr. Tuck states that nothing but

force will keep the American fishermen out of our waters. But there is a strong reason for the employment of this language. What is it? Why, our fisheries are all valuable, while theirs are practically valueless; "and the truth is," says Mr. Tuck," "our fishermen absolutely must have access to our thousand of miles of shore fisheries." He states:—

"They (the Americans) want the shore fisheries, they want the right to erect and maintain structures on shore to cure codfish as soon as taken, thus saving cost, and making better fish for market; and believing their wishes to be easy of accomplishment, they will not consent to the endurance of former restrictions, the annoyances and trouble which they have so long felt."

This is very extraordinary language for any man to use. The admission is clear, and also the conclusion which Mr. Tuck draws from it. It is this: they want our inshore fisheries free from those restrictions, the effect of which the United States' fishermen have so long felt; and this is simply a declaration made on the part of American citizens that a solemn agreement entered into between their country and Great Britain is an agreement which they do not choose to keep. But of course, such views cannot be tolerated in any Court.

Now, let us see what are the views as to the value of our fisheries entertained by the persons who live in Boston, the very centre of the fish trade. I will call your attention for a few moments to the first annual report of the Boston Board of Trade, of 1855, and just after the Reciprocity Treaty had come in force. It was presented at the annual meeting, which was held on the 17th January, 1855. I will only read an extract, but the whole book may go in, if necessary, and be considered as read, if you please. This is the same extract which I read when I cross-examined Mr. Wonson:—

"But in connection with the Reciprocity Treaty, it is to the importance of the fisheries that your Directors wish at this time particularly to call your attention; 70 per cent. of the tonnage employed in the whale, cod, and mackerel fisheries in the United States belongs to Massachusetts, and Boston is the business centre.

"By colonial construction of the Convention between the United States and Great Britain of 1818, we were excluded from not less than 4,000 miles of fishing-ground. The valuable mackerel fishery is situate between the shore and a line drawn from the St. Croix River, southeast to Seal Island, and extending along the Atlantic coast of Nova Scotia—about three miles from the coast—around Cape Breton, outside Prince Edward Island, across the entrance to the Bay of Chaleur; thence outside the Island of Anticosti to Mt. Joly on the Labrador coast, where the right of shore fishing commences. The coasts within these limits following their several indentations are not less than 4,000 miles in extent, and all excellent fishing-grounds. Before the mackerel fishery began to be closely watched and protected, our vessels actually swarmed on the fishing-ground within the spaces enclosed by the line mentioned.

"Each of these vessels made two or three full fares in the season, and some thousands of valuable cargoes were landed every year in the United States, adding largely to our wealth and prosperity.

"A sad contrast has since existed. From Gloucester only 156 vessels were sent to the Bay of St. Lawrence in 1853. Of these not more than one in ten made the *second* trip, and even they did not get full fares the first trip, but went a second time in the hope of doing better. The principal persons engaged in the business in Gloucester estimated that the loss in 1853 amounted to an average of 1,000 dollars on each vessel, without counting that incurred from detention, delays and damages, from being driven out of the harbour, and from waste of time by crews. It was agreed by all parties that if their vessels could have had free access to the fishing grounds as formerly, the difference to that district alone would have been at least 400,000 dollars.

"In 1853 there were forty-six vessels belonging to Berverly, thirteen of them went to the bay in 1852, but owing to the restrictions, their voyages were wholly unsuccessful, and none of them went in 1853.

"At Salem only two mackerel licenses were granted in 1853, and at Marblehead only six.

"At Newburyport there are ninety fishing vessels; seventy of these went to the bay for mackerel in 1853, but almost all of them, it is said, made ruinous voyages. At Boston only a dozen licences were granted for this fishery in 1853, and very few of the 100 vessels belonging to the towns of Dennis and Harwich, on Cape Cod—two-thirds of which are engaged in the mackerel fishery—went to the bay for mackerel last year, because of the ill-success attending the operations of the year previous. One of their vessels of 100 tons burden, manned by sixteen men, was six weeks in the bay in 1853, and returned with only one barrel of mackerel.

"Unless some change had taken place beneficial to the interests of our hardy fishermen, the northern fisheries would have been wholly ruined, and in all probability have entirely ceased, except on a very limited scale on our own shores. The 150,000 tons of shipping employed in those fisheries would have been obliged to seek employment elsewhere, and the product of the fisheries themselves, amounting to 3,000,000 or 4,000,000 dollars annually, would have been lost to us. The present Treaty opens to us again all these valuable fisheries, and our thanks are due to the distinguished statesmen who have laboured in bringing it to a successful termination; and your Directors are most happy to make mention of the services of Israel D. Andrews, Esq.—a gentleman whom we hope to have the pleasure of meeting to-day—who has worked most assiduously for the last four years in collecting and furnishing in his valuable reports almost all the information possessed on the subject, and without whose exertions, it is hardly too much to say, the Treaty never would have been made."

Is not this conclusive? These vessels, I suppose, kept away from the three-mile limit, and they made ruinous voyages, and yet we have had witness after witness declaring here on the American side that the best fishing was outside of that limit, and that there was no fishing inside at all.

This is the opinion of the Boston Board of Trade on this subject. In fact, we hold the key in our hands which locks and unlocks the North American fisheries of both countries; and it is necessary for us to take care that we are not deprived of our rights without receiving proper and adequate consideration.

Your Excellency and your Honours will recollect that the Reciprocity Treaty was not put an end to by us; but it was put an end to by the solemn act of the United States against the desire of Great Britain, and against the wishes of the Dominion of Canada.

On page 391 of the American evidence, the following question was put to Major Low, the then witness on the stand:—

"Looking up the files of the "Cape Ann Advertiser" with reference to the Centennial, I notice a statement relative to your fisheries, and to the effect their prosecution has had on Gloucester, to which I would like to call your attention, to see whether you agree with it or not."

It has been shown here before the Commission, and it is well known to everybody acquainted with the fisheries, that this paper, the "Cape Ann Advertiser," is the great organ of the fishing interests of New England.

This article runs as follows:—

"In 1841 the fishery business of Gloucester had reached its lowest ebb. Only about 7,000 barrels of mackerel were packed that year, and the whole product of the fisheries of the port was only about 300,000 dollars. In 1851 the business began to revive, the Georges and Bay Chaleur fishery began to be developed, and from that time to this year, 1875, has been steadily increasing, until at the present time Gloucester's tonnage is 10,000 tons more than Salem, Newburyport, Beverly, and Marblehead united. Nearly 400 fishing schooners are owned at, and fitted from, the port of Gloucester by thirty-nine firms, and the annual sales of fish are said to be between 3,000,000 dollars and 4,000,000 dollars, all distributed from here by Gloucester houses.

The Commercial Wharves.

"The wharves once covered with molasses and sugar hogsheads, are now covered with fish flakes and the odours of the 'sweets of the tropics' have given place to 'the ancient and fish-like smells' of oil and dried cod; the few sailors of the Commercial Marine have been succeeded by five thousand fishermen drawn from all the maritime quarters of the globe, and the wharves that were the wonders of our boyhood days are actually swallowed up in the splendid and capacious piers of the present day, so much have they been lengthened and widened.

The Salt Trade.

"For many years after the decline of the Surinam trade, hardly a vessel was ever seen at Gloucester, and many persons thought that nevermore would a majestic ship be seen entering this capacious and splendid seaport. But never in the palmiest days of Gloucester's foreign trade, were such immense vessels seen as at the present day. Ships of 1,500 tons (as big as six William and Henry's) sailed into Gloucester Harbour from Liverpool and Cadiz, and came into the wharves without breaking bulk, and also laid afloat at low water. More than forty ships, barques, brigs, and schooners of from 400 to 1,400 tons laden with salt alone, have discharged at this port the present year, and also the same number last year. The old, venerable port never presented such a forest of masts as now can be seen; sometimes six ships and barques at a time, besides innumerable schooners.

The City of Gloucester of 1875, *and the Town of* 1825.

"What a contrast is presented as a ship enters the harbour now, with what was presented in 1825. The little rusty, weather-beaten village, with two 'meeting houses' and a few dwellings and wharves gathered around them; two or three thousand people with 500,000 dollars property, was all that Gloucester then was, as far as we can ascertain; now the central wards, without suburban districts, contain 14,000 people, with 9,000,000 dollars valuation."

The article continues in this fashion:—

"Five banks with nearly 2,000,000 dollars capital in them (including Savings); and this increase has arisen, not from foreign commerce, but from the once despised and insignificant fisheries.

"It will be seen by a review of the history of Gloucester, that a foreign commerce did not build the town up in population or wealth; that from 1825 to 1850, its increase had been very small; but from 1850 to 1875, it has grown from 8,000 to 17,000 inhabitants, and its valuation from 2,000,000 dollars to 9,000,000 dollars! It is the fisheries that have mainly caused this great change; it is the success of that branch of industry that has lined Gloucester Harbour with wharves, warehouses, and packing establishments, from the Fort to 'Oakes' Cove.' It is the fisheries that have built up Rocky Neck and Eastern Point, and caused Ward 3 (Gravel Hill and Prospect Street) to show nearly all the gain in population from 1870 to 1875."

This is the testimony of the organ of the Gloucester fishermen. I might consume a great deal of your time in similar quotations. I turn your attention now to a book which was quoted by my learned friends on the other side, this book of Mr. Adams upon "The Fisheries and the Mississippi." At page 204 this language is used under the head of fishing liberties and their values:—

"Of these ten thousand men, and of their wives and children, the cod fisheries, if I may be allowed the expression, were the daily bread—their property—their subsistence. To how many thousands more were the labours and the dangers of their lives subservient? Their game was not only food and raiment to themselves, but to millions of other human beings.

"There is something in the very occupation of fishermen, not only beneficent in itself but noble and exalted in the qualities of which it requires the habitual exercise. In common with the cultivators of the soil, their labours contribute to the subsistence of mankind, and they have the merit of continual exposure to danger, superadded to that of unceasing toil. Industry, frugality, patience, perseverance, fortitude, intrepidity, souls inured to perpetual conflict with the elements, and bodies steeled with unremitting action, ever grappling with danger, and familiar with death; these are the properties to which the fisherman of the ocean is formed by the daily labours of his life. These are the properties for which He who knew what was in man, the Saviour of mankind, sought His first and found His most faithful, ardent, and undaunted disciples among the fishermen of His country. In the deadliest rancours of national wars, the examples of latter ages have been frequent of exempting, by the common consent of the most exasperated enemies, fishermen from the operation of hostilities. In our treaties with Prussia, they are expressly included among the classes of men '*whose occupations are for the common subsistence and benefit of mankind*;' with a stipulation, that in the event of war between the parties, they shall be allowed to continue their employment without molestation. Nor is their devotion to their country less conspicuous than their usefulness to their kind. While the huntsman of the ocean, far from his native land, from his family, and his fireside, pursues, at the constant hazard of life, his game upon the bosom of the deep, the desire of his heart, is by the nature of his situation ever intently turned towards his home, his children, and his country. To be lost to them gives their keenest edge to his fears; to return with the fruits of his labours to them is the object of all his hopes. By no men upon earth have these qualities and dispositions been more constantly exemplified than by the fishermen of New England. From the proceeds of their 'perilous and hardy industry,' the value of three millions of dollars a year, for five years preceding 1808, was added to the exports of the United States. This was so much of national wealth created by the fishery. With what branch of the whole body of our commerce was this interest unconnected? Into what artery or vein of our political body did it not circulate wholesome blood? To what sinew of our national arm did it not impart firmness and energy? We are told that they were '*annually decreasing in number*;' Yes! they had lost their occupation by the war; and where were they during the war? They were upon the ocean and upon the lakes fighting the battles of their country. Turn back to the records of your revolution—ask Samuel Tucker himself, one of the number; a living example of the character common to them all, what were the fishermen of New England in the tug of war for independence? Appeal to the heroes of *all* our naval wars—ask the vanquishers of Algiers and Tripoli—ask the redeemers of your citizens from the chains of servitude, and of your nation from the humiliation of annual tribute to the barbarians of Africa—call on the champions of our last struggles with Britain—ask Hull and Bainbridge, ask Stewart, Porter, and Macdonough, what proportion of New England fishermen were the companions of their victories, and sealed the proudest of our victories with their blood; and *then* listen if you can, to be told that the *unoffending* citizens of the West were *not at all* benefited by the fishing privilege; and that the few fishermen in a remote quarter, were *entirely exempt from the danger*.

"But we are told also that, 'by far the greatest part of fish taken by our fishermen before the present war was caught in the open sea, or upon our own coasts, and cured on our own shores.' This assertion, is like the rest, erroneous.

"The shore fishery is carried on in vessels of less than twenty tons burthen, the proportion of which, as appears by 'Seybert's Statistical Annals,' is about one-seventh of the whole. With regard to the comparative value of the Bank, and Labrador fisheries, I subjoin hereto information collected from several persons, acquainted with them, as their statements will show in their minutest details."

I know of no language that can more forcibly bring home to the Commission the value of this fishery. If the eloquent language that I have quoted contains a tittle of the truth, then this fishery is the nursery of the American naval marine. The future maritime defenders of their country are to be found amongst the bold and fearless men who prosecure these fisheries, and amongst them alone. From the fishing vessels of America sprang those maritime defenders of her flag who maintained with undaunted bravery the honour of their country in the last war with England; and from the same source must be drawn those who doubtless would do so again if, unfortunately, another war should arise between the two countries. Yet, when we speak of such a fishery as this, we are calmly told by Mr. Foster "You must not look at these advantages at all, but like business men you must, pencil in hand, put down the figures and make a calculation of the values, as though it were a petty matter of bargain and sale between man and man." In the name of our common humanity, in the name of the common honour of England and America, and of the Dominion for which I am counsel this day, I repudiate such a construction being placed upon this Treaty.

There are some other passages in this book to which I may call your attention. At page 210 this language is used:—

"These fisheries, as most advantageously secured to the United States by the Treaty of 1873, and made at the time was, I have always understood, a *sine quâ non* of that Treaty, offer an invaluable fund of wealth and power to our country, one which has never been duly attended to, nor justly appreciated; but which, if continued and improved, was destined to grow with our growth and strengthen with our strength.

"The prosecution of these coast and bay fisheries, although it had already become extremely advantageous, had undoubtedly reached, in a very small degree, the extension and importance it was capable of attaining. The unsettled state of the commercial world for the past twenty years, and the more alluring objects of mercantile enterprise which such a state of things evolved, seemed, in point of immediate consideration and attention, to throw these fisheries into the background; but still, until first checked by the system of embargoes and restrictions, and finally stopped by a declaration of war, they were silently, but rapidly, progressing, and reaching an importance which, though generally unknown to our country and its statesmen, had become highly alarming to the Governments and more wealthy merchants of the provinces, and was beginning to attract the attention and jealousy of the Cabinet of Great Britain towards them.

"The shores, the creeks, the inlets, of the Bay of Fundy, the Bay of Chaleurs, and the Gulf of St. Lawrence, the Straits of Belleisle, and the coast of Labrador, appear to have been designed by the God of Nature as the great ovarium of fish—the inexhaustible repository of this species of food, not only for the supply of the American, but also of the European continent. At the proper season, to catch them in endless abundance, little more effort is needed than to bait the hook and pull the line, and occasionally even this is not necessary. In clear weather, near the shores, myriads are visible, and the strand is at times almost literally paved with them.

"All this was gradually making itself known to the enterprise and vigilance of the New England fishermen, and for a few seasons prior to the year 1808, the resort to this employment had become an object of attention from the Thames at New London, to the Schoodic; and boats and vessels of a small as well as a larger size, were flocking to it from all the intermediate parts of the United States. In the fishing season, at the best places for catching the cod, the New England fishermen, I am told, on a Sunday, swarmed like flies upon the shores, and that in some of these years, it probably would not make an over-estimate to rate the number of vessels employed in this fishery, belonging to the United States, at from 1,500 to 2,000 sail, reckoning a vessel for each trip or voyage, and including the larger boat fishery, and the number, if the fisheries were continued, would shortly be still further and very greatly extended.

"The nursery for seamen, the consequent increase of power, the mine of wealth, the accumulation of capital (for it has been justly observed, that he who draws a codfish from the sea, gives a piece of silver to his country), the effect upon the trade and custom of Great Britain, and the corresponding advantages to the United States, of which the enlargement of such an intercourse was susceptible (for the stock of fish appears inexhaustible), you are much better able to conceive them than I am to describe; but I with pleasure point them anew for your consideration, as on many accounts presenting one of the most interesting public objects to which it can be directed."

At page 199 the following language is used:—

"Be the opinion of Mr. Russell what it may—the portion of the fisheries to which we are entitled, even within the British Territorial jurisdiction, is of great importance to this union. To New England it is among the most valuable of earthly possessions."

Now, in the course of his argument, Mr. Foster put the question as if it turned distinctly upon who paid the duty, the producer or the consumer. Whether that be absolutely necessary, for the purpose of determining this case in favour of Great Britain or not, is not for me to say. That is a question of political economy with which I am neither desirous, nor probably capable, of dealing. But I am not afraid to let our case turn upon that question. I think I shall show you by evidence of witnesses and by figures, that in every instance in this case the duty is paid by the consumer. I am speaking more particularly of the mackerel; I shall conclusively show that in the year when the Reciprocity Treaty was in force, the price of mackerel fell off; that immediately after the Reciprocity Treaty terminated, the price of mackerel rose in the American market. I shall show that immediately after that state of affairs was terminated by the Treaty of Washington the price of mackerel again fell off, and we say that these facts establish at once that the consumer must have paid the duty. Our witnesses have, one and all, or nearly all, testified that in their judgment the consumer paid the duty. In answer to the question put by the learned counsel associated with me and myself, "Would you rather have the Americans excluded from your fisheries and pay the duty?" they have said "Yes." While I am upon this subject I will remark, although I will not have time to turn attention to the document itself, that Mr. Foster, or, at all events, one of the learned counsel for the United States, read in his speech a communication from the Hon. Peter Mitchell, then Minister of Marine and Fisheries, for the purpose of showing that the repeal of the Reciprocity Treaty would be ruinous to our fishermen. Now upon reference

to that communication you will find that what he did put forward was this: that if the Americans would come in without either paying a license fee or giving any other compensation at all for our fisheries, and if they fished in our territorial waters where the fish were to be taken, side by side with our own fishermen, and then carried their catch into the American market free of duty, while our fishermen, fishing on the same terms, and with no better appliances, were met there with a duty of 2 dollars a barrel on mackerel and 1 dollar on herring, it would necessarily be ruinous. And that proposition, no doubt, has a vast deal of truth in it. It is impossible, I assume, for two persons to fish upon equal terms in the same waters, and then, when they go into the American market, for one to be met by a duty while the other has no such duty to pay, without it operating to the disadvantage of the former. But that it is a totally different case from the one we have to deal with.

I shall show you, as I have said, that during the period of the Reciprocity Treaty the prices were low, and that the moment that Treaty was repealed or abrogated by notice from the American Government, the prices rose. That the moment that state of affairs was terminated by the Washington Treaty the prices fell again; and we say that is conclusive proof that the Americans have to pay the duty. There has been a consensus of testimony, American and British, upon that point.

Let us see what the American witnesses say, for I affirm that on both sides the witnesses agree in the statement that the consumers pay the duty. It is true that American witnesses, who are themselves fishermen, or those who speak the opinion of fishermen, say that they would prefer the old state of things. Why? Because, under that state of things, they could steal into our waters and carry off our fish for nothing, and then their British competitor was met in the market with a duty of 2 dollars a barrel, while they were free. But I apprehend the consumer did not want that state of affairs. These witnesses admitted that it made the fish dearer, whenever the question was put to them. I have cut out the evidence referring to this point, and I will read it:—

AMERICAN WITNESSES ON DUTIES.

Page 75—F. Freeman:—

"Q. If you were allowed to make your choice which would you take—exclusion from the British inshore fisheries and the imposition of a duty on colonial caught fish, or the privilege of fishing inshore in British waters and no duty?—A. I would rather have the duty.

"Q. You say you would rather have the duty paid; you think you would make more money; you are speaking as a fisherman?—A. Yes.

"Q. You would have a better market for your fish? Under the present system the consumer gets his fish cheaper, does he not? *You would make the consumer pay that 2 dollars duty? You would sell your fish 2 dollars higher?*—A. Yes.

Mr. Trescot.—That is political economy.
Mr. Thomson.—Why did you ask him?
Mr. Trescot.—I asked him simply which system he would prefer.
Mr. Thomson.—I am asking him why?

"Q. And you say the reason is that you would get so much money in your pocket at the expense of the people that eat fish. Is not that the whole story?—A. Certainly.

Page 93—N. Freeman:—

"Q. Were you among those who opposed or favoured the continuance of the Reciprocity Treaty?—A. I was among those that opposed it.

"Q. There were some that opposed it or rather required the duty to be maintained upon codfish?—A. I was one who preferred to have the duty retained upon codfish.

"Q. Upon codfish?—A. Yes.

"Q. Your people wished in fact to keep the duty on codfish?—A. Yes.

"Q. Why? Be kind enough to state why?—A. Because we felt it would be better for us as a cod-fishing town to exclude as far as possible the fish from the Provinces. *It would give us a better chance, as we supposed, to dispose of our fish at higher rates.*

"Q. And the effect of the Treaty you considered would be to reduce the price?—A. We supposed that the effect of the Treaty would be to bring in codfish from these Provinces into our port, and of course necessarily it was presumed that it would reduce the price of fish.

"Q. I suppose the mackerel fishermen have the same object, to keep up the price of fish?—A. I presume they have.

"Q. Then, of course, you think your views are correct. You think now, I presume that your opinion was correct?—A. Yes.

"Q. And you still continue to think that is correct, and that the effect of the provisions of the Treaty is to bring down the price of fish?—A. Yes, I think that is the tendency. I am not aware whether it has brought the prices down.

"Q. I mean to say you have not changed your opinion?—A. No.

"Q. Of course there might be other causes operating, but that is the general tendency of the Treaty?—A. Yes.

"Q. To make the fish cheaper for the consumer?—A. We have so regarded it. Well, perhaps, it would have that tendency. We have thought that it would.

"Q. That is precisely what your opinion was?—A. Yes.

"Q. You have not altered your opinion?—A. No.

"Q. *Your opinion, if you will allow me to put it in my words, is that it makes fish cheaper to the consumers in the United States?*—A. *My opinion is that it will have that tendency.*

Page 107—Graham:—

"Q. You say that you would prefer a duty on Canadian fish entering American market to the privilege of fishing within three miles of the shore in the bay?—A. Yes, I should if I went fishing.

"Q. Why?—A. Because I do not think that the privilege amounts to as much as the duties to us.

"Q. Why do you want the duty kept on?—A. Because, in the first place, we would get more for our fish in the United States.

"Q. And when the duty is abolished the price naturally comes down?—A. The fish might then be a little cheaper.

"Q. That is your opinion?—A. I do not think that the price would come down much.

"Q. Then why do you want the duty kept on? Do you not think that you gave a rather hasty answer? You say you would prefer the duty to the privilege of fishing in the Bay of St. Lawrence, within the limits?—A. Yes.

"Q. Why? I understood you to say, it was because this would keep the price up?—A. That was a little erroneous, I think. Let me think the matter over.

"Q. Why would you rather prefer the duty to the privilege mentioned?—A. Because that would keep the price up, and we would then get more for our fish. I thought you had me a little.

"Q. I merely want your statement on the point?—A. That is my candid opinion.

"Q. You now speak as a fisherman?—A. Yes, if I was fishing that would be my idea.

"Q. All classes of men have selfish motives?—A. I want to get all I can for what I have to sell, and to buy as cheaply as possible.

"Q. And in order to get a high price for your fish, you want the duties on?—A. Yes.

Page 124—Friend:—

"Q. You thought you would get more mackerel and get a better price for them?—A. If we had a duty on mackerel we would get a better price, and would get more mackerel if we fished off shore.

Page 130—Orne:—

"Q. You say you would prefer a duty of 2 dollars a barrel to the liberty of fishing within the limits of the bay?—A. I do.

"Q. Why?—A. Because I think the mackerel which I take to market would then bring more.

"Q. Would the price be then higher by 2 dollars?—A. I could not say.

"Q. What is your belief?—A. *I believe that would be the case.*

"Q. Consumers might appreciate the matter differently?—A. I speak as a fisherman.

Page 147—Leighton:—

"Q. In regard to mackerel, leaving herring out, would you prefer a duty on mackerel?—A. Yes.

"Q. You speak as a fisherman?—A. Yes.

"Q. Why would you prefer a duty on mackerel?—A. *Our mackerel would fetch that much more a barrel.* We lose that, you know.

"Q. By the duty coming off?—A. *Yes, the fishermen lose it. The Government does not lose it.*

"Q. *And the people who eat the fish gain it?*—A. *Yes.*

"Q. And if you were to speak to a man whose business was consuming mackerel, you would get an opinion adverse to a duty?—A. *Yes.*

"Q. You would not object I suppose to run the duty up a little higher—how would that suit the fishermen?—A. I think that is about right.

Page 160—Riggs:—

"Q. You say you would prefer a duty being imposed on our mackerel to the right to fish inshore in British waters?—A. I should.

"Q. Why do you want a duty on?—A. It is no benefit to us to fish inshore, that I ever saw.

"Q. Why do you want it on?—A. Well, we would have a better market for our fish.

"Q. Would you get a higher price for them?—A. We should—yes.

"Q. And therefore you are speaking as a fisherman; as such you would like to get the highest price you could for your fish?—A. Certainly.

"Q. You think that the imposition of a duty would give you a better market?—A. Yes, if Canadians had to pay the duty, it is likely they would not fetch the fish in.

"Q. What would be the result of that?—A. We would have a higher price and a quicker market.

"Q. You would have a higher price?—A. I do not know that this would be the case or anything about it; but it would be a quicker market for us.

Page 187—Smith :—

"Q. *You speak as a fisherman; you want to get the most you can. How much do you think you would get?*—A. *As much as the duty.*

"Q. I don't know but you are right. Perhaps you would like to have a little more on. Supposing a duty of 3 dollars was put on, I suppose it would still have the effect of rising the price of fish?—A. I think it would kill us. No, let me see. I don't know anything about that. I think by keeping the English fish out, our fish would bring a better price."

Page 201—Procter :—

"Q. Speaking as a fisherman, would you prefer to have the duty on?—A. Personally, I would rather have the duty on.

"Q. Why?—A. Because the duty is better for us, for it would have a tendency in years of good catches to prevent your people from increasing their business. It has that tendency.

"Q. Has it any tendency to better you, as well as to injure your neighbours?—A. That is what we were looking for—for better prices.

"Q. Has it a tendency to increase prices to your fishermen?—A. It would.

"Q. So, if it increases the price of the fish, it strikes me the consumer must pay the increased price?—A. Am I not clear that the duty has anything to do with it; it is the catch."

Page 207—Procter :—

"Q. And did not the duty on Canadian caught fish replace the bounty?—A. Yes; and the reduction of the duty on salt was granted as an offset for the removal of the duty.

Page 208—Procter :—

"Q. And that came latter?—A. Yes, two or three years after the Ratification of the Treaty.

"Q. When it was proposed to take the duty off you remonstrated, thinking that this would reduce the price of fish, and this was the general feeling among fishermen and of the inhabitants of the coast of New England?—A. Yes."

Page 312—Warren :—

"Q. Now, with regard to the right of carrying our fish free into the United States, I suppose you think that is of no advantage to your fishermen, that provision of the Treaty?—A. I have no idea it is any advantage to our side of the house.

"Q. It is a disadvantage, isn't it?—A. Yes, it is against us.

"Q. Be kind enough to explain how?—A. All these things seem to me to regulated by supply and demand. If there is 100,000 barrels of mackerel hove into our market on top of what we produce, the tendency is to depreciate prices.

"Q. If this provision of the Treaty increases the supply of mackerel in the United States market it will bring down the price of fish?—A. State that again.

"Question repeated?—A. I think it would have that tendency.

"Q. That is the reason you think it is no advantage to your fishermen to have the privilege of fishing inside?—A. No, putting both questions of the Treaty together, it is no advantage, because the supply is increased and the prices are depreciated.

"Q. You will admit this, that it is an advantage to the consumers by bringing down the price? You admit that?—A. Yes.

"Q. Then in point of fact it gives you cheap fish?—A. The tendency is to cheapen them.

"Q. For the people of the United States?—A. Yes."

Page 326—Lakeman :—

"Q. The American fishermen want the duty back on fish, I suppose?—A. I do not know about that, I am sure; but they naturally would wish to have it back again, I suppose, in order to exclude our fish from their market.

"Q. I suppose that the consumer got his fish cheaper, owing to the removal of the duty, and the admission of your fish into the American Market?—A. The consumer would then get his fish cheaper—the more fish that are put on the market the cheaper the consumers gets them.

"Q. Is not the result of the Treaty, which admits your fish into the American market, on equal terms with the American fish, to make the price of fish lower in that market?—A. It has that tendency evidently.

"Q. Therefore the consumer gets his fish for less money?—A. Evidently he does. When herring are abundant the price is low.

"Q. It further follows that although a certain class of fishermen may lose something by this free admission of British fish into the American market the American public gain by it?—A. By getting their fish at a lower price? Of course it makes the price of fish lower in that market. That is clear.

"Q. Then the consumer gets the fish cheaper? He evidently does—the larger the quantity that is put upon the market the less the price will be."

Page 389—Sylvanus Smith :—

"Q. Supposing the mackerel caught in colonial waters were excluded, would it, or would it not, have any effect upon the price you get for your fish? Supposing one-fourth of the quantity consumed

in the States was excluded, would it have any any effect on the price of the other three-fourths ?—A. I think some, not much. I think it would stimulate our home production.

"Q. In what way would it stimulate it ? By raising the price, is it not ?—A. Well, to a small extent.

"Q. Well, then the effect of the British mackerel coming in is that the consumer is able to buy it cheaper than he otherwise would.—A. Well up to a certain point. The effect would be very small. There is not a large enough quantity. It is our home catch that affects it."

Page 429—Myrick :—

"Q. What would be the effect upon the business of your firm of putting back the former duty of 2 dollars a barrel upon mackerel sent from Prince Edward Island to the States ? I would like you to explain your views in this regard, particularly ?—A. Well, I suppose, since we have got our business established there, and our buildings and facilities for carrying on the fishery, it would be difficult for us to abandon it altogether ; but we would then turn our attention more particularly to codfishing, until, at any rate, the mackerel season got well advanced and the mackerel became fat, and if any would bring a high price it would be those taken in the latter part of the season. We might catch some of them, but we would not undertake to catch poor mackerel to compete with those caught on the American shore.

"Q. Explain why not ?—A. Well, No. 3 mackerel, which are poor mackerel, generally bring a good deal less price than fat mackerel, and men do not catch any more poor mackerel than they do fat ones ; the cost of catching them, and of barreling and shipping them is the same, while the fat mackerel bring a better price. We would carry on the codfishing business irrespective of the American market ; we would catch, cure, and ship codfish to other markets—to the West India markets, and we might make a fair business at that ; but as to catching mackerel exclusively under such circumstances, it would not do to depend on it all."

Page 430—Myrick :—

"Q. What is it that fixes the price of mackerel in the United States market ?—A. *Oh, well, of course it is the supply and demand, as is the case with everything else.* When there is a large catch of mackerel on the American shore, prices rule low ; this is a very sensitive market. If a fleet of 500, 600, or 800 vessels are fishing for mackerel, and those interested get reports of the fleet doing anything, the market falls at once ; and this is the case, particularly when prices are any way inflated."

Page 488—Isaac Hall :—

"Q. You told Mr. Foster that if a duty was re-imposed you would consider very seriously whether you would continue in the business ?—A. Yes.

"Q. You made that statement on the assumption that you paid the duty ?—A. Yes.

"Q. I think it has been explained very clearly that the price of fish depends almost altogether on the catch—this is the case to a large extent ?—A. To a *large extent—yes.* If there is a large catch of mackerel prices rule low, and if there is a small catch they rule high.

"Q. If the evidence given here on the part of British witnesses is correct, two-thirds of the fish taken by American vessels in the gulf, I may say, are caught inshore ; and assuming that two-thirds of their whole catch in the gulf is taken inside of the three-mile limit, could the American fleet, if they were excluded from fishing within this limit, prosecute the gulf fishery for the other third—would this pay them ?—A. I think it would be a difficult business to do so, if that proportion is correct.

"Q. *If the price goes up, who pays the enhanced price ? is it not the consumer ?*—A. *Yes.*

"Q. And if the catch is large, the price goes down—so it would depend in some measure on whether the catch on the American or on our own shore was large, as to who would pay this duty ?—A. Yes ; and on the quality of the mackerel."

These are quotations that I make from the American evidence. I do not quote from our own, as Mr. Dana admitted there was such a consensus of evidence on that point, that he almost insinuated that it was too uniform to be depended upon.

I now propose to deal at length with two questions of vital importance in this inquiry, viz. :—

1st. In favour of which country is the balance of advantages arising from reciprocal freedom of trade gained by the Treaty of Washington ? and

2nd. Upon whom is the incidence of duties levied upon fish exported by Canada into the United States, the producer or the consumer ?

I again (if I may do so without giving offence to my learned friends on the other side) express my obligations to Mr. Miall for the valuable assistance he has afforded in preparing my argument on these points.

Article XXI of the Treaty of Washington is as follows :—

"It is agreed that for the term of years mentioned in Art. XXIII of this Treaty, fish and fish oil of all kinds (except fish of the inland lakes and of the rivers falling into them and except fish preserved in oil), being the products of the fisheries of the United States or of the Dominion of Canada, or of Prince Edward Island, shall be admitted into each country respectively, free of duty."

Article XXII. "Inasmuch as it is asserted by the Government of Her Britannic Majesty that the privileges accorded to the citizens of the United States under Article XVIII of this Treaty are of greater value than those accorded by Articles XIX and XXI of this Treaty to the subjects of Her Britannic Majesty, and this assertion is not admitted by the Government of the United States, it is further agreed that Commissioners shall be appointed to determine, having regard to the privileges accorded to the United States to the subjects of Her Britannic Majesty, as stated in Articles XIX and XXI of this Treaty, the amount of any compensation which, in their opinion, ought to be paid by the Government of the United States to the Government of Her Britannic Majesty in return for the privileges accorded to the citizens of the United States under Article XVIII of this Treaty; and that any sum of money which the said Commissioners may so award shall be paid by the United States Government in a gross sum within twelve months after such award shall have been given."

The advantages which might be expected to flow from the reciprocal freedom of markets, provided for by Article XXI, might be of two kinds:—

1. Increased trade.
2. Increased profits upon the volume of trade already existing.

The latter, however, could only obtain upon the supposition that the duties previously levied had been a burden upon the foreign producer.

In reference to the first of these questions it is contended—

1. That the increase of consumption in the United States of British caught fish has not been equal to the increase in Canada of the products of the United States fisheries.
2. That a considerable portion of the products of British American fisheries exported to the United States for many years past, has been re-exported to foreign countries where they have entered into competition with other foreign exports of Her Majesty's British American subjects; and it must be borne in mind that these fish have not paid any duty.

These propositions will be dealt with seriatim.

By reference to statement No. 8, to be found on page 435 of the British evidence, it will be found that for the seven years following the abrogation of the Reciprocity Treaty (*when duties were payable upon importations*) the imports of fish and fish oil from the United States into the Dominion of Canada and Prince Edward Island were as follows:—

	Dollars.
1867	172,366
1868	170,156
1869	99,563
1870	99,409
1871	123,331
1872	123,670
1873	279,049

the average annual value being 152,506 dollars.

During the years 1874, 1875, 1876, 1877, *when no duties were payable*, they have, under the operation of the Treaty, been as follows:—

	Dollars.
1874	728,921
1875	727,587
1876	697,657
1877	750,382

the annual average having been increased to 721,637 dollars.

The increase, therefore, of United States exportation of fish and fish oil annually to Canada has been 569,131 dollars, of which 179,030 dollars consisted of fresh fish, leaving 390,101 dollars as the increase upon articles previously subjected to duty. As against this gain to the United States the British producers have gained an increased market in the United States of only 340,589 dollars, as will be seen by the following figures to be found in the same statement.

During the seven years immediately preceding the Washington Treaty, *when duties were payable*, the United States imported the fish products of Canada and Prince Edward Island as follows, viz.:—

	Dollars.
1867	1,108,779
1868	1,103,859
1869	1,208,805
1870	1,129,665
1871	1,087,341
1872	933,041
1873	1,393,389

the annual average being 1,137,839 dollars.

Since the Treaty has been in full operation the annual average has increased to 1,505,888 dollars, the imports having been as follows:—

	Dollars.
1874	1,612,295
1875	1,637,712
1876	1,455,629
1877	1,317,917

the increase in the annual average being 368,049 dollars, of which increase 27,460 dollars was due to fresh fish, leaving 340,589 dollars as the increase upon articles previously subjected to duty. From these figures it is clear, then, that as respects the advantages arising from an increased market the United States and not Canada has been the greatest gainer. It may be remarked, before leaving this part of the subject, that although the statistics put in by the Government of the United States, as to the total imports into the United States from Canada, approximate very closely to those put in by Her Majesty's Government in respect of the exports from Canada to the United States; there is an important discrepancy between the exports from the United States to Canada, as put in evidence in Table XIV of Appendix O, and the imports into Canada from the United States as put in evidence by Her Majesty's Government.

This has already been referred to during the course of the evidence, but the attention of the Commissioners is now again directed to the explicit admissions of Mr. Young, the Chief of the Bureau of Statistics at Washington, in his reports of 1874, 1875, and 1876. With regard to this subject, for example, he says, at page 15 of his report for 1876:—

"During the year ended June 30, 1876, the total value of domestic merchandize and produce exported to Canada, and which was omitted in the Returns of the United States' Custom officers on the Canadian border, as appears from the official statements furnished by the Commissioner of Customs of the Dominion, amounted to 10,507,563 dollars, as against 15,596,524 dollars in the preceding year, and 11,424,566 dollars in 1874."

2. I beg now to call the attention of your Excellency and your Honours to the fact that a considerable proportion of the products of the British-American fisheries, exported to the United States for many years past, has been re-exported to other foreign countries, where they may be fairly presumed to have entered into competition with the direct foreign exports of Her Majesty's British-American subjects.

This will clearly appear by reference to statement No. 11, to be found on page 437 of the British evidence, which shows that the exports of dried and smoked, pickled and other cured fish (exclusive of California) to all other foreign countries, from 1850 to 1876, averaged annually (at a gold valuation), as follows, viz.:—

	Dollars.	
1850–1854	755,165	non-reciprocal years.
1860–1866	1,001,984	reciprocal years.
1866–1873	1,196,554	non-reciprocal years.
1873–1876	1,640,426	reciprocal years.

Now, comparing these exports from the United States to all foreign countries, with the imports from Canada to the United States, it would appear that they are largely inter-dependent. The imports referred to are as follows:—

	Dollars.
1850–1854	792,419
1856–1866	1,377,727
1866–1873	1,137,839
1873–1877	1,505,888

With regard to this matter, I call attention to the following assertion made at page 9 of the "Answer" of the United States, viz.:—

"But while the result (of the Washington Treaty) to them (Canadians) has been one of steady development and increasing wealth, the United States' codfishery even has declined in amount and value."

If, then, the domestic production of the United States has decreased, and the exports to foreign countries have increased in about the same ratio as have the importations from Canada, is it not evident that the increased imports have been made *mainly* with a view to the supply of foreign markets—or what is equivalent—to supply the hiatus in the markets of the United States due to the exportation of a greater quantity of their own fish products than the yield of their fisheries warranted, in view of their own requirements for home consumption? It would seem from an examination of the statistics that the increased importations from Canada during those years in which no duties were levied on Canadian

fish were largely due to an increased foreign trade, and it is contended that Her Majesty's subjects gained no substantial pecuniary advantage from supplying those foreign markets by indirect rather than direct trade. On the other hand, the tendency of this class of trade is to throw the foreign carrying trade, hitherto conducted by subjects of Her Majesty, more and more into the hands of the shipowners and brokers of the United States.

A close examination of Canadian exports confirms this view. Of the entire exports those to the United States and to other foreign countries compare as follows :—

Years.	Percentage sent to the United States.	Percentage sent to other foreign countries.
1850–54	31½	68½
1856–66	34 7–10	65 3–10
1866–73	28½	71½
1873–76	31 1–10	68 9–10

If any further reasoning is required in support of this very evident contention, the following extract from page 529 of the "United States' Census Report for 1860" may be useful :—

"By the Warehousing Act of 1846, foreign fish were allowed to be imported and entered in bond, and thence exported without payment of duty; but under the Reciprocity Act, Colonial fish are admitted free of duty. These Acts have caused our principal fish distributing cities, such as Boston, New York, and Philadelphia, to become exporters of large quantities of foreign fish."

Although, therefore, the export trade of Canada has progressively increased from year to year, it is plain that the removal of fiscal obstructions on the part of the United States has had the effect more or less of turning a certain proportion of our foreign trade, with other foreign countries, into American channels. In other words, a larger proportion of the West Indian and South American fish trade of Canada has been done through United States' merchants, whenever tariff restrictions have been removed.

Now, the able Counsel and Agent of the United States has chosen as the basis upon which to determine the question of remissions of duty, the year 1874.

It is contended that it would be manifestly unfair to take as a basis upon which to estimate such remissions, those years during which it is alleged the exportations from Canada to the United States have (*mainly in consequence of such remissions*) considerably increased.

The United States import from Canada and Prince Edward Island of fish and fish-oil from 1867 to 1873, during which period duties were imposed upon such importations, were as follows :—

	Dollars.
1867	1,108,779
1868	1,103,859
1869	1,208,805
1870	1,129,665
1871	1,087,341
1872	933,041
1873	1,393,389

The average annual value of the above-mentioned importation was 1,137,840 dollars, and the largest in any one year, 1,393,389 dollars, in 1873.

The commerce and navigation returns of the United States give the importation from Canada in that year at 1,400,562; or, including Newfoundland, at 1,685,489 dollars, as follows :—

Description.	Imported.		Rate of Duty.	Amount of Duty which would have been collected if entered for consumption.
	Quantity.	Values.		
		Dollars.	Dollars.	Dollars.
Fish (fresh)	8,627,724 lbs.	278,707	Free.	..
Herring	53,039 bbls.	179,377	1·00 per bbl.	53,339
Mackerel	89,698 bbls.	605,778	2·00 „	179,396
Sardines, &c., preserved in oil ..	..	3,527	50 per cent.	1,763
All others not elsewhere specified ..	..	552,032	13½ „	74,524
Oil, whale and fish	127,315 gals.	66,068	20 „	13,213
Total	..	1,685,489	..	321,935

Now, by reference to the United States' Commerce and Navigation Returns for 1873 (page 311) it will be seen that the re-exports of foreign fish were as follows :—

	Barrels.	Amount.	Rate.	Duty.
		Dollars.	Dollars.	Dollars.
Herring..	19,928	81,775	1·00 per brl.	19,928
Mackerel	36,146	178,328	2·00 „	72,292
All other	..	213,534	13½ per cent.	28,827
Oil (page 319)	..	25,601	20 „	5,120
Total	..	..	..	126,167

This sum, therefore, representing duties which never were collected must be deducted from the aggregate duties accrued, as shown by the figures just previously given, viz., 321,935 dollars.

	Dols.	Dols.
Deduct—		
Duties on re-exports	126,167	
Estimated duties on fish products not covered by Washington Treaty, estimated at..	10,000	
		136,167
Thus leaving a sum of		185,768

in regard to which it remains to be decided whether or not its remission has inured to the benefit of the Canadian producer.

The United States contend, at page 31 of the Answer, that the remission of duties to Canadian fishermen during the four years which have already elapsed under the operation of the Treaty has amounted to about 400,000 dollars annually, which proposition it was explicitly stated would be conclusively proved in evidence which would be laid before the Commission. This extraordinary assertion which, it has been contended, has been contravened by the whole tenor of the evidence, whether adduced on behalf of the United States or of Great Britain, was followed up by the laying down of the following principle, viz. :—

"Where a tax or duty is imposed upon a small portion of the producers of any commodity, from which the great body of its producers are exempt, such tax or duty necessarily remains a burden upon the producers of the smaller quantity, diminishing their profits, which cannot be added to the price, and so distributed among the purchasers and consumers."

It is contended, in reply, that this principle is true only in those cases in which the ability on the part of the majority of producers to supply the commodity thus taxed, is fully equal to the demand.

The question whether the consumer or producer pays any imposts levied upon the importation of certain commodities, does not depend upon whether the body of foreign producers is large or small relatively to the body of domestic producers, with whose products theirs are to come into competion, but simply upon the question whether or not the existing home production is equal to the demand. If it be not equal, and a quantity equal to one-third or one-fourth of that produced at home be really required, prices must go up until the foreign producer can be tempted to supply the remainder, and the consumer will pay the increased price not only upon the fraction imported, but upon the greater quantity produced within the importing country as well. And the tendency of all the evidence in this case, British and American, has been a most explicit and direct confirmation of this principle.

The British evidence to which I shall immediately call your attention, proves beyond a doubt that when duties were imposed upon mackerel of 2 dollars per barrel, British exporters to the United States realized a sufficient increase of price to enable them to pay those duties and still receive a net amount equal to the average price received before those duties were imposed, as well as after they were removed.

Upon a careful examination of the United States' testimony, it will, I submit, appear that during those years when duties were imposed upon British-caught fish, the price of mackerel when landed from United States' vessels from their fishing voyages in the bay, was to the full extent of the duty in excess of the price they commanded after the duty was repealed, or before it was imposed.

It is impossible to conceive a clearer proof that the consumer and not the producer had to bear the burden of the duty and not only that, but an equivalent burden upon

every barrel of mackerel caught and landed by the United States' mackerel vessels during the existence of that duty.

In the evidence adduced on behalf of Her Majesty's Government this point has been established beyond possibility of refutation. The average prices obtained by the following firms, viz., A. H. Crowe, Lawson and Harrington; and Young, Hart and Co., in gold, at Halifax, after payment of duties and all other charges, are given by the various witnesses as follows, the sales being made in all cases to United States' buyers.

British Evidence.—1861–1866 (during Reciprocity).

	No. 1.	No. 2.	No. 3.
	D. c.	D. c.	D. c.
P. 424, A. H. Crowe	13 12	8 75	6 65
P. 419, Lawson and Harrington	12 78	7 98	6 73
P. 425, Young, Hart and Co.	12 66	8 54	6 04
Average prices	12 85	8 42	6 47
1866–1873 (dutiable period).			
P. 424, A. H. Crowe	13 05	9 43	6 55
P. 419, Lawson and Harrington	13 30	9 83	6 63
P. 425, Young, Hart and Co.	14 46	10 62	6 28
Average prices	13 60	9 96	6 49
1873–1877 (during Washington Treaty).			
P. 424, A. H. Crowe	12 37	10 00	8 00
P. 419, Lawson and Harrington	12 25	8 62	7 46
P. 425, Young, Hart and Co.	12 81	9 39	7 18
Average prices	12 47	9 33	7 55

It will be observed, then, that the Halifax merchants had to submit to no decline in price from 1866 to 1873.

The evidence adduced on behalf of the United States proves the prices at which mackerel caught by United States' vessels in the Bay of St. Lawrence during these same periods were valued, on settling with the crews (exclusive of the cost and profits of packing, which would have increased the prices by 2.00 dollars per barrel), to have been as follows:—

Year.	J. O. Proctor.	Sylvanus Smith.	George Steele.
	As per page 208a United States' evidence.	Page 330, United States' evidence.	Page 402, United States' evidence.
	D. c.	D. c.	D. c.
1857	7 80	..	..
1858	12 00	..	10 98
1859	12 30	..	12 85
1860	11 90	..	10 87
1861	5 20	..	5 77
1862	7 60	..	7 62
1863	10 96	..	10 84
1864	11 13	..	12 21
1865	14 20	..	12 93
	9)93 09	..	8)84 07
Average	10 34	..	10 51
1866	15 74	..	15 35
1867	12 22	..	14 12
1868	18 45	16 00	18 85
1869	17 80	16 00	17 31
1870	11 90	13 00	..
1871	..	8 00	..
1872	9 86	14 00	8 22
	6)85 97	5)67 00	5)73 85
Average	14 33	13 40	14 77

Year.	J. O. Proctor.	Sylvanus Smith.	George Steele.
	As per page 208a United States' evidence.	Page 330, United States' evidence.	Page 402, United States' evidence.
1873	9 85	9 25	10 46
1874	5 52	6 00	6 25
1875	14 46	11 33	14 18
1876	11 05	10 20	11 60
	4)40 88	4)36 75	4)42 49
Average	10 22	9 19	10 62

These prices produce the following result:—

	1857 to 1865.	1866 to 1873.	1873 to 1876.
	During operation of Reciprocity Treaty.	Dutiable period.	During Washington Treaty.
	D. c.	D. c.	D. c.
J. O. Proctor	10 34	14 33	10 22
S. Smith	Nil.	13 40	9 19
George Steele	10 51	14 77	10 62
Average price in United States' currrency	10 42	14 17	10 01
Approximate gold prices*	9 17	11 33	9 00

From these prices, it is abundantly clear that the consuming classes in the United States were compelled to pay at least 2 dollars (gold) per barrel more for all the mackerel brought in by the United States' vessels during the existence of the duty.

What stronger evidence can be required than these facts (perhaps the only facts with reference to which the testimony of witnesses on both sides are fully and absolutely in accord) to satisfy an impartial mind as to the real incidence of taxation, upon the article in question; and inasmuch as the mackerel is the only fish the market for the best qualities of which is limited to the United States, it is not deemed necessary to continue the inquiry with reference to other fish products to which the markets of the world are open, and whose prices therefore can in no way be influenced by the United States.

Now, if your Honours please, there is but one other subject to which I will call the attention of this Commission before I close, and that is to the offer made by the American Commissioners at the time this Treaty of Washington was being negotiated. I refer to the offer to remit the duty on coal, lumber, and salt. The circumstances are stated at length in the Reply of Great Britain to the Answer of the United States, and, therefore, I need not refer particularly to the figures. The sum was 17,800,000 dollars, as far as I can recollect. Now, if it is true, as contended by the United States in their "Answer," that the remission of duties means a boon to the persons in whose favour they are remitted, and that those persons are the producers, then it is clear that *this a fair estimate put by the American High Commissioners themselves, upon the fishing privileges that they were then endeavouring to obtain from the British Government.* Whether that is a correct principle or not, is no part of my duty to contend. My argument is that that was the view of the United States, as a country, believing in the proposition that the producer, and not the consumer, pays the duty.

In their own Answer they put the remission of duties which they say inures to our benefit at 400,000 dollars a year. While we do not admit the correctness of their view of that remission either in principle or amount, their Answer is *an admission of their estimate of the value of the concessions afforded to them.* If the concessions were worth as much as that, then the award of this Commission must of necessity be in favour of Great Britain for a large amount. But it may be said "You have got the value of this because we have remitted these duties." We have shown by evidence and argument conclusively that the producer does not pay 1 dollar of these duties, that fish from the Halifax market was sent there during the period when the duties were paid, and that the fish merchant here received back in his own counting-house for the fish sold in Boston, as

* Average price of currency 1857 to 1865, 88c.; 1866 to 1873 80c.; 1873 to 1876, 90c.

much money as when there was no duty paid at all. The remission of duty, therefore, is a benefit to citizens of the United States and not to us.

I have, in order to close this argument to-day, passed over a number of subjects to which I at one time intended to call to the attention of the Commission. But the time is pressing. We are all to a considerable extent worn out with the labours of the Commission. Yesterday I asked the Commission to open at an earlier hour to-day in order that I might finish my remarks without further adjournment, and I am happy to be able to redeem my promise.

I have now brought my argument on behalf of Great Britain to a close. To the shortcomings and defects of that argument I am painfully alive. But the cause I have advocated is so righteous in itself, has been supported and sustained by evidence so trustworthy and conclusive, and is to be decided by a tribunal so able and impartial as that which I have the honour to address, that I entertain no fears of the result.

Although I rejoice that a responsibility which for many months has pressed with no ordinary weight upon my learned colleagues and myself, is well nigh ended, yet I cannot but feel a pang of regret that the days of my pleasant intercourse with the gentlemen engaged in and connected with this most important inquiry, are drawing to a close.

For the kind consideration, and unfailing urbanity extended to my colleagues and myself, I tender to your Excellency and your Honours my most sincere acknowledgment and thanks.

What shall I say to my brethren of the United States? To their uniform courtesy tact, and kindly feeling, we chiefly owe it, that this protracted inquiry has almost reached its termination without unpleasant difference or dissension of any kind.

To the cause of the United States, which both my patriotism and my professional duty constrain me to regard as utterly untenable, the ability, ingenuity, and eloquence of Judge Foster, Mr. Dana, and Mr. Trescot, have done more than justice. They have shown themselves no unworthy members of a profession which in their own country has been adorned and illustrated on the Bench and at the Bar by the profound learning of a Marshall, a Kent, and a Story, and by the brilliant eloquence of a Webster and a Choate. From my learned, able, and accomplished brethren of the United States, I shall part when this Commission shall have closed its labours with unfeigned regret.

A few words more and I have done. To the judgment of this Tribunal, should it prove adverse to my anticipations, Great Britain and Canada will bow without a murmur. Should, however, the decision be otherwise, it is gratifying to know that we have the assurance of her counsel, that America will accept the award in the same spirit with which England accepted the Geneva judgment, and like England pay it without unnecessary delay. This is as it should be. It is a spirit which reflects honour upon both countries. The spectacle presented by the Treaty of Washington, and the arbitrations under it, is one at which the world must gaze with wonder and admiration. While nearly every other nation of the world settles its difficulties with other Powers by the dreadful arbitrament of the sword, England and America, two of the most powerful nations upon the earth, whose peaceful flags of commerce float side by side in every quarter of the habitable globe, whose ships of war salute each other almost daily in every clime and on every sea, refer their differences to the peaceful arbitrament of Christian men, sitting without show or parade of any kind in open court.

On the day that the Treaty of Washington was signed by the High Contracting Parties, an epoch in the history of civilization was reached. On that day the heaviest blow ever struck by human agency fell upon that great anvil of the Almighty upon which, in His own way and at His appointed time, the sword and the spear shall be transformed into the plough-share and the reaping-hook.

MISCELLANEOUS. No. 1 (1878).

(GENERAL POSTAL UNION.)

DECLARATION

RECORDING THE

ADHESION OF CANADA

TO THE

GENERAL POSTAL UNION

OF

OCTOBER 9, 1874.

Signed at Berne, May 28, 1878.

Presented to both Houses of Parliament by Command of Her Majesty.
1878.

LONDON:
PRINTED BY HARRISON AND SONS.

[C.—2050.] *Price* 1*d.*

Declaration recording the Adhesion of Canada to the General Postal Union.

PAR Circulaire du 11 Avril, 1876, l'Administration Suisse des Postes a proposé aux autres membres de l'Union Générale des Postes de recevoir le Canada aux conditions du Traité de Berne du 9 Octobre, 1874.

Par leurs lettres du 13 Mai, 1878, dont le contenu est identique, les Administrations des Postes de France et d'Espagne ont déclaré retirer l'opposition qu'elles avaient formulée contre l'admission du Canada, dans le terme de six semaines prescrit par l'alinéa 6 de l'Article XVII du Traité précité.

Vu les circonstances qui précèdent, les Soussignés, dûment autorisés à cet effet, constatent par le présent acte diplomatique l'adhésion définitive, dès le 1er Juillet, 1878, du Gouvernement Britannique, pour le Canada, aux stipulations du Traité concernant la création d'une Union Générale des Postes, conclu à Berne le 9 Octobre, 1874, ainsi qu'aux dispositions définitives du Règlement de détail pour l'exécution du dit Traité.

Fait à Berne, le 28 Mai, 1878.

Pour le Gouvernement du Canada :
Le Ministre Résident de Sa Majesté Britannique près la Confédération Suisse,
(Signé) HORACE RUMBOLD.

Pour le Conseil Fédéral Suisse, au nom des Membres de l'Union :
Le Président de la Confédération,
Signé) SCHENK.

(Translation.)

BY a Circular dated 11th April, 1876, the Swiss Postal Department proposed to the other members of the General Postal Union, the admission of Canada to the terms of the Treaty of Berne of 9th October, 1874.

By their letters of 13th May, 1878, the contents of which are identical, the Postal Departments of France and Spain declared that they withdrew the opposition to the admission of Canada which they had expressed within the term of six weeks prescribed by Article XVII, paragraph 6, of the above-mentioned Treaty.

Under these circumstances the Undersigned, duly authorized for this purpose, declare by the present diplomatic instrument the definitive adhesion of the British Government for Canada, from the 1st July, 1878, to the provisions of the Treaty concerning the creation of the General Postal Union concluded at Berne on the 9th October, 1874, as well as to the definitive stipulations and arrangements in detail for carrying the said Treaty into effect.

Done at Berne, 28th May, 1878.

On behalf of the Government of Canada :
Her Britannic Majesty's Minister Resident accredited to the Swiss Confederation,
(Signed) HORACE RUMBOLD.

On behalf of the Swiss Federal Council, in the name of the Members of the Union :
The Vice-President of the Federal Council,
(Signed) SCHENK.

MISCELLANEOUS. No. 1 (1878).

(GENERAL POSTAL UNION.)

DECLARATION recording the Adhesion of Canada to the General Postal Union of October 9, 1874.

Signed at Berne, May 28, 1878.

Presented to both Houses of Parliament by Command of Her Majesty. 1878.

LONDON:

PRINTED BY HARRISON AND SONS

ONTARIO (PETITION OF ROMAN CATHOLIC INHABITANTS).

RETURN to an Address of the Honourable The House of Commons, dated 7 August 1878;—*for*,

"COPIES of a PETITION addressed to Her MAJESTY by certain ROMAN CATHOLIC INHABITANTS of the Province of *Ontario*, in the Dominion of *Canada*, transmitted on the 17th of July last to the Secretary of State for the Colonies for Presentation to The QUEEN:"

"And, of the LETTER of Mr. *Butt*, M.P., accompanying the PETITION, and of the REPLY to that LETTER."

Colonial Office,
August 1878.

ROBERT G. W. HERBERT.

(*Mr. Butt.*)

Ordered, by The House of Commons, *to be Printed*,
15 *August* 1878.

COPIES of a PETITION addressed to Her MAJESTY by certain ROMAN CATHOLIC INHABITANTS of the Province of *Ontario*, in the Dominion of *Canada*, transmitted on the 17th of July last to the Secretary of State for the Colonies for Presentation to The QUEEN :—And, of the LETTER of Mr. *Butt*, M.P., accompanying the PETITION, and of the REPLY to that LETTER.

No. 1.

No. 1.
Isaac Butt, Esq., M.P., to the Right Hon. Sir M. E. Hicks Beach, Bart.
17 July 1878.

Isaac Butt, Esq., M.P., to the Right Hon. Sir *M. E. Hicks Beach*, Bart.

Sir, House of Commons, London, 17 July 1878.

I HAVE the honour to transmit to you for presentation to Her Majesty a Petition, signed by more than 25,000 of Irish Canadian Catholics, inhabitants of Her Majesty's Province of Ontario, in the Dominion of Canada.

The Petitioners complain that an Act giving special privileges to the Orange Society in the Province of New Brunswick had received from the Lieutenant Governor of that Province the Royal Assent, and that this Assent had been forbidden, and has not since been recalled by the Governor General of the Dominion.

In contemplation of an attempt to obtain a similar enactment in the Province of Ontario, the Petitioners humbly pray that Her Majesty may be graciously pleased to forbid the Governor General of the Dominion, and the Lieutenant Governors and their successors, sanctioning by the Royal Assent any enactment giving a Charter to the Orange Society.

I have, &c.
(signed) *Isaac Butt.*

The Right Hon.
Her Majesty's Principal Secretary of State,
Colonial Department.

Enclosure in No. 1.

Enclosure in No. 1.

TO THE QUEEN'S MOST EXCELLENT MAJESTY.

The PETITION of the undersigned Irish Canadian Catholics, Inhabitants of Your Majesty's Province of *Ontario*,

Humbly showeth,

That the Orange Society, which has kept alive in the land of our origin memories of evil passions, to the disgrace of religion, the violation of law, the fosterage of discontent, has been transplanted to the several Provinces of Your Majesty's Dominion of Canada.

That condemned as that society in Ireland is by the spirit of the age as embodied in the judgments conveyed against it by the Right Hon. the Marquis of Hartington, the Right Hon. William Ewart Gladstone, and other exponents of public opinion in England, its importation, outside all the circumstances of its origin, into this young Dominion is an evil which can find no apology whatever in either policy or decency.

That whatever be the dangers from which Orangeism assumes to protect Protestantism, they certainly cannot apply in the Province of Nova Scotia, where the Protestants are 67 per cent. of the population; in the Province of New Brunswick, where the Protestants are 62 per cent. of the population; in the Province of Ontario, where the Protestants are 84 per cent. of the population; and that, therefore, Orangeism in these Provinces can find no excuse whatever for its existence in the old cry, which has fallen amongst the enlightened into ridicule since the days of Dean Swift's announcement, that "the lion has been let out of the Tower of London to destroy Protestant religion."

That

That Orangeism in any part of this Dominion may find a justification in the fact that the great majority of the population of the Province of Quebec is Catholic, is a consideration which, even if the tolerant and inoffensive majority of that Province were disposed to exercise its right of local government as illiberally as the Protestant majorities of New Brunswick and of Prince Edward Island exercise theirs, cannot be entertained short of an acceptance of the practice of the 2,000 armed Orangemen of the Province of Ontario who invaded the Province of Quebec on the 16th of last July, to thrust their insult and outrage on the Catholic population of Montreal by insurrectionary violence.

Your Majesty's Petitioners humbly show also, that the Orange body as an organisation menacing the freedom of religious conscience, is in conflict with the spirit of the constitution, and in direct violation of the guarantees of religious liberty, when it makes annually a demonstration of physical force under banners that demand suppression of the Catholic faith.

And your Majesty's Petitioners humbly show further, that the Orange Society outrages publicly with its banners and its music and religious faith, and its visible head, which one million and a half or 42 per cent. of your Majesty's subjects in this Dominion hold most venerable and holy.

That the said Orange Society perpetrates by its banners, music, and exhibition of physical force, wanton outrage on not only the religious faith, and its visible head of half a million of Your Majesty's Canadian subjects who are Catholics of Irish birth or blood, but aggravates that wanton public outrage on those unoffending citizens by the insults conveyed in the Orange presence and the Orange music, to the memories of those of our forefathers who, now half a century in the repose of Irish graves, laid down their lives in a resistance of desperation against what subsequent action of the estates of Your Majesty's realm has confessed in effect to have been cruel oppression.

That though animosity, strife, and bloodshed result here, as in Ireland, from those violations of good citizenship on the part of our misguided fellow-subjects of the Orange Society, Your Majesty's Memorialists are willing to bear, and as far as human nature may be subdued by religious restraint and civil obedience, to forbear in a recognition of the general principle of the right of public procession, and they do not seek to interfere in anywise with that or any other right or privilege enjoyed by the Orange body (so far as that body may be lawful) in common with all similar bodies in this Dominion.

That the Orange Society is, however, not content with rights and privileges in common with all similar bodies in this Dominion, but that it seeks to obtain for itself special rights and privileges through legislation; that it has actually obtained such in the Province of New Brunswick, and that having made several unsuccessful attempts to do so in the Province of Ontario, it contemplates a renewal of those attempts in Ontario now.

That the indecent legislation which has given in the last quarter of the 19th century the Orange Society of New Brunswick the authority of law by special enactment, has received from the Lieutenant Governor of the Province the Royal Assent, and that that Assent had not been forbidden, or has not since been recalled by the Governor General of the Dominion.

And on all these grounds your Memorialists humbly pray that Your Majesty will graciously cause the Governor General and the Lieutenant Governors of this Dominion and their successors in office to be forbidden to sanction any enactment so revolting to the spirit of the Constitution, so well calculated to alienate the affections of a million and a half of Your Majesty's subjects in Canada from the Throne and Government as a special Charter of the Orange Society; and that while saving thus the self-respect, the religious sense, the constitutional equality of ourselves and our co-religionists in this part of the Empire, Your Majesty will save your person and throne before the civilised world, and especially before a vast body of your people, from responsibility for the sanction, by your Royal Assent, of annual outrages on a million and a half of your Canadian subjects through their faith, and on 500,000 of that number through the memories of their fathers.

And your Memorialists shall ever pray.

Here follow the Signatures.

No. 2.

Colonial Office to *Isaac Butt*, Esq., M.P.

No. 2.
Colonial Office to Isaac Butt, Esq., M.P.
2 August 1878.

Sir, Downing-street, 2 August 1878.

I AM directed by the Secretary of State for the Colonies to acknowledge the receipt of your letter of the 17th of July, transmitting, for presentation to the Queen, a Petition to Her Majesty largely signed by Irish Canadian Roman Catholics of the Province of Ontario, praying that the Royal Assent may be refused to any enactment granting a special Charter to the Orange Society within the Dominion of Canada.

Sir Michael Hicks Beach desires me to inform you in reply that, in accordance with the standing rules of the Colonial service, all communications from the Colonies should be transmitted to this Department through the Governor of the Colony from which they proceed, in order that they may be duly verified and reported upon by the responsible authorities.

The Petition which accompanies your letter will therefore be forwarded to the Governor General of Canada, by next mail, for such observations as the Dominion and Provincial authorities may think proper to make upon it; but in the meantime I am to intimate that the question to which it relates would appear, under the provisions of the British North America Act, 1867, to fall within the exclusive powers of the Provincial Legislatures of the Dominion, and that it is contrary to established constitutional procedure for Her Majesty's Government to interfere, unless in very special circumstances, with such legislation as is within the competency of a Provincial Legislature.

I am, &c.

Isaac Butt, Esq., M.P. (signed) *Robert G. W. Herbert.*

No. 3.

The Right Hon. Sir *M. E. Hicks Beach*, Bart., to the Earl of *Dufferin*.

No. 3.
The Right Hon. Sir M. E. Hicks Beach, Bart., to the Earl of Dufferin.
2 August 1878.

My Lord, Downing-street, 2 August 1878.

I HAVE the honour to transmit to you, for communication to your Ministers, a copy of a letter which I have received from Mr. Isaac Butt, M.P., accompanied by a Petition addressed to the Queen by Irish Canadian Roman Catholics of the Province of Ontario, praying that the Royal Assent may be refused to any enactment granting a special Charter to the Orange Society within the Dominion of Canada.

17 July 1878.
Petition in original.

I also enclose a copy of the reply which I have caused to be sent to Mr. Butt's letter, and I should be glad to receive from you such observations as the Dominion and Provincial Authorities may think proper to make in the matter.

I have, &c.

Governor General, (signed) *M. E. Hicks Beach.*
The Earl of Dufferin.

ONTARIO (PETITION OF ROMAN CATHOLIC INHABITANTS).

COPIES of a PETITION addressed to Her MAJESTY by certain ROMAN CATHOLIC INHABITANTS of the Province of *Ontario*, in the Dominion of *Canada*, transmitted on the 17th July 1878 to the Secretary of State for the Colonies for Presentation to The QUEEN; and, of the LETTER of Mr. *Butt*, M.P., accompanying the PETITION, and of the REPLY to that LETTER.

(*Mr. Butt.*)

Ordered, by The House of Commons *to be Printed*,
15 *August* 1878.

389.

Under 1 *oz.*

CANADA.

COPY OF DESPATCH

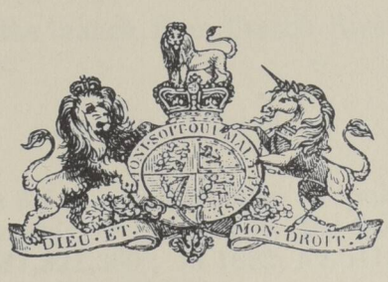
FROM

THE GOVERNOR-GENERAL OF CANADA,

RESPECTING THE

NEW CUSTOMS TARIFFS.

Presented to both Houses of Parliament by Command of Her Majesty,
April 1879.



LONDON:
PRINTED BY GEORGE EDWARD EYRE AND WILLIAM SPOTTISWOODE,
PRINTERS TO THE QUEEN'S MOST EXCELLENT MAJESTY.
FOR HER MAJESTY'S STATIONERY OFFICE.

1879.

[C.–2305.] *Price 3d.*

CANADA.

GOVERNOR-GENERAL THE MARQUIS OF LORNE, K.T., to the RIGHT HON. SIR MICHAEL HICKS BEACH, BART. (Received April 1, 1879.)

Canada Government House, Ottawa,
March 19, 1879.

SIR,

IN transmitting herewith—

1st. A printed copy of the new tariff;

2nd. The speeches of the Finance Minister in introducing his budget, and the reply of the Hon. R. J. Cartwright, late Finance Minister, as well as the speeches of the Hon. A. Mackenzie and the Hon. C. Tuppen;*

3rd. The leading articles of the Ministerial and Opposition press;*

4th. A memorandum by the Finance Minister, showing how far comparatively England is favoured in the new tariff;

I have the honour to state:—

That after the years of prosperity, viz., from 1867 to 1873, which has been called a time of inflation, there was in one year (1871-72) a surplus in the Treasury amounting to $3,000,000, and in another (1870-71) nearly $4,000,000, and that a reaction of financial depression has followed; and since 1875, although additional taxation had been resorted to by Mr. Mackenzie's Government, there had been deficits in 1875-76 of $1,900,785, in 1876-77 of $1,460,027, in 1877-78 of $1,128,147, and in the first half of 1878-79 about $800,000 or more.

That the Excise and Customs receipts, although population has increased, have given diminishing returns and have declined in value as follows:—Excise, from $5,594,903 in 1873-74 to $4,858,671 in 1877-78; while the Custom receipts have decreased from $15,351,011 in 1873-74 to $12,782,824 in 1877-78.

Stamp duties (in Canada bill stamps only) have also yielded less.

The result, comparing the periods 1873-74 and 1877-78, being as follows:—$2,568,187 Customs, $736,232 Excise, $43,738 bill stamps, making in all a decrease of $3,348,157 in the revenue of 1877-78, as compared with that of 1873-74, from the income derived by taxation.

That the fixed charges for debts, &c. to the provincial governments have increased from $10,255,798 in 1873-74 to $11,659,523 in 1877-78, an addition of $1,403,725, which being a fixed charge cannot be reduced, while the subsidies have only decreased $280,000.

That the Dominion of Canada is liable for public works on the 1st July 1878, as follows:—

	$
(A.) For completion of Lachine and Welland Canals - -	5,500,000
(B.) The construction of the Pacific Railway from Lake Superior to Red River - - - - - -	6,000,000
(C.) For continuation of the branch from French River on Lake Huron to Pembroke - - - - -	2,500,000
Making a total of - - -	16,000,000

In addition to the liabilities for the construction of public works, Canada will have during the next few years to provide in England for the following maturing debts:—In 1880, $6,065,813; in 1881, $1,321,300; in 1882, $2,641,626; in 1883, $1,639,580; in 1884, 1,305,240; and in 1885, $32,467,665.

That in consequence of failure in revenue, and having to provide for the public service, interest on debt, &c., at least $2,000,000 must be obtained by the new budget to meet existing deficiencies.

That the present Government were returned by a large majority in September 1878, the issue at the general elections being revenue *versus* a protection tariff.

A protection tariff, in order to encourage the industries of the Dominion, was advocated by the leaders of the then Opposition; and the Government they have since formed do not desire to avail themselves of direct taxation. They also desire to point to the very hostile action of the American Government towards the Dominion of Canada in all

* Not printed.

matters relating to tariff; and to the fact that manufacturers in the United States have established combinations under such perfect organisation, that should any special industry arise in Canada the Canadian market is at once flooded with a corresponding article of American produce sold below value; the effect of such combination being equal to that which is produced by a Government bounty.

I have, &c.
(Signed) LORNE.

TARIFF OF CUSTOMS OF THE DOMINION OF CANADA, AS IN FORCE ON AND AFTER THE 15TH MARCH 1879.

Resolved, That it is expedient to provide that the value of all bottles, flasks, jars, demijohns, carboys, casks, hogsheads, pipes, barrels, and all other vessels or packages, manufactured of tin, iron, lead, zinc, glass, or any other material, and capable of holding liquids, crates, barrels and other packages containing glass, china, crockery, or earthenware, and all packages in which goods are commonly placed for home consumption, including cases in which bottled spirits, wines, or malt liquors are contained, and every package, being the first receptacle or covering enclosing goods for purpose of sale, shall, in all cases not otherwise provided for, in which they contain goods subject to an ad valorem duty, be taken and held to be a part of the fair market value of such goods for duty, and when they contain goods subject to specific duty only such packages shall be charged with a duty of customs of twenty per centum ad valorem to be computed upon their original cost or value; and all or any of the above packages described as capable of holding liquids when containing goods exempt from duty under this Act shall be charged with a duty of twenty per centum ad valorem; but all packages not hereinbefore specified, and not specially charged with duty by any unrepealed enactment, and being the usual and ordinary packages in which goods are packed for exportation only, according to the general usage and custom of trade, shall be free of duty.

Resolved, That it is expedient to provide that on all goods imported into Canada, subject under this Act or any other Act to ad valorem duty, upon which a drawback of duties has been allowed by the Government of the country where the same were purchased, the amount of such drawback shall in all cases be taken and considered to be a part of the fair market value of such goods, and duty shall be collected thereon, and in cases when the amount of such drawback shall have been deducted from the value of such goods upon the face of the invoice under which entry is to be made, the collector of Customs or proper officer shall add the amount of such deduction and collect and cause to be paid the lawful duty thereupon, and the fair market value of all goods, wares, and merchandise imported into Canada shall be understood to be the ordinary wholesale price at which the same are sold for home consumption in the country where they are purchased without deduction of any kind because of any drawback paid or to be paid thereon, or because of any special arrangement between the seller and purchaser having reference to the exportation of such goods, or the exclusive right to territorial limits for the sale thereof, or because of any royalty payable upon patent rights, but not payable when goods are purchased for exportation, or on account of any other consideration by which a special reduction in price might or could be obtained: Provided that nothing herein shall be understood to apply to general fluctuations of market values.

Resolved, That it is expedient to provide that any or all of the following articles, that is to say, animals of all kinds, green fruit, hay, straw, bran, seeds of all kinds, vegetables (including potatoes and other roots), plants, trees, and shrubs, coal and coke, salt, hops, wheat, peas and beans, barley, rye, oats, Indian corn, buckwheat and all other grain, flour of wheat and flour of rye, Indian meal and oatmeal, and flour or meal of any other grain, butter, cheese, fish (salted or smoked), lard, tallow, meats, (fresh, salted or smoked), may be imported into Canada free of duty, or at a less rate of duty than is provided by this Act upon proclamation of the Governor in Council, which may be issued whenever it appears to his satisfaction, that similar articles from Canada may be imported into the United States free of duty, or at a rate of duty not exceeding that payable on the same under such proclamation when imported into Canada.

Resolved, That it is expedient to provide that if at any time any greater duty of customs should be payable in the United States of America on tea or coffee imported from Canada than on tea or coffee imported from any other country, then the Governor in

Council may impose on tea or coffee imported into Canada from the said United States an additional duty of customs, equal to the duty payable in the United States on tea or coffee imported from Canada: Provided that tea or coffee imported into Canada from any country other than the said United States but passing in bond through the United States shall be taken and rated as a direct importation from the country wherever the tea or coffee was purchased.

Resolved, That it is expedient to provide that an allowance may be made for deterioration by natural decay or breakage upon all perishable and brittle goods imported into Canada, such as green fruits and vegetables, crockery, china, glass, and glassware, provided such damage is found to exceed twenty-five per centum of the value thereof upon an examination to be made by an appraiser or proper officer of customs at the first landing, or within three days of such landing; but such allowance shall be only for the amount of loss in excess of twenty-five per centum of the whole quantity of such goods contained or included in any one invoice; and provided the duty has been paid on the full value thereof a refund of such duty may be allowed and paid in the proportion and on fulfilment of the conditions above specified, but not otherwise, on application to the Minister of Customs.

Resolved, That it is expedient to provide that in determining the suitable value of merchandize there shall be added to the cost or the actual wholesale price or fair market value at the time of exportation in the principal markets of the country from whence the same has been imported into Canada the cost of inland transportation, shipment and trans-shipment, with all the expenses included, from the place of growth, production or manufacture, whether by land or water, to the vessel in which shipment is made, either in transitu or direct to Canada.

Resolved, That it is expedient to provide that the Governor in Council shall from time to time establish such regulations, not inconsistent with law, as may be required to secure a just, faithful, and impartial appraisal of all goods, wares, and merchandize imported into Canada, and just and proper entries of the actual or fair market value thereof, and of the weight, measures, or other quantities thereof, as each case may require, and such regulations, whether general or special, so made by the Goveror in Council, shall have the full force and authority of law, and it shall be the duty of the appraisers of Canada and every of them, and every person who shall act as such appraiser, or of the Collector of Customs, as the case may be, by all reasonable ways and means in his or their power, to ascertain, estimate and appraise the true and fair market value and wholesale price, any invoice or affidavit thereto to the contrary notwithstanding, of the merchandize, at the time of exportation and in the principal markets of the country whence the same has been imported into Canada, and the proper weights, measures, or other quantities, and the fair market value or wholesale price of every of them, as the case may require.

Resolved, That it is expedient to provide that no refund of duty paid shall be allowed because of any alleged inferiority or deficiency in quantity of goods imported and entered, and which have passed into the custody of the importer under permit of the Collector of Customs; nor because of the omission in the invoice of any trade discount, or other matter or thing which might have the effect of reducing the value of such goods for duty, unless the same shall have been reported to the Collector of Customs within ten days of the date of entry; and the said goods shall have been examined by the said Collector or by an appraiser, or other proper officer of customs, and the proper rate or amount of reduction certified by him after such examination; and if such Collector or proper officer reports that the goods in question cannot be identified as those named in the invoice and entry in question, then and in such case no refund of the duty or any part thereof shall in any case be allowed, and all applications for refund of duty in such cases shall be submitted, with the evidence and all particulars, for decision of the Minister of Customs, who may then order payment on finding the evidence to be sufficient and satisfactory.

Resolved, That it is expedient to repeal all Acts and parts or Schedules of Acts, and all Orders in Council, imposing any duties of customs upon goods, wares, and merchandize, or providing for the exemption of goods, wares, and merchandize from customs duty, when imported into Canada, and to make the following provisions in lieu thereof:

Resolved, That it is expedient that the following articles shall be subject to the several rates of duty set opposite to each, respectively:—

Acid, sulphuric half a cent per pound - - - -	½ c. per lb.
Acetic, twelve cents per imperial gallon - - -	12 cents.

Muriatic and nitric, twenty per centum ad valorem	20 per cent.
But carboys containing acids shall be subject to the same duty as if empty.	
Agricultural implements, not otherwise herein provided for, twenty-five per centum ad valorem	25 per cent.
Ale, beer and porter, when imported in bottles, (six quart and twelve pint bottles to be held to contain one imperial gallon	18c. per imp. gal.
Ale, beer, and porter, when imported in casks or otherwise than in bottles, ten cents per imperial gallon)	10c. per imp. gal.
Animals, living, of all kinds, not elsewhere specified, twenty per cent. ad valorem	20 per cent.
Artificial flowers, thirty per cent. ad valorem	30 per cent.
Books, printed, periodicals and pamphlets bound, or in sheets, not being foreign reprints of British copyright works, nor blank account books nor copybooks, nor books to be written or drawn upon, nor reprints of books printed in Canada, nor Bibles, prayer-books, nor psalm and hymnbooks, six cents per pound	6c. per lb.
British copyright works, reprints of, six cents per pound, and in addition thereto, twelve and a half per cent. ad valorem	6c. per lb. and 12½ per cent.
Bibles, prayer-books, psalm and hymn-books, five per cent. ad valorem	5 per cent.
Books, periodicals, and pamphlets imported through the Post Office, for every two ounces in weight or fraction thereof, one cent	1c. per 2 ozs.
Blank books, bound or in sheets, twenty-five per cent. ad valorem	25 per cent.
Printed, lithographed, or copper or steel plate bill-heads, cheques, receipts, drafts, posters, cards, commercial blank forms, labels of every description, advertising pictures, or pictorial show cards or bills, thirty per cent. ad valorem	30 per cent.
Advertising pamphlets, one dollar per hundred	$1 per 100.
Maps and charts, twenty per cent. ad valorem	20 per cent.
Printed music, bound or in sheets, six cents per pound	6c. per lb.
Playing cards, thirty per cent. ad valorem	30 per cent.
Bookbinders' tools and implements, including ruling machines, fifteen per cent. ad valorem	15 per cent.
Billiard tables, without pockets, four feet six inches by nine feet, a specific duty of twenty-two dollars and fifty cents.	$22.50
On those of five feet by ten a specific duty of twenty-five dollars	$25.00
On billiard tables, with pockets, five feet six inches by eleven feet a specific duty of thirty-five dollars	$35.00
And on those of six feet by twelve, a specific duty of forty dollars	$40.00
And in addition thereto, ten per cent. ad valorem; each table to include twelve cues, one set of four balls, with markers, cloths and cases, but no pool balls	10 per cent.
Brass, old and scrap, in bars, bolts, and sheets; in wire, round or flat; on seamless drawn tubing and on plain and fancy tubing, ten per cent. ad valorem	10 per cent.
On manufactures of brass, not elsewhere specified, thirty per cent. ad valorem	30 per cent.
Breadstuffs, viz.:	
Barley, fifteen cents per bushel	15c. per bush.
Buckwheat, ten cents. per bushel	10c. „
Indian corn, seven and one-half cents per bushel	7½c. „
Oats, ten cents per bushel	10c. „
Rice, one cent per pound	1c. per lb.
Rye, ten cents per bushel	10c. per bush.
Wheat, fifteen cents. per bushel	15c. „
Pease, ten cents per bushel	10c. „
Beans, fifteen cents per bushel	15c. „
Buckwheat meal or flour, one fourth of one cent. per pound	¼c. per lb.
Cornmeal, forty cents per barrel	40c. per barrel.
Oatmeal, one half cent per pound	½c. per lb.
Rye flour, fifty cents per barrel	50c. per barrel.

Wheat flour, fifty cents per barrel	50c. per barrel.
Rice and sago flour, two cents per pound	2c. per lb.
Brick, for building, twenty per cent. ad valorem	20 per cent.
Brooms and brushes, twenty-five per cent. ad valorem	25 per cent.
Butter, four cents per pound	4c. per lb.
Candles, tallow, two cents per pound	2c. ,,
Candles, paraffine wax, four cents per pound	4c. ,,
All other candles, twenty per cent. ad valorem	20 per cent.
Carriages, waggons, railway cars and carriages, sleighs, wheelbarrows, and other like articles, twenty-five per cent. ad valorem	25 per cent.
Cement, raw, or in stone from the quarry, per ton of thirteen cubic feet, one dollar	$1 per ton.
Cement, burnt and unground, seven and one-half cents per one hundred pounds	7½c. per 100 lbs.
Cement, hydraulic, or waterlime, ground, including barrels, forty cents per barrel	40c. per barrel.
Cement, in bulk or in bags, nine cents per bushel	9c. per bushel.
Cement, Portland or Roman, twenty per cent. ad valorem	20 per cent.
Cheese, three cents per pound	3c. per lb.
Chicory, raw or green, three cents per pound	3c. ,,
Chicory, or other root or vegetable used as a substitute for coffee, kiln dried, roasted or ground, four cents per pound	4c. per lb.
China and porcelain ware, twenty per cent. ad valorem	20 per cent.
Clocks and parts thereof, thirty-five per cent. ad valorem	35 per cent.
Coal, anthracite and bituminous, fifty cents per ton of two thousand pounds	50c. per ton.
Coal tar and coal pitch, ten per cent. ad valorem	10 per cent.
Cocoa nuts, one dollar per one hundred	$1 per 100.
Cocoa paste and chocolate, not sweetened, twenty per cent. ad valorem	20 per cent.
Cocoa paste and other preparations of cocoa containing sugar, one cent per pound and twenty-five per cent. ad valorem	1c. per lb. 25 per cent.
Coffee, green, two cents per pound	2c. per lb.
Coffee, roasted or ground, and all imitations of, and substitutes for, three cents per pound	3c. per lb.
Coke, fifty cents per ton of two thousand pounds	50c. per ton.
Copper, old and scrap, in pigs, in bars, rods, bolts, ingots, sheets, and sheathing, not planished or coated; copper wire, round or flat, and copper seamless drawn tubing, ten per cent. ad valorem	10 per cent.
Cordage for ships' purposes, ten per cent. ad valorem	10 per cent.
Cordage, all other, twenty per cent. ad valorem	20 per cent.
Copper rivets and burrs, and on all manufactures of copper not elsewhere specified, thirty per cent. ad valorem	30 per cent.
Corks, and other manufactures of cork-wood or cork-bark, twenty per cent. ad valorem	20 per cent.
Cotton, Manufactures of, viz.:	
On grey or unbleached and bleached cottons, sheetings, drills, ducks, cotton or Canton flannels, not stained, painted or printed, one cent. per square yard, and fifteen per cent. ad valorem	1c. per sq. yard. 15 per cent.
On all cotton jeans, denims, drillings, bed-tickings, ginghams, plaids, cotton or Canton flannels, ducks and drills, dyed or coloured, cottonades, pantaloon stuffs and goods of like description, two cents per square yard, and fifteen per cent. ad valorem	2c. per sq. yard. 15 per cent.
On all cotton wadding, batting, batts and warps, carpet warps, knitting yarn, hosiery yarn, or other cotton yarns under number forty, not bleached, dyed, or coloured, two cents per pound, and fifteen per cent. ad valorem	2c. per lb. 15 per cent.
And if bleached, dyed, or coloured, three cents per pound, and fifteen per cent. ad valorem	3c. per lb. 15 per cent.
On cotton warp, on beams, one cent. per yard, and fifteen per cent. ad valorem	1c. per yard, 15 per cent.

On cotton seamless bags, two cents per pound, and fifteen per cent. ad valorem	2c. per lb. 15 per cent.
On cotton shirts and drawers woven or made on frames, and on all cotton hosiery, thirty per cent. ad valorem	30 per cent.
On cotton sewing thread, on spools, twenty per cent. ad valorem	20 per cent.
On cotton in hanks, twelve and a half per cent. ad valorem	12½ per cent.
On all clothing made of cotton, or of which cotton is the component part of chief value, including corsets, thirty per cent. ad valorem	30 per cent.
On all manufactures of cotton not elsewhere specified, twenty per cent, ad valorem	20 per cent.
Drain-tile, and drain pipes and sewer pipes, glazed or unglazed, twenty per cent. ad valorem	20 per cent.
Earthenware and stoneware, brown or coloured, and Rockingham ware, twenty-five per cent. ad valorem	25 per cent.
Earthenware, white granite or ironstone ware, and "C.C.," or cream-coloured ware, thirty per cent. ad valorem	30 per cent.
Essences, viz.:	
Of apple, pear, pine-apple, raspberry, strawberry, vanilla, and other fruits, one dollar and ninety cents. per imperial gallon, and twenty per cent. ad valorem	$1.90 per imp. gallon, 20 per cent.
Essential oils for manufacturing purposes, twenty per cent. ad valorem	20 per cent.
Excelsior for upholsterers' use, twenty per cent. ad valorem	20 per cent.
Feathers, ostrich and vulture, undressed, fifteen per cent.	15 per cent.
And dressed, twenty-five per cent. ad valorem	25 per cent.
Fire-brick or tiles for lining stoves and furnaces, twenty per cent. ad valorem	20 per cent.
Fish, fresh, salted, or smoked, except fish free of duty, as provided by the Treaty of Washington, one cent per pound	1c. per lb.
Flax, fibre, scutched, one cent per pound	1c. per lb.
„ hackled, two cents. per pound	2c. per lb.
Flax, tow of, scutched or green, one-half cent per lb.	½c. per lb.
Flax seed, ten cents. per bushel	10c. per bushel.
Fruit, dried, viz.:	
Apples, currants, dates, figs, plums, prunes, raisins, and all other not elsewhere specified, one cent. per pound	1c. per lb.
Fruit, green, viz.:	
Apples, forty cents per barrel	40c. per barrel.
Blackberries, gooseberries, raspberries, and strawberries, two cents per quart	2c. per quart.
Cherries and currants, one cent per quart	1c. per quart.
Cranberries, plums, and quinces, thirty cents per bushel	30c. per bushel.
Grapes, one cent per pound	1c. per lb.
Peaches, forty cents per bushel	40c. per bushel.
Oranges and lemons, twenty per cent. ad valorem	20 per cent.
Fruits in air-tight cans, including cans, three cents per pound, if sweetened	3c. per lb.
And two cents per pound, if not sweetened	2c. per lb.
Fruits preserved in brandy or other spirits, one dollar and ninety cents per imperial gallon	$1.90 per imp. gall.
Furs, viz.:	
Fur skins dressed, fifteen per cent. ad valorem	15 per cent.
Caps, hats, muffs, tippets, capes, coats, cloaks, and other manufactures of fur, twenty-five per cent. ad valorem	25 per cent.
Furniture, house, cabinet or office, thirty-five per cent. ad valorem	35 per cent
Gas, coal oil or kerosene fixtures or parts thereof, thirty per cent. ad valorem	30 per cent.
Glass and Manufactures of, viz.:	
On carboys and demijohns, on pressed bottles, flasks and phials of every description, on telegraph and lightning-rod insulators, and on fruit jars and glass balls, thirty per cent. ad valorem	30 per cent.

On lamp and gas-light shades, lamps and lamp-chimneys, globes for lanterns, lamps and gas-lights, thirty per cent. ad valorem	30 per cent.
On ornamental, figured, and enamelled stained glass, stained, tinted, painted, and vitrified glass, and stained glass windows; figured, enamelled, and obscured white glass; thirty per cent. ad valorem	30 per cent.
On common and colourless window glass, and on coloured glass, not figured, painted, enamelled, or engraved, twenty per cent. ad valorem	20 per cent.
On all other glass and manufactures of glass not herein otherwise provided for twenty per cent. ad valorem	20 per cent.
Gunpowder and other explosives, viz.:	
On gun, rifle, and sporting powder, in kegs, half-kegs or quarter kegs, and other similar packages, five cents. per pound	5c. per lb.
On cannon and musket powder in kegs and barrels, four cents. per pound	4c. per lb.
On canister powder, in pound and half-pound tins, fifteen cents per pound	15c. per lb.
On blasting and mining powder, three cents per pound	3c. per lb.
On giant powder, dualin, dynamite, and other explosives in which nitro-glycerine is a constituent part, five cents per pound and twenty per cent. ad valorem.	5. per lb. and 20 per cent.
On nitro-glycerine, ten cents per pound and twenty per cent. ad valorem.	20 per cent.
Gutta-percha, manufactures of, twenty-five per cent. ad valorem	25 per cent.
Hair, curled, twenty per cent. ad valorem	20 per cent.
Honey, bees, in the comb or otherwise, three cents per pound	3c. per lb.
Hops, six cents per pound	6c. per lb.
India rubber, viz.: boots and shoes and other manufactures of, twenty-five per cent. ad valorem	25 per cent.
Iron and manufactures of, viz.:	
Pig, two dollars per ton	$2 per ton.
Old and scrap, two dollars per ton	$2 per ton.
In slabs, blooms, loops, or billets, twelve and one half per cent. ad valorem	12½ per cent.
In bars, rolled, or hammered, including flats, rounds, and squares, band and hoop; sheet, smoothed or polished, coated or galvanized, and commoner black; boiler and other plate; Canada plates or squares, nail and spike rods, and all other iron not otherwise provided for, seventeen and one half per cent. ad valorem	17½ per cent.
On rolled, round, wire rods in coils, under half an inch in diameter, ten per cent. ad valorem	10 per cent.
On iron rails or railway bars for railways or tramways, fifteen per cent. ad valorem	15 per cent.
On railway fish-plates, frogs, frog-points, chairs, and finger-bars, seventeen and a half per cent. ad valorem	17½ per cent.
On tin plates, ten per cent. ad valorem	10 per cent.
On iron and steel wire, not over number 18 wire gauge, twenty-five per cent. ad valorem	25 per cent.
On castings in the rough, twenty per cent. ad valorem	20 per cent.
On stoves and other finished castings, twenty-five per cent. ad valorem	25 per cent.
On car wheels, twenty-five per cent. ad valorem	25 per cent.
On mill irons and mill cranks, and on wrought forgings for mills and locomotives, or parts thereof, weighing 25 pounds or more, twenty per cent. ad valorem	20 per cent.
On locomotive engines and on stationary fire or other steam engines and boilers, and on other machinery composed of iron, or of which iron is the component part of chief value, twenty-five per cent. ad valorem	25 per cent.
On locomotive tires of steel or Bessemer steel in the rough, ten per cent. ad valorem	10 per cent.

On seamless drawn boiler tubing, ten per cent. ad valorem -	10 per cent.
On bedsteads and other iron furniture and ornamental iron work, twenty-five per cent. ad valorem - - - -	25 per cent.
On tinned, glazed, or enamelled hollow ware of cast or wrought iron, twenty-five per cent. ad valorem - - -	25 per cent.
On hardware, viz.: builders, cabinet-makers, upholsterers, carriage makers, saddlers, and undertakers, including coffin trimmings of metal, thirty per cent. ad valorem - - -	30 per cent.
On bolts, nuts, washers, and rivets, thirty per cent. ad valorem -	30 per cent.
On tacks, brads, and sprigs, thirty per cent. ad valorem -	30 per cent.
On horse-shoes and horse-shoe nails, thirty per cent ad valorem -	30 per cent.
On iron wire nails, called "points de Paris," thirty per cent. ad valorem - - - - - - - -	30 per cent.
On iron and steel screws, commonly called "wood screws," thirty-five per cent. ad valorem - - - -	35 per cent.
On scales, balances, and weighing beams, thirty per cent. ad valorem - - - - - - -	30 per cent.
On chain cables over half an inch in diameter, whether shackled or swivelled or not, five per cent. ad valorem - - -	5 per cent.
On nails and spikes, wrought and pressed, whether galvanized or not, three-fourths of a cent. per pound, and ten per cent. ad valorem - - - - - - -	¾c. per lb. 10 per cent.
On nails and spikes cut, half a cent per pound and ten per cent. ad valorem - - - - - - -	½c. per lb. 10 per cent.
On composition nails and spikes and sheathing nails, twenty per centum ad valorem - - - - - -	20 per cent.
On sewing machines, whole, or on heads or parts of heads, two dollars each, and in addition thereto twenty per cent. ad valorem - - - - - - -	$2 each. 20 per cent.
On jewellery and other manufactures of gold and silver, and on watches twenty per cent. ad valorem - - - - -	20 per cent.
On jute manufactures twenty per cent. ad valorem - - -	20 per cent.
On lard, tried or rendered, two cents per pound - - -	2c. per lb.
On lard, untried, one and a-half cents per pound - - -	1½c. per lb.
On lead, old and scrap, and on pigs, bars, blocks, and sheets, ten per cent. ad valorem - - - - - - - -	10 per cent.
On lead pipe, twenty per cent. ad valorem - - - - -	20 per cent.
On lead shot, and on all manufactures of lead, not otherwise specified twenty-five per cent. ad valorem - - - - -	25 per cent.
Leather board, three cents per pound - - - -	3c. per lb.
On boot and shoe counters made from leather board, half a cent per pair - - - - - - - - -	½c. per pair.
Leather, sole, tanned, but rough or undressed, ten per cent. ad valorem - - - - - - - - -	10 per cent.
On morocco skins, tanned, but rough or undressed, ten per cent. ad valorem - - - - - - - - -	10 per cent.
On sole leather and belting leather, tanned, but not waxed, and on all upper leather, fifteen per cent. ad valorem - - -	15 per cent.
On leather as above, dressed and waxed, twenty per cent. ad valorem	20 per cent.
On japanned, patent, or enamelled leather, twenty per cent. ad valorem	20 per cent.
On all other leather and skins, tanned, not elsewhere specified, twenty per cent. ad valorem - - - - - -	20 per cent.
On boots and shoes and other manufactures of leather, and on leather belting, twenty-five per cent. ad valorem - - - -	25 per cent.
Lithographic stones, not engraved, twenty per cent. ad valorem -	20 per cent.
Machine card clothing, twenty-five per cent. ad valorem - -	25 per cent.
Malt, two cents. per pound - - - - - -	2c. per lb.
Marble in blocks from the quarry, in the rough, or sawn on two sides only, and not specially shapen, containing 15 cubic feet or over, ten per cent. ad volorem - - - - - - -	10 per cent.
Slabs sawn on not more than two sides, fifteen per cent. ad valorem -	15 per cent.
Marble blocks and slabs, sawn on more than two sides, twenty per cent. ad valorem - - - - - - - -	20 per cent.

On finished marble and on all manufactures of marble, not elsewhere specified, twenty-five per cent. ad valorem - - -	25 per cent.
On meats, fresh, or salted, on actual weight as received in Canada (except bacon and hams), one cent per lb. - - -	1c. per lb.
On bacon and hams, dried or smoked, two cents per pound - -	2c. per lb.
On other meats not specified, two cents per pound - - -	2c. per lb.
Mustard seed, unground, fifteen per cent. ad valorem - -	15 per cent.
Mustard ground, twenty-five per cent. ad valorem - - -	25 per cent.
Nuts of all kinds, except cocoa nuts, twenty per cent. ad valorem -	20 per cent.
Ochres, dry, ground, or unground, washed or unwashed, not calcined, ten per cent. ad valorem - - - - - - -	10 per cent.
Oils, coal and kerosene, distilled, purified or refined, naphtha, benzole, and petroleum, products of petroleum, coal, shale, and lignite, not elsewhere specified, six cents per wine gallon - - -	6c. per gal.
Carbolic or heavy oil used in making wooden block pavement, for treating wood for building and railway ties, ten per cent. ad valorem - - - - - - - -	10 per cent.
Cod liver, medicated, twenty per cent. ad valorem - -	20 per cent.
Oil, lard, twenty per cent. ad valorem - - - -	20 per cent.
Linseed or flax-seed, raw or boiled, twenty-five per cent. ad valorem - - - - - - - -	25 per cent.
Neatsfoot, twenty per cent. ad valorem - - -	20 per cent.
Olive or salad, twenty per cent. ad valorem - - -	20 per cent.
Sesame seed, twenty per cent. ad valorem - - -	20 per cent.
Sperm, twenty per cent. ad valorem - - - -	20 per cent.
Oil cloth for floors, stamped, painted, or printed, twenty-five per cent. ad valorem - - - - - - - -	25 per cent.
Opium, drug, twenty per cent. ad valorem - - - -	20 per cent.
Opium, prepared for smoking, and all preparations of opium, five dollars per pound - - - - - - - -	$5 per lb.
Organs, cabinet, viz.:—On reed organs having not more than two sets of reeds, a specific duty of ten dollars; having over two and not over four sets of reeds, fifteen dollars; having over four and not over six sets of reeds, twenty dollars; having over six sets of reeds, thirty dollars; and in addition thereto, ten per cent. ad valorem on the fair market value thereof - - - -	10 per cent.
Paintings, drawings, engravings, and prints, twenty per cent. ad valorem - - - - - - - - -	20 per cent.
Paints and colours, not elsewhere specified, twenty per cent. ad valorem - - - - - - - - -	20 per cent.
Paper pulp, for paper makers, ten per cent. ad valorem - -	10 per cent.
Paper-hangings, or wall paper, thirty per cent. ad valorem - -	30 per cent.
Paper of all kinds, not elsewhere specified, twenty per cent. ad valorem - - - - - - - -	20 per cent.
Envelopes, and all manufactures of paper not otherwise specified, twenty-five per cent. ad valorem - - - - -	25 per cent.
Union collar cloth paper, in sheets, not shapen, ten per cent. ad valorem - - - - - - - -	10 per cent.
Mill board and straw board, ten per cent. ad valorem - -	10 per cent.
Paper collars, cuffs, and shirt fronts, twenty-five per cent. ad valorem - - - - - - - - -	25 per cent.
Perfumery, including toilet preparations, viz.:—	
Hair oils, tooth and other powders and washes, pomatums, pastes, and all other perfumed preparations used for the hair, mouth, or skin, thirty per cent. ad valorem. - - - - -	30 per cent.
Phosphor bronze, in blocks, bars, sheets, and wire, ten per cent. ad valorem - - - - - - - - -	10 per cent.
Pianofortes, viz.:—	
On all square pianofortes, whether round cornered or not, not over seven octaves, twenty-five dollars; on all other square pianofortes, thirty dollars; on upright pianofortes, thirty dollars; on concert, semi-concert, or parlour grand piano-	

fortes, fifty dollars; and in addition thereto, ten per cent. ad valorem. - - - - - - - -	10 per cent.
Pitch (coal) and coal tar, ten per cent ad valorem - - -	10 per cent.
Plants, viz., fruit, shade, lawn, and ornamental trees, shrubs, and plants, twenty per cent. ad valorem - - - - -	20 per cent.
Plaster of Paris, ground, calcined, or manufactured, twenty per cent. ad valorem - - - - - - - -	20 per cent.
Electro-plated ware and gilt ware of all kinds, thirty per cent. ad valorem - - - - - - - - -	30 per cent.
Plates engraved on wood and on steel or other metal, twenty per cent. ad valorem - - - - - - -	20 per cent.
Playing cards, thirty per cent. ad valorem - - - -	30 per cent.
Plumbago, ten per cent. ad valorem, and on all manufactures of plumbago, twenty per cent. ad valorem - - - -	10 per cent. 20 per cent.
Pomades, French or flower odours preserved in fat or oil for the purpose of conserving the odours of flowers which do not bear the heat of distillation, when imported in tins of not less than ten pounds each, fifteen per cent. ad valorem - - - - -	15 per cent.
Printing presses of all kinds, fifteen per cent. ad valorem - -	15 per cent.
Proprietary medicines, commonly called patent medicines, or any medicine or preparation of which the recipe is kept secret, or the ingredients whereof are kept secret, recommended by advertisement, bill, or label for the relief of any disorder or ailment, in liquid form, fifty per cent.; and all other, twenty-five per cent. ad valorem -	50 per cent. 25 per cent.
Pumice stone, ground or powdered, twenty per cent. ad valorem -	20 per cent.
Putty, twenty-five per cent. ad valorem - - - -	25 per cent.
Quills, twenty per cent. ad valorem - - - - -	20 per cent.
Quinine, sulphate of, twenty per cent. ad valorem - - -	20 per cent.
Salt (except salt imported from the United Kingdom or any British possession, or imported for the use of the Sea or Gulf Fisheries, which shall be free of duty) in bulk, eight cents per one hundred pounds; in bags, barrels, and other packages, twelve cents per one hundred pounds - - - - - - - -	8 c. per 100. 12 c. per 100.
Saltpetre, twenty per cent. ad valorem - - - -	20 per cent.
Sand paper, glass and emery paper, twenty per cent. ad valorem -	20 per cent.
Seeds, viz., flower, garden, field, and other seeds, for agricultural purposes, when in bulk or in large parcels, fifteen per cent.; when put up in small papers or parcels, twenty-five per cent. ad valorem	15 per cent. 25 per cent.
Seed, mustard, unground, fifteen per cent. ad valorem; ground, twenty-five per cent. ad valorem - - - - -	15 per cent. 25 per cent.
Shingles, twenty per cent. ad valorem - - - -	20 per cent.
Ships and other vessels, built in any foreign country, whether steam or sailing vessels, on application for Canadian register, on the fair market value of the hull, rigging, machinery and all appliances, an ad valorem duty of ten per cent - - - - -	10 per cent.
Silk, in the gum, not more advanced than singles, tram, and thrown organzine, fifteen per cent. ad valorem - - - -	15 per cent.
Sewing silk and silk twist, twenty-five per cent. ad valorem - -	25 per cent.
Silk velvets, and all manufactures of silk or of which silk is the component part of chief value, not elsewhere specified, thirty per cent. ad valorem - - - - - - - -	30 per cent.
Silver, German, in sheets, ten per cent. ad valorem - - -	10 per cent.
Slate, for roofing, twenty per cent. ad valorem - - -	20 per cent.
Slate slabs, square or in special shapes, twenty per cent. ad valorem -	20 per cent.
Slate mantels, thirty per cent. ad valorem - - - -	30 per cent.
School and writing slates, twenty-five per cent. ad valorem - -	25 per cent.
Soap, common brown and yellow, not perfumed, one cent per pound -	1 cent.
Soap, Castile and white, two cents per pound - - -	2 cents.
Soap, perfumed or toilet, twenty-five per cent. ad valorem - -	25 per cent.
Spelter, in blocks or pigs, ten per cent. ad valorem - - -	10 per cent.
Spices, viz.:	
Ginger and spices of all kinds, except nutmegs and mace, unground, twenty per cent. ad valorem - - - -	20 per cent.

Ginger and spices of all kinds, except nutmegs and mace, ground, twenty-five per cent. ad valorem - - - -	25 per cent
Nutmegs and mace, twenty-five per cent. ad valorem - -	25 per cent.
Starch, including farina, corn starch or flour, and all preparations having the qualities of starch, two cents. per pound - -	2 cents.
Spirits and strong waters, not having been sweetened or mixed with any article so that the degree of strength thereof cannot be ascertained by Syke's hydrometer, for every Imperial gallon of the strength of proof by such hydrometer, and so in proportion for any greater or less strength than the strength of proof, and for every greater or less quantity than a gallon, viz.: Geneva, gin, rum, whiskey, and unenumerated articles of like kinds, one dollar and thirty-two and one-half cents per imperial gallon - - -	$1.32½ imp. gal.
On brandy, one dollar and forty-five cents per imperial gallon -	$1.45 imp. gal.
On old Tom Gin, one dollar and thirty-two and one-half cents per imperial gallon, in bulk - - - - -	$1.32½ imp. gal.
Spirits sweetened and mixed, so that the strength cannot be ascertained as aforesaid, viz.: Rum-shrub, cordials, Schiedam schnapps, tafia, bitters, and unenumerated articles of like kinds, one dollar and ninety cents per imperial gallon - -	$1.90 imp. gal.
On spirits and strong waters not elsewhere specified, one dollar and ninety cents per imperial gallon - - - -	$1.90 imp. gal.
Spirits and strong waters imported into Canada, mixed with any ingredient or ingredients, and although thereby coming under the denomination of proprietary medicines, tinctures, essences, extracts, or any other denomination not elsewhere specified, shall be, nevertheless, deemed "spirits or strong waters," and subject to duty as such, one dollar and ninety cents per imperial gallon - - - - - - -	$1.90 imp. gal.
On Cologne water and perfumed spirits, in bottles or flasks not weighing more than four ounces each, forty per cent. ad valorem - - - - - - - -	40 per cent.
On Cologne water and perfumed spirits in bottles, flasks, or other packages weighing more than four ounces each, one dollar and ninety cents per imperial gallon, and twenty per cent. ad valorem - - - - - - - -	$1.90 imp. gal. and 20 per cent.
Wines of all kinds, except sparkling wines, including ginger, orange, lemon, strawberry, raspberry, elder, and currant wines, containing twenty-six per cent. or less of spirits of the strength of proof, by Syke's hydrometer, imported in wood or in bottles (six quart and twelve pint bottles to be held to contain an imperial gallon), twenty-five cents per imperial gallon; containing over twenty-six and not over thirty-one per cent., forty cents per imperial gallon; containing over thirty-one and not over thirty-six per cent., fifty-five cents per imperial gallon; and containing over thirty-six and not over forty per cent., seventy cents per imperial gallon, and in addition thereto, thirty per cent. ad valorem - - - - -	25c. per imp. gal. 40c. per imp. gal. 55c. per imp. gal. 70c. per imp. gal. 30 per cent. ad valorem.
On champagne, and all other sparkling wines in bottles, containing each not more than a quart and more than one pint, three dollars per dozen bottles; containing not more than a pint each and more than one half-pint, one dollar and fifty cents per dozen bottles; containing one half-pint each or less, seventy-five cents per dozen bottles. Bottles containing more than one quart each shall pay in addition to three dollars per dozen bottles, at the rate of one dollar and fifty cents per imperial gallon on the quantity in excess of one quart per bottle - - - - - - - -	$3 per dozen. $1.50 per dozen. 75c. per dozen. $1.50 per gal. for over 1 quart per bottle.
In addition to the above specific duty on sparkling wines there shall be an ad valorem duty of thirty per cent. - -	30 per cent.ad val.

But any liquors imported under the name of wine, and containing more than forty per cent. of spirits of the strength of proof by Syke's hydrometer, shall be rated for duty as unenumerated spirits.

Stationery of all kinds, not elsewhere specified, twenty per cent. ad valorem - - - - - - - - -	20 per cent.
Steel and manufactures of, viz. :—	
On steel in ingots, bars, sheets and coils, ten per cent. ad valorem - - - - - - - -	10 per cent.
On shovels, spades, hoes, hay, manure and potatoe forks, rakes and rake teeth, carpenters, coopers, cabinet-makers, and all other mechanics' tools, edge tools of every description, including axes, scythes, and saws of all kinds, and on steel skates, thirty per cent ad valorem - - - - - -	30 per cent.
On cutlery; on firearms; viz.: muskets, rifles, pistols, and shot guns, and on all manufactures of steel and of iron and steel, not elsewhere specified, twenty per cent. ad valorem - -	20 per cent.
On knife blades or knife blanks, in the rough, unhandled, for use by electro-platers, ten per cent. ad valorem - - -	10 per cent.
Stereotypes and electrotypes of standard books, ten per cent. ad valorem - - - - - - - - -	10 per cent.
Stereotypes and electrotypes for commercial blanks and advertisements, twenty per cent. ad valorem - - - - -	20 per cent.
Stone, viz.: rough freestone, sandstone, and all other building stone except marble, one dollar per ton of thirteen cubic feet - -	$1 per ton.
Water-line stone or cement stone, one dollar per ton - -	$1 per ton.
Grindstones, in the rough, one dollar and fifty cents per ton -	$1.50 per ton.
On dressed freestone, and all other building stone, except marble, and on all manufactures of stone or granite, twenty per cent. ad valorem - - - - - - - -	20 per cent.
Sugars, Syrups, and Molasses:	
On all sugar above number 14, Dutch standard in colour, one cent per lb. and thirty-five per cent. ad valorem - -	1c. per lb. 35 per cent.
On sugar equal to number 9, and not above number 14, Dutch standard, three-fourths of a cent per pound, and thirty per cent. ad valorem - - - - - -	¾c. per lb. 30 per cent.
On sugar below number 9, Dutch standard, half a cent per pound, and thirty per cent. ad valorem - - - -	½c. per lb. 30 per cent.
Provided that the ad valorem duty shall be levied and collected on sugar and melado when imported direct from the country of growth and production, upon the fair market value thereof at the place of purchase, without any addition for the cost of hogsheads or other packages, or other charges and expenses prior to shipment, anything contained in section 34 of the Act 40th Victoria, chap. 10. to the contrary notwithstanding.	
On syrups, cane juice, refined syrup, sugar-house syrup, syrup of sugar, syrup of molasses, or sorghum, five-eighths of one cent per pound and thirty per cent. ad valorem - - -	⅝c. per lb. 30 per cent.
On melado, concentrated melado, concentrated cane juice, concentrated molasses, concentrated beet root juice, and concrete, three-eighths of one cent. per pound, and thirty per cent. ad valorem - - - - - - -	⅜c. per lb. 30 per cent.
Molasses, if used for refining, clarifying, or rectifying purposes, or for the manufacture of sugar, when imported direct from the country of growth and production, twenty-five per cent. ad valorem - - - - - - - -	25 per cent.
And for the same purposes when not imported direct from the country of growth and production, thirty per cent. ad valorem - - - - - - - -	30 per cent.
Molasses, when not so used, when imported direct from the country of growth and production, fifteen per cent. ad valorem - - - - - - - -	15 per cent.
And when not imported direct from the country of growth and production, twenty per cent. ad valorem - - - -	20 per cent.
Sugar candy, brown or white, and confectionery, one cent per pound and thirty-five per cent. ad valorem - - -	1c. per lb. and 35 per cent.

Glucose or grape sugar to be classed and rated for duty as sugar according to grade by Dutch standard in colour.	
Glucose syrup, thirty-five per cent. ad valorem	35 per cent.
Tallow, one cent per pound	1c. per lb
Tea, viz.: on all black tea, two cents per pound, and ten per cent. ad valorem	2c. per lb. and 10 per cent.
And on all green and Japan tea, three cents per pound, and ten per cent. ad valorem	3c. per lb. and 10 per cent.
Tin, in blocks, pigs, bars, plates and sheets, ten per cent. ad valorem	10 per cent.
Tinware, stamped and japanned ware, and on all manufactures of tin not elsewhere specified, twenty-five per cent. ad valorem	25 per cent.
Tobacco, manufactured, and snuff, twenty-five cents per pound, and in addition thereto, twelve and a half per cent. ad valorem	25c. per lb. and 12½ per cent.
On cigars and cigarettes, fifty cents per pound, and twenty per cent. ad valorem	50c. per lb. and 20 per cent.
Turpentine, spirits of, twenty per cent. ad valorem	20 per cent.
Trunks, satchels, valises, and carpet bags, twenty-five per cent. ad valorem	25 per cent.
Type, for printing, twenty per cent. ad valorem	20 per cent.
Type metal, ten per cent. ad valorem	10 per cent.
Varnish, not elsewhere specified, twenty cents per imperial gallon, and twenty per cent. ad valorem	20c. per gal. and 20 per cent.
Vegetables, viz.:	
Potatoes, ten cents per bushel	10c. per bushel.
On tomatoes, thirty cents per bushel	30c. per bushel.
And on all other vegetables, twenty per cent. ad valorem	20 per cent.
Vinegar, twelve cents per imperial gallon	12c. per imp. gal.
Watches, watch movements, and watch cases, twenty per cent. ad valorem	20 per cent.
Wire of brass and copper, ten per cent. ad valorem	10 per cent.
Wire cloth of brass and copper, twenty per cent. ad valorem	20 per cent.
Wood and manufactures of, viz.: wooden ware, pails, tubs, churns, brooms, brushes, and other manufactures of wood not elsewhere specified, twenty-five per cent. ad valorem	25 per cent.
Hubs, spokes, felloes, and wheels, twenty per cent. ad valorem	20 per cent.
Lumber and timber not elsewhere specified, twenty per cent. ad valorem	20 per cent.
Wool and Woollens, viz.:	
Wool, unmanufactured, hair of the Alpaca goat and other like animals	Free.
On manufactures composed wholly or in part of wool, worsted, the hair of the Alpaca, goat, or other like animals, viz.: shawls, blankets, and flannels of every description, cloths, doeskins, cassimeres, tweeds, coatings, overcoatings, cloakings, felt cloth of every description, horse-collar cloth, yarn, knitting yarn, fingering yarn, worsted yarn, under number 30, knitted goods, viz.: shirts, drawers, and hosiery of every description, seven and a half cents per pound, and in addition thereto, twenty per cent. ad valorem	7½c. per lb. 20 per cent.
On clothing ready made, and wearing apparel of every description composed wholly or in part of wool, worsted, the hair of the Alpaca, goat, or other like animals, made up or manufactured wholly or in part by the tailor, seamstress, or manufacturer, except knit goods, ten cents per pound, and in addition thereto twenty-five per cent ad valorem	10c. per lb. 25 per cent.
On all manufactures, composed wholly or in part of wool, worsted, the hair of the Alpaca, goat, or other like animals, not herein otherwise provided for, twenty per cent. ad valorem	20 per cent.
On treble ingrain, three-ply and two-ply carpets composed wholly of wool, ten cents per square yard, and in addition thereto twenty per cent. ad valorem	10c. per sq. yd. and 20 per cent.

On two-ply and three-ply ingrain carpets, of which the warp is composed wholly of cotton, or other material than wool, worsted, the hair of the Alpaca goat, or other like animal, five cents per square yard, and in addition thereto, twenty per cent. ad valorem - - - - - - -	5c. per sq. yd. and 20 per cent.
Whips, twenty-five per cent. ad valorem - - - -	25 per cent.
Wire, of brass and copper, ten per cent. ad valorem - - -	10 per cent.
Wire cloth, of brass and copper, twenty per cent. ad valorem -	20 per cent.
Zinc, in pigs, blocks, and sheets, ten per cent. ad valorem - -	10 per cent.
Zinc, seamless drawn tubing, ten per cent. ad valorem - -	10 per cent.
Zinc, manufactures of zinc, not elsewhere specified, twenty-five per cent. ad valorem - - - - - - -	25 per cent.

On all goods not enumerated in this Act or any other Act as charged with any duty of Customs and not declared free of duty by this Act or some unrepealed Act or provision, shall be charged with a duty of twenty per cent. ad valorem, when imported into Canada, or taken out of warehouse for consumption therein.

Resolved, That it is expedient to provide that the following goods shall be exempt from duty when imported into Canada:—

Agaric.
Agates, unmanufactured.
Alkanet root.
Aloes.
Aluminium.
Alum.
Ambergris.
Ammonia, crude.
Aniline dyes.
Aniline oil, crude.
Aniline salts.
Animals brought into Canada temporarily, and for a period not exceeding three months, for the purpose of exhibition or competition for prizes offered by any agricultural or other association. But a bond shall be first given in accordance with regulations to be prescribed by the Minister of Customs, with the condition that the full duty to which such animals would otherwise be liable shall be paid in case of their sale in Canada, or if not re-exported within the time specified in such bond.
Animals for the improvement of stock under regulations to be made by the Treasury Board, and approved by the Governor in Council.
Annato, liquid or solid.
Annato seed.
Anchors.
Antimony.
Ashes, pot, pearl, and soda.
Apparel, wearing, and other personal and household effects, not merchandize, of British subjects dying abroad, but domiciled in Canada.
Argol dust.
Argols, crude.
Arsenic.
Arseniate of aniline.
Articles for the use of the Governor-General.
Articles for the use of foreign Consuls-General.
Army and Navy, for the use of:
- Arms.
- Clothing.
- Musical instruments for bands.
- Military stores and munitions of war.

Bamboo reeds, not further manufactured than cut into suitable lengths for walking sticks or canes, or for sticks for umbrellas, parasols, or sunshades.
Bamboos, unmanufactured.
Barrels, of Canadian manufacture, exported filled with domestic petroleum and returned empty, under such regulations as the Minister of Customs may prescribe.
Barilla.
Bells for churches.
Berries for dyeing, or used for composing dyes.
Bismuth.
Bolting cloths.
Bones, crude and not manufactured, burned, calcined, ground, or steamed.
Bone dust and bone ash, for manufacture of phosphates and fertilizers.
Borax.
Botany, specimens of.
Bristles.
Brimstone, in roll or flour.
Brim moulds, for gold beaters.
Bromine.
Broom corn.
Buchu leaves.
Bullion, gold and silver.
Burgundy pitch.
Burr-stones in blocks, rough or unmanufactured, and not bound up into mill-tones.
Bichromate of potash.
Carriages of travellers, and carriages laden with merchandise, and not to include circus troops nor hawkers. Under regu-

lations to be prescribed by the Minister of Customs.
Cabinets of coins, medals, and all other collections of antiquities.
Casts as models for the use of schools of design.
Cornelian, unmanufactured.
Canvas for manufacture of floor oil-cloth, not less than forty-five inches wide, and not pressed nor calendered.
Caoutchouc, unmanufactured.
Cat-gut strings, or gut cord for musical instruments.
Cat-gut or whip-gut, unmanufactured.
Chalk and cliff-stone, unmanufactured.
Chamomile flowers.
Citrons, and rinds of, in brine for candying.
Clays.
Clothing, donations of, for charitable purposes.
Cobalt, ore of.
Cochineal.
Cocoa, bean, shell, and nibs.
Coins, gold and silver, except United States silver coin.
Communion plate.
Coir and coir yarn.
Colcothar, dry, or oxide of iron.
Conium, cicuta, or hemlock, seed and leaf.
Cotton waste, and cotton wool.
Cork-wood or cork-bark, unmanufactured.
Colours, viz.:—Bichromate of potash, blue black, Chinese blue, Castille lakes, scarlet and marone in pulp, Paris green, Prussian blue, satin and fine washed white, ultramarine, umber, raw.
Diamonds, unset, including black diamonds for borers.
Diamond dust or bort.
Dragon's blood.
Duck, for belting and hose.
Dyeing or tanning articles in a crude state, used in dyeing or tanning, not elsewhere specified.
Earths.
Eggs.
Emery.
Esparto, or Spanish grass, and other grasses and pulp of, for the manufacture of paper.
Extract of logwood.
Felt, adhesive, for sheathing vessels.
Fire clay.
Fibre, Mexican.
Fibre, vegetable, for manufacturing purposes.
Fibrilla.
Fish-bait.
Fish-oil and fish of all kinds, the produce of the fisheries of the United States (except fish of the inland lakes and of the rivers falling into them, and fish preserved in oil).
Fish-hooks, nets and seines, and lines and twines for the use of the fisheries, but not to include sporting fishing tackle or hooks with flies or trolling spoons.
Fur skins of all kinds, not dressed in any manner.
Flint, flints, and ground flint stones.
Foliæ digitalis.
Fossils.
Gentian root.
Ginseng root.
Goldbeaters' moulds, and goldbeaters' skins.
Grease and grease scrap, for manufacture of soap only.
Gravels.
Guano, and other animal and vegetable manures.
Gums, amber, Arabic, Australian, British, copal, damar, mastic, sandarac, shellac, and tragacanth.
Gunny cloth and gunny bags.
Gut and worm gut, manufactured or unmanufactured, for whip and other cord.
Gutta-percha, crude.
Gypsum (sulphate of lime).
Hair, alpaca, angola, buffalo and bison, camels, goat, hog, horse, and human, cleaned or uncleaned, but not curled or otherwise manufactured.
Hemlock bark.
Hemp, undressed.
Hides, raw or uncured, whether dry, salted, or pickled.
Hoofs, horns, and horntips.
Hyoscyamus, or henbane leaf.
Ice.
India-rubber, unmanufactured.
Indian hemp (crude drug).
Indigo.
Iris, orris root.
Isinglass, or fish-glue.
Istle, or tampico fiber.
Ivory and ivory nuts, unmanufactured.
Ivory veneers, sawn only, not planed or polished.
Iron, masts for ships, or parts of.
Iron cables, chain over one half of an inch, shackled or swivelled, or not.
Jalap root.
Junk, old.
Jute-butts.
Jute.
Kelp.
Kryolite.
Lac, dye, crude, seed, button, stick, and shell.
Lava, unmanufactured.
Leeches.
Licorice root.
Litharge.
Litmus and all lichens, prepared and not prepared.

Lemons and rinds of, in brine, for candying.
Logs and round unmanufactured timber, not elsewhere provided for.
Lumber, plank and boards, sawn, of box-wood, cherry, chestnut, hickory, mahogany, oak, pitch.pine, rosewood, sandalwood, walnut, Spanish cedar, and whitewood, not shaped, planed, or otherwise manufactured.
Locomotives and railway passenger baggage and freight cars, being the property of railway companies in the United States, running upon any line of road crossing the frontier, so long as Canadian locomotives and cars are admitted free under similar circumstances in the United States, under regulations to be prescribed by the Minister of Customs.
Madder and munjeet, or Indian madder, ground or prepared, and all extracts of.
Manilla grass.
Menageries, horses, cattle, carriages, and harnesses of, under regulations to be prescribed by the Minister of Customs.
Medals, of gold, silver, or copper.
Meerschaum, crude or raw.
Mica and mica waste.
Mineralogy, specimens of.
Models of inventions and other improvements in the arts, but no article or articles shall be deemed a model or improvement which can be fitted for use.
Moss, Iceland and other mosses, crude.
Moss, seaweed, and all other vegetable substances used for beds and mattresses, in their natural state, or only cleaned.
Machinery for worsted and cotton mills; of kinds while not manufactured in Canada.
Nitrate of soda, or cubic nitre.
Nut-galls.
Newspapers received by mail.
Nickel.
Oak-bark.
Oakum.
Oil-cake.
Oils, cocoanut and palm, in their natural state.
Oil, carbolic or heavy oil, used in the manufacture of wood block pavement, and of wood for buildings and railroad ties.
Oranges and rinds of, in brine, for candying.
Ores of metal of all kinds.
Osiers.
Oxalic acid.
Palm-leaf, unmanufactured.
Pearl, mother of, not manufactured.
Persis, or extract of archill and cudbear.
Philosophical instruments and apparatus, including globes, when imported by and for the use of colleges and schools, scientific and literary societies.
Phosphorus.
Pelts.
Pipe-clay.
Pitch (pine).
Plaster of Paris, not ground nor calcined.
Pumice and pumice stone.
Plaits, Tuscan and grass.
Precipitate of copper, crude.
Rags, of cotton, linen, jute, and hemp, paper waste or clippings, and waste of any kind, fit only for manufacture of paper.
Rattans and reeds, unmanufactured.
Rennet, raw or prepared.
Rosin.
Rhubarb root.
Salt, coarse, imported from the United Kingdom or any British possession, or imported for the use of the sea or Gulf fisheries.
Saffron and safflower, and extract of.
Saffron-cake
Sal ammonia.
Sal soda.
Sand.
Sea-weed, not elsewhere specified.
Sea grass.
Senna, in leaves.
Silex, or crystallized quartz.
Silk, raw, or as reeled from the cocoon, not being doubled, twisted, or advanced in manufacture any way, silk cocoons and silk waste.
Skins, undressed, dried, salted, or pickled.
Soda ash.
Soda, caustic.
Soda, silicate of.
Settlers Effects, viz. :—
Wearing apparel, household furniture, professional books, implements and tools of trade, occupation, or employment, which the settler has had in actual use for at least six months before removal to Canada, not to include machinery or live stock, or other articles imported for use in any manufacturing establishment, or for sale. Provided that any dutiable article entered as settlers' effects shall not be sold or otherwise disposed of without payment of duty until after two years' actual use in Canada.
Sulphur, in roll or flour.
Tails, undressed.
Tampico, white and black.
Tanner's bark.
Tar (pine).
Terra-alba, aluminous.
Terra-japonica.
Teasels.
Tobacco, unmanufactured, for Excise purposes, under conditions of Act 31 Vic., c. 51.
Tortoise and other shells, unmanufactured.
Traveller's baggage, under regulations to be prescribed by the Minister of Customs.

Turmeric.
Turpentine, raw or crude.
Turtles.
Tree-nails.
Vitriol, blue.
Veneers of wood and ivory, sawn only.
Verdigris, or sub-acetate of copper, dry.
Vegetable fibres, natural, not produced by any mechanical process.
Whiting or whitening.
Whalebone, unmanufactured.
Whale-oil, in casks from on shipboard, and in the condition in which it was first landed.
Willow, for basket-makers.
Wool.
Yellow metal, in bolts, bars, and for sheathing.

The following articles shall be prohibited to be imported, under a penalty of two hundred dollars, together with the forfeiture of the parcel or package of goods in which the same may be found, viz. :—

Books, printed papers, drawings, paintings, prints, photographs, or representations of any kind of a treasonable or seditious, or of an immoral or indecent character.
Coin, base or counterfeit.

MEMORANDA to accompany TABLES showing the effect of the NEW CANADIAN TARIFF upon the IMPORTS of GREAT BRITAIN and the UNITED STATES.

1. THE general effect must certainly be to decrease importations from the United States and to re-establish commercial relations between Canada and the West Indies, while if it materially alters the measure of trade with Great Britain, it must be on the side of increase, and in several branches this will certainly be the case. Fostering and promoting Canadian industries, and especially manufactures, will not lessen the necessity for large imports of various commodities which are now largely supplied to Canada by Great Britain, but if the result should prove the means of restoring prosperity, the effect upon British mercantile and manufacturing interests must be most favourable. A few examples will serve to illustrate these positions.

2. Among the articles heretofore free upon which a duty is imposed of 50 cents per ton by the present tariff, coal is one of the most prominent. The supply of this article has for years past been received chiefly from the United States, and the small proportion received from England has been generally brought in ships as ballast. The duty will consequently fall upon the owners of such ships, but this will not result in any considerable diminution of the quantity thus imported. In 1878 the value of coal imported from the United States was $2,667,000, while from Great Britain the amount was only $387,454. Should the imposition of this duty stimulate the mining enterprise of Nova Scotia, the increased production would find its way chiefly to the province of Ontario, where United States coal is almost exclusively used at present, and will not interfere with the consumption of English coal in the maritime provinces.

3. The value of live animals imported in 1878 was $341,611, the proportion of which from the United States was $338,015, and from Great Britain $3,084. The duty on these has been raised from 10 per cent. to 20 per cent., but the statement shows that if the imports are lessened, it must affect the United States almost solely.

4. A more important item is that of cottons, the total imports of which in 1878 amounted to about $8,000,000, and of the kinds upon which any considerable increase of duty has been imposed the value was somewhat under $3,000,000; about $1,000,000 of the latter sum represents British goods and $2,000,000 the United States. These goods consist mostly of the cheaper kinds of bleached and unbleached cottons, jeans, denims, and kindred articles. The increase of duty on these classes will certainly lessen the imports from the United States, and the deficiency will be supplied partly from Canadian factories and partly from England, and will tend to increase rather than diminish the volume of trade with the latter country.

The higher classes of cottons, representing an importation of about $5,000,000, are principally supplied by Great Britain, and the increase of duty imposed upon them is only 2½ per cent. ad valorem, which cannot seriously diminish the trade, especially as Canadian mills and factories are not prepared to produce them. The proportion imported in 1878 from England was $4,000,000 to $1,000,000 from other countries.

5. Similar statements may be made respecting woollens. The total imports of these goods amounted in 1878 to about $8,500,000, of which Great Britain furnished about $7,000,000 worth. Of the latter, the higher classes of goods constituted the proportion of $5,000,000 in round numbers, and upon these the increase of duty is but 2½ per cent., the former duty being 17½ per cent. and the present 20 per cent.; Canadian manufactories are not prepared to furnish them, nor can they be purchased in the United States except at prices greatly in advance of English manufactures.

6. Iron and manufactures of iron. Iron in bar, rod, sheet, &c., has been taxed heretofore at the low rate of duty of 5 per cent. The value of the importations of 1878 was about $2,400,000, of which Great Britain furnished about $1,600,000. The duty has been increased to 10, 12, 15, and 17½ per cent., but the largest proportion must still be imported from Great Britain, as the prices ruling in the United States would not admit of its being purchased there, and the only diminution of the trade at all probable will originate in an increase of Canadian manufactures, but this will much more largely affect the imports from the United States of other classes of similar goods.

7. In manufactures of iron the arrangement is still more favourable to Great Britain. The total value of the imports in 1878 may be stated at $3,300,000. Of this amount the United States is credited with $2,437,000, consisting of castings and the coarser descriptions of hardware, while the balance of $861,500 consisted of cutlery and a variety of the finer manufactures of iron and steel such as neither the United States nor Canada can at present supply. The increased duty on these articles ranges from 2½ to 7½ per cent., and in some minor items to 10 per cent. The smallest increase is that which applies to British manufactures, or goods chiefly imported from Great Britain, while the heavier rates of duty will fall upon goods now imported from the United States, but which can and will be produced in Canada.

8. Books, periodicals, &c. The duties on these goods have been arranged with special regard to the higher classes of literary productions. The effect of the change from an ad valorem duty of 5 per cent. to a specific duty of 6 cents per pound will be that the revenue will be principally collected upon publications of small literary worth; while valuable works of a scientific character and others which sell at high prices will pay but a small percentage upon their value; books of equal bulk but of little intrinsic value will pay a much higher percentage. The former character is specially applicable to English publications, while an equally large proportion of those from the United States are of a decided inferior description. Bibles, prayer and hymn books are allowed to remain at 5 per cent., and reprints of British copyright works are taxed 12½ per cent., in addition to the duty of 6 cents per pound, for the benefit of the proprietors.

9. The duties imposed upon grain of all kinds, and upon flour and meal, have been graded with reference to the respective values of each kind, and will probably average about 10 per cent. ad valorem. This cannot in any way exert any appreciable effect upon the trade with Great Britain, as the quantity imported from thence is an insignificant fraction of the whole.

10. Sugar, as will be seen by reference to the table herewith, of the higher qualities is nominally raised from 25 to 35 per cent. ad valorem duty, while the specific duty of 1 cent per pound remains unaltered. This ad valorem duty, however, will now be levied on the net cost of sugars imported direct from the place of growth and production, without any addition for the cost of packages and expenses, and hence it is not really much more than 30 per cent., or 5 per cent. increase instead of 10 per cent. A provision of law is also made whereby the duty on refined sugars imported from any country allowing drawbacks on sugar exported will be collected on its full market price when sold for home consumption. This provision makes the duty on sugars from Great Britain considerably less than that on the same classes of sugar from the United States, the drawback in the latter country being on an average of 2½ cents per pound, on which the ad valorem duty will be collected.

(Signed) J. L. Tilley,
Minister of Finance.

Statement showing the Quantity or Value of the Principal Articles imported into the Dominion of Canada from Great Britain and the United States, also the Rates of Duty payable thereon under the Old and New Tariffs respectively.

Articles.	Imported in 1878 from		Former Rates of Duty.	Present Rates of Duty.	Remarks.
	Great Britain.	United States.			
Agricultural implements - dols.	9,752	132,053	17½ per cent. ad val.	25 per cent. ad val.	
Animals - - - „	3,084	338,015	10 „ „	20 „ „ -	Animals from Great Britain are chiefly for breeding or improvement of stock, and are free of duty.

Articles.	Imported in 1878 from Great Britain.	Imported in 1878 from United States.	Former Rates of Duty.	Present Rates of Duty.	Remarks.
Books, printed periodicals, and pamphlets bound. &c. dols.	370,069	451,436	5 per cent. ad val. -	6 cents per lb. -	Memo. No. 8.
British copyright works, reprints of - dols.	—	3,550	12½ „ „	6 cents per lb. and 12½ per cent.	
playing cards - „	9,301	4,380	25 „ „	30 per cent. ad val.	
Billiard tables, 4½ ft. × 9 ft. „	175	11,129	17½ „ „	22 dol. 50 cents each, and 10 per cent. ad val.	
5 ft. × 10 ft. „			„ „ „	25 dol. each, and 10 per cent. ad val.	
5½ ft. × 11 ft. „			„ „ „	35 dol. each, and 10 per cent. ad val.	
6 ft. × 12 ft. „			„ „ „	40 dol. each, and 10 per cent. ad val.	
Brass, manufactures of - „	22,351	64,915	„ „ „	30 per cent. ad val.	
Breadstuffs, viz.:—					
Barley - - - bush.	65	302,082	Free - -	15 cents per bushel -	Memo. No. 9.
Indian corn - - „	30	7,387,477	„ - -	7½ „ „	
Oats - - - „	76	2,162,216	„ - -	10 „ „	
Rice - - - lbs.	5,483,447	950,692	1 cent. per lb. -	1 cent per lb.	
Wheat - - - bush.	8	5,635,403	Free - -	15 cents per bushel.	
Pease - - - „	956	8,595	„ - -	10 „ „	
Beans - - - „			„ - -	15 „ „	
Cornmeal - - brls.	—	226,266	„ - -	40 „ „	
Oatmeal - - „	756	2,249	„ - -	½ cent per lb.	
Flour of wheat and rye- „	1,524	314,747	„ - -	50 cents per barrel.	
Brooms and brushes - dols.	20,319	22,707	17½ per cent. ad val.	25 per cent. ad val.	
Candles, tallow - - lbs.	1,858	12,134	„ „ „	2 cents per lb.	
„ parafine wax - „	198,452	70,210	„ „ „	4 „ „ -	The chief quantity of these candles are spermaceti and wax of other kinds, and will come under the 20 per cent. rate.
„ other - - „			„ „ „	20 per cent. ad val.	
Carriages - - - dols.	2,130	83,504	„ „ „	25 „ „	
China and porcelain ware - „	27,926	9,657	„ „ „	20 „ „	
Clocks - - „	7,420	59,770	„ „ „	35 „ „	
Coal, anthracite - - tons.	2,582	404,389	Free - -	50 cents per ton -	*See* Memo. No. 2.
„ bituminous - - „	124,614	331,323	„ - -	„ „ „	
Copper, old and scrap, in pigs, bars, rods, bolts, &c. - dols.	76,338	24,195	„ - -	10 per cent. ad val.	
„ seamless drawn tubing -	1,648	5,728	17½ per cent. ad val.	„ „ „	
„ other manufactures of -	8,637	15,884	„ „	30 per cent. „	
Cotton, manufactures of, viz.:					
Grey or unbleached, and bleached sheetings, drills, ducks, cotton or Canton flannels, not stained, painted, or printed -	5,372,893 yds. 431,807 dols.	7,398,741 539,763	- - - 17½ per cent. ad val.	1 cent per sq. yard, and 15 per cent. ad val.	Memo. No. 4.
Jeans, denims, drillings, bed-tickings, ginghams, plaids, cotton or Canton flannels, ducks and drills dyed or coloured, &c. -	549,925 yds. 47,125 dols.	1,584,351 141,955	- - - 17½ per cent. ad val.	2 cents per sq. yard, and 15 per cent ad val.	
Wadding, batting, warps, not bleached or coloured dols.	692	14,674	„ „ „	2 cents per lb., and 15 per cent. ad val.	
Clothing or wearing apparel - - - „	174,288	191,441	„ „ „	30 per cent. ad val.	
Munufactures of cotton, all other - - - „	3,735,249	1,622,752	„ „ „	20 „ „	The largest proportion of this ware is subject to 20 per cent. only. Probably 300,000 dols. worth out of the whole.
Earthenware and stoneware, brown or coloured, and Rockingham ware - - „	385,038	45,890	„ „ „	25 „ „	
Earthenware, white granite, or ironstone ware and C.C., or cream-coloured, ware - „	„	„	„ „ „	30 „ „	
Earthenware, all other crockery and earthenware - „	„	„	„ „ „	20 „ „	
Fruit, dried - - - lbs.	3,872,863	6,127,404	„ „ „	1 cent. per lb.	
„ „ - - - dols.	166,018	261,430	„ „ „	40 cents per brl.	
„ green, viz., apples - „	2,666	93,706	10 „ „	1 cent per lb.	
„ „ grapes - „	9,833	18,199	„ „ „	20 per cent. ad val.	
„ lemons and oranges „	121,899	112,315	„ „ „	20 „ „	
all other - „	62	109,112	„ „ „	25 „ „	
Fur, manufactures of - „	129,187	67,892	17½ „ „	35 „ „	
Furniture, house - - „	12,201	387,270	„ „ „	30 „ „	
Gas fixtures, &c. - - „	11,113	73,823	„ „ „		

Articles.		Imported in 1878 from Great Britain.	Imported in 1878 from United States.	Former Rates of Duty.	Present Rates of Duty.	Remarks.
Glass and manufactures of, viz., carboys, demijohns, pressed bottles, flasks, insulators, fruit jars, balls, shades, lamps, chimneys, globes, ornamental, figured, enamelled, stained, tinted, painted, vitrified, obscured	dols.	69,729	12,743	17½ per cent. ad val.	30 per cent. ad val.	Imports of glass and glassware amounted to 800,000 dols. in 1878, but over 600,000 dols. worth, embracing the common window and other common glass, is now rated 20 per cent., or an increase of 2½ per cent.
Glass, other manufactures of	,,	117,544	408,443	,, ,, ,,	20 ,, ,,	
India-rubber, manufactures of	,,	56,078	192,261	,, ,, ,,	25 ,, ,,	
Iron, and manufactures of, viz.:						
Pig iron	tons.	26,174	3,913	Free	2 dols. per ton.	
Bars, rolled or hammered, flats, rounds, and squares, band and hoop; sheet boiler and other plate; Canada plates; nail and spike rods, and all other iron not otherwise provided for	dols.	1,436,328	224,165	5 per cent. ad val.	17½ per cent. ad val.	*See* Mem. 6 and 7.
Rolled round wire rods in coils under ½ inch in diameter	,,	90,473	33,357	,, ,, ,,	10 ,, ,,	
Rails or railway bars	,,	233,133	51,923	Free	15 ,, ,,	
Railway fish plates, frogs, &c	,,	44,585	13,243	,,	17½ ,, ,,	
Tin plates		348,613	61,254	5 per cent. ad val.	10 ,, ,,	
Castings in the rough	,,	34,202	362,518	17½ per cent. (except mill shafts free)	20 ,, ,,	
,, finished, stoves, &c.	,,			17½ per cent. ad val.	25 ,, ,,	
Locomotive engines, other steam engines, boilers and machinery	,,	137,832	507,705	17½ per cent. ad. val.	25 ,, ,,	
Iron seamless tubing, drawn	,,	80,839	154,237	,, ,, ,,	10 ,, ,,	
,, tacks, brads, and sprigs	,,	24,562	154,679	,, ,, ,,	30 ,, ,,	
,, nails and spikes	,,			,, ,, ,,	¾ cents per lb. and 10 per cent. ad val.	
,, sewing machines	No.	3,097	2,938	,, ,, ,,	2 dols. each and 20 per cent. ad. val.	
	dols.	29,308	67,259	,, ,, ,,		
Hardware, builders, cabinet-makers, upholsterers, carriage makers, saddlers, and undertakers	,,	466,274	1,731,766	,, ,, ,,	30 per cent. ad. val.	
Hardware, all other	,,			,, ,, ,,	20 ,, ,,	
Lard, tried or rendered	lbs.	14,904	2,324,967	1 cent per lb.	2 cents per lb.	
,, untried	,,			,, ,,	1½ ,, ,,	
Organs, cabinet, viz.	dols.	32	118,255	17½ per cent. ad. val.		
Reed organs:						These duties add very little to the higher classes of instruments, and discriminate considerably against those of an inferior and undesirable quality.
2 sets of reeds		-	-	,, ,, ,,	10 dols. each and 10 per cent. ad val.	
over 2 and not over 4 reeds		-	-	,, ,, ,,	15 dols. each and 10 per cent. ad val.	
over 4 and not over 6 reeds		-	-	,, ,, ,,	20 dols. each and 10 per cent. ad val.	
over 6 sets reeds		-	-	,, ,, ,,	30 dols. each and 10 per cent. ad val.	
Pianofortes, viz.	dols.	9,636	341,067	,, ,, ,,		The same remarks as above apply equally to these instruments.
,, square, not over 7 octaves		-	-	,, ,, ,,	25 dols. each and 10 per cent. ad val.	
,, square, all other		-	-	,, ,, ,,	30 dols. each and 10 per cent. ad val.	
,, upright		-	-	,, ,, ,,	30 dols. each and 10 per cent. ad val.	
,, concert or grand			-	,, ,, ,,	50 dols. each and 10 per cent. ad val.	
Salt	bush.	1,964,591	183,260	Free	Free from Great Britain and British possessions and for fisheries, otherwise 8 cents per 100 lbs. in bulk; 12 cents per 100 lbs. in packages.	

Articles.		Imported in 1878 from Great Britain.	Imported in 1878 from United States.	Former Rates of Duty.	Present Rates of Duty.	Remarks.
Sugar, above No. 14 D.S.	lbs.	47,611,106	40,897,269	1 cent per lb. and 25 per cent. ad val.	1 cent per lb. and 35 per cent. ad val.	Memo. No. 10.
	dols.	2,530,445	2,484,372			
„ equal to No. 9 and not above 14 D.S.	lbs.	5,596,962	4,039,498	¾ cent per lb. and 25 per cent. ad val.	¾ cent per lb. and 30 per cent. ad val.	
	dols.	243,026	207,509			
„ below No. 9 D.S.	lbs.	30,094	258,568	½ cent per lb. and 25 per cent. ad val.	½ cent. per lb. and 30 per cent. ad val.	
	dols.	1,282	9,983			
Syrups, cane juice, sorghum, &c.	lbs.	13,238	4,008,784	⅝ cent per lb. and 25 per cent. ad val.	⅝ cent per lb. and 30 per cent. ad val.	
	dols.	629	120,172			
Melada, concentrated cane juice, concentrated molasses, &c.	lbs.	—	16,894	⅜ cent per lb. and 25 per cent. ad val.	⅜ cent. per lb. and 30 per cent. ad val.	
	dols.	—	438			
Molasses for refining purposes	lbs.	—	—	73 cents per 100 lbs.	25 per cent. direct, 30 per cent. if not direct, from place of growth.	
Molasses not for refining	dols.	8,194	295,435	25 per cent. ad val.	15 per cent. direct, 20 per cent. if not direct, from place of growth.	
Tea, green and Japan	lbs.	1,254,154	4,144,872	6 cents per lb.	3 cents per lb. and 10 per cent. ad val.	
	dols.	250,955	1,006,633			
„ black	lbs.	3,426,536	1,666,094	5 cents per lb.	2 cents per lb. and 10 per cent. ad val.	
	dols.	788,905	411,381			
Woollen manufactures, viz.: Shawls, blankets, flannels, cloths, doeskins, cassimeres, tweeds, coatings, cloakings, yarns, knitted goods, hosiery, &c.	dols.	1,433,358	113,374	17½ per cent. ad val.	7½ cents per lb. and 20 per cent. ad val.	Memo. No. 5.
Clothing or wearing apparel	„	759,439	128,446	„ „ „	10 cents per lb. and 25 per cent. ad val.	
Carpets, wholly of wool	„	251,497	14,253	„ „ „	10 cents per sq. yd. and 20 per cent. ad val.	This does not include tapestry or Brussels and other similar fabrics, which are advanced only 2½ per cent.
„ of wool and cotton	„	96,000	8,058	„ „ „	5 cents per sq. yd. and 20 per cent. ad val.	
Other woollen manufactures	„	5,530,623	147,614	„ „ „	20 per cent. ad val.	

J. L. Tilley,
Minister of Finance.

LONDON:
Printed by GEORGE E. EYRE and WILLIAM SPOTTISWOODE,
Printers to the Queen's most Excellent Majesty.
For Her Majesty's Stationery Office.

CANADA.

COPY OF DESPATCH

FROM

THE GOVERNOR-GENERAL OF CANADA

RESPECTING THE

NEW CUSTOMS TARIFF.

(In continuation of [C.–2305.] April 1879.)

Presented to both Houses of Parliament by Command of Her Majesty,
July 1879.

LONDON:
PRINTED BY GEORGE EDWARD EYRE AND WILLIAM SPOTTISWOODE,
PRINTERS TO THE QUEEN'S MOST EXCELLENT MAJESTY.
FOR HER MAJESTY'S STATIONERY OFFICE.

1879.

[C.—2369.] *Price* 2½*d.*

CANADA.

GOVERNOR-GENERAL THE MARQUIS OF LORNE, K.G., to the RIGHT HON. SIR MICHAEL HICKS BEACH, BART. (Received June 18, 1879.)

SIR, Citadel, Quebec, June 5, 1879.

I HAVE the honour of forwarding for the use of the Colonial Office 25 copies of the Canadian Customs Tariff in operation since the 15th March last.

I have, &c.

The Right Hon. Sir M. E. Hicks Beach, Bart. (Signed) LORNE.
&c. &c. &c.

Enclosure.

42 Victoria, Chap. 15.

An Act to alter the Duties of Customs and Excise. [*Assented to* 15*th May* 1879.]

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

Repeal of enactments imposing duties of customs. 1. So much of all Acts and parts or schedules of Acts and of all Orders in Council as imposes any duty of Customs upon goods (which word shall, for all the purposes of this Act, have the meaning assigned to it in the Act passed in fortieth year of Her Majesty's reign, and intituled "*An Act to amend and consolidate the Acts respecting the Customs*"), or exempts goods from Customs duty when imported into Canada, or is in anywise inconsistent with this Act, is hereby repealed; but any power conferred upon the Governor in Council by the Act last cited (fortieth Victoria, chapter ten) to transfer dutiable goods to the list of goods free of duty is not hereby abrogated or impaired; and in lieu and instead of all other duties of Customs upon goods imported into Canada, there shall be raised, levied, collected, and paid upon the goods enumerated in Schedule A. to this Act, or referred to as not enumerated therein but charged with duty, imported into Canada or taken out of warehouse for consumption therein, the several duties of Customs set forth and described in the said Schedule A., and set opposite to each respectively, or charged on them as not enumerated, subject to the provisions herein-after made.

Saving certain power under 40 V., c. 10.

Duties in Schedule A. imposed.

Goods free of duty. 2. The goods enumerated in Schedules B. and C. may, subject to the provisions and conditions therein mentioned, be imported into Canada or taken out of warehouse for consumption therein without payment of any duty of Customs thereon.

Prohibited goods. 3. The goods enumerated in Schedule D. shall not be imported into Canada, under the penalty therein mentioned, and if imported shall be forfeited and forthwith destroyed.

Provisions respecting packages containing goods paying ad valorem duty. 4. The value of all bottles, flasks, jars, demijohns, carboys, casks, hogsheads, pipes, barrels, and all other vessels or packages manufactured of tin, iron, lead, zinc, glass, or any other material, and capable of holding liquids; crates, barrels, and other packages containing glass, china, crockery, or earthenware, and all packages in which goods are commonly placed for home consumption, including cases in which bottled spirits, wines, or malt liquors are contained, and every package, being the first receptacle or covering, enclosing goods for purpose of sale, shall, in all cases not otherwise provided for in which they contain goods subject to an ad volorem duty, be taken and held to be a part of the fair market value of such goods for duty, and when they contain goods subject to specific duty only, such packages shall be charged with a duty of Customs of twenty per centum ad valorem, to be computed upon their original cost or value; and all or any of the above packages described as capable of holding liquids, when containing goods exempt from duty under this Act, shall be charged with a duty of twenty per centum ad valorem; but all packages not herein-before specified, and not herein specially charged with or declared liable to duty under regulations, and being the usual and ordinary packages in which goods are packed for exportation only, according to the general usage and custom of trade, shall be free of duty.

As to packages containing goods paying specific duty only, or free goods in certain cases.

Other packages free.

As to goods on which a drawback has been allowed in country of manufacture. 5. On all goods imported into Canada subject under this Act to ad valorem duty upon which a drawback of duties has been allowed by the Government of the country where the same were manufactured, the amount of such drawback shall, in all cases, be taken and considered to be a part of the fair market value of such goods, and duty shall be collected thereon; and in cases where the amount of such drawback has been deducted

M 839. Wt. 4892.

from the value of such goods upon the face of the invoice under which entry is to be made, the Collector of Customs, or proper officer, shall add the amount of such deduction and collect and cause to be paid the lawful duty thereupon; and the fair market value of all goods imported into Canada shall be understood to be the ordinary wholesale price at which the same are sold for home consumption in the country where they are purchased or manufactured, without deduction of any kind because of any drawback paid or to be paid thereon, or because of any special arrangement between the seller and purchaser having reference to the exportation of such goods, or the exclusive right to territorial limits for the sale thereof, or because of any royalty payable upon patent rights but not payable when goods are purchased for exportation, or on account of any other consideration by which a special reduction in price might or could be obtained: Provided that nothing herein shall be understood to apply to general fluctuations of market values.

No reduction of value by reason of drawback, &c.

Proviso.

Certain articles to be free of duty in Canada when free in United States.

6. Any or all of the following articles, that is to say, animals of all kinds, green fruit, hay, straw, bran, seeds of all kinds, vegetables (including potatoes and other roots), plants, trees, and shrubs, coal and coke, salt, hops, wheat, peas, and beans, barley, rye, oats, Indian corn, buckwheat, and all other grain, flour of wheat and flour of rye, Indian meal and oatmeal, and flour or meal of any other grain, butter, cheese, fish (salted or smoked), lard, tallow, meats (fresh, salted, or smoked), and lumber, may be imported into Canada free of duty, or at a less rate of duty than is provided by this Act, upon Proclamation of the Governor in Council, which may be issued whenever it appears to his satisfaction that similar articles from Canada may be imported into the United States free of duty, or at a rate of duty not exceeding that payable on the same under such Proclamation when imported into Canada.

Provision in case of higher duty in U.S. on tea or coffee imported from Canada than from elsewhere.

Proviso, if passing in bond through U.S.

7. If at any time any greater duty of Customs should be payable in the United States of America on tea or coffee imported from Canada than on tea or coffee imported from any other country, then the Governor in Council may impose on tea or coffee imported into Canada from the said United States an additional duty of Customs equal to the duty payable in the United States on tea or coffee imported from Canada. Provided that tea or coffee imported into Canada from any country other than the said United States, but passing in bond through the United States, shall be taken and rated as a direct importation from the country in which the tea or coffee was purchased.

Allowance for natural deterioration or breakage on certain articles.

Amount limited.

Proviso for refund in certain cases.

8. An allowance may be made for deterioration by natural decay or breakage upon all perishable and brittle goods imported into Canada, such as green fruits and vegetables, crockery, china, glass and glassware, provided such damage is found to exceed twenty-five per cent. of the value thereof upon an examination to be made by an appraiser, or proper officer of Customs, at their first landing, or within three days of such landing; but such allowance shall be only for the amount of loss in excess of twenty-five per cent. of the whole quantity of such goods contained or included in any one invoice; and provided the duty has been paid on the full value thereof, a refund of such duty may be allowed and paid in the proportion and on fulfilment of the conditions above specified, but not otherwise, on application to the Minister of Customs.

Cost of inland transportation, &c. to be deemed part of value.

9. In determining the dutiable value of goods, except when imported from Great Britain and Ireland, there shall be added to the cost or the actual wholesale price or fair market value, at the time of exportation in the principal markets of the country from whence the same has been imported into Canada, the cost of inland transportation, shipment, and trans-shipment, with all the expenses included, from the place of growth, production, or manufacture, whether by land or water, to the vessel in which shipment is made, either *in transitu* or direct to Canada, subject to such regulations as may be made by the Governor in Council.

Governor in Council may make regulations for ensuring fair valuation.

Duty of appraisers.

10. The Governor in Council shall from time to time establish such regulations, not inconsistent with law, as may be required to secure a just, faithful, and impartial appraisal of all goods imported into Canada, and just and proper entries of the actual or fair market value thereof, and of the weights, measures, or other quantities thereof, as each case may require; and such regulations, whether general or special, so made by the Governor in Council shall have the full force and authority of law; and it shall be the duty of the appraisers of Canada and every of them, and every person who shall act as such appraiser, or of the Collector of Customs, as the case may be, by all reasonable ways and means in his or their power, to ascertain, estimate, and appraise the true and fair market value and wholesale price (any invoice or affidavit thereto to the contrary notwithstanding) of the goods at the time of exportation, and in the principal markets of the country whence the same have been imported into Canada, and the proper weights, measures, or other quantities, and the fair market value or wholesale price, of every of them, as the case may require.

11. No refund of duty paid shall be allowed because of any alleged inferiority or deficiency in quantity of goods imported and entered, and which have passed into the custody of the importer under permit of the Collector of Customs, nor because of the omission in the invoice of any trade discount, or other matter or thing which might have the effect of reducing the value of such goods for duty, unless the same has been reported to the Collector of Customs within 10 days of the date of entry, and the said goods have been examined by the said Collector or by an appraiser, or other proper officer of Customs, and the proper rate or amount of reduction certified by him after such examination; and if such Collector or proper officer reports that the goods in question cannot be identified as those named in the invoice and entry in question, then and in such case no refund of the duty or any part thereof shall in any case be allowed; and all applications for refund of duty in such cases shall be submitted, with the evidence and all particulars, for decision of the Minister of Customs, who may then order payment on finding the evidence to be sufficient and satisfactory.

No refund of duty for alleged inferiority of value, &c., except in certain cases.

Not if goods cannot be identified.

Minister of Customs to decide.

12. The whole or part of the duty of thirty per centum ad valorem imposed by this Act upon wines imported into Canada may be remitted upon proclamation of the Governor in Council, which may be issued whenever it appears to his satisfaction that the Governments of France and Spain, or either of them, have made changes in their tariffs of duties imposed upon articles imported from Canada in reduction or repeal of the duties now in force in the said countries.

Remission of or on duties on wines in certain cases.

13. In lieu of all Excise duties—except license fees—now or heretofore imposed on spirits, there shall be imposed, levied, and collected upon every gallon of the strength of proof by Sykes' Hydrometer, and so in proportion for any greater or less strength of spirits, the manufacture of which had not been wholly completed, or upon which the duty had not been paid before the coming into force of this section, an Excise duty of one dollar.

Excise duties on spirits altered.

14. In lieu of all Excise duties—except license fees—now or heretofore imposed on malt, there shall be imposed, levied, and collected on every pound of malt made and weighed as removed from the kiln, and upon which the duty had not been paid before the coming into force of this section, an Excise duty of one cent.

And on malt.

15. Upon all stocks of malt liquor held by licensed brewers at the time of the coming into force of this section, a drawback may be paid on the malt contained in such stocks, equal to the duty paid thereon in excess of one cent. per pound, and the quantity of malt contained in such stocks of malt liquor, shall be determined under the existing departmental regulations for determining the quantity of malt contained in malt liquor.

Drawback on present stocks of malt liquors.

16. In lieu of all Excise duties—except license fees—now imposed on tobacco known as "common Canadian twist," otherwise called "tabac blanc en torquette," being the unpressed leaf rolled and twisted, and made wholly from raw tobacco, the growth of Canada, and upon raw leaf the growth of Canada, there shall be imposed, levied, and collected on every pound, or less quantity than a pound, an Excise duty of four cents.

Excise duty on certain kinds of tobacco altered.

17. The foregoing sections to this Act shall be held to have come into force, and the duties mentioned therein and in the schedules to this Act shall be held to have been imposed and to have been substituted for those imposed by any Acts or parts of Acts theretofore in force, on and after the fifteenth day of March in the present year of our Lord one thousand eight hundred and seventy-nine, and to have been payable on all goods imported or taken out of warehouse for consumption upon or after the said day, or becoming subject to the duties of Excise on and after the same under the next preceding four sections.

From what time the foregoing provisions shall have effect.

18. The Acts now in force respecting the Customs and respecting Inland Revenue and Excise, and all regulations lawfully made or to be made under them respectively, shall apply to the duties imposed by this Act, except in so far only as they may be inconsistent with this Act; and all words and expressions used in this Act shall have the meaning assigned to them in the said Acts respectively; and the said Acts respecting the Customs and Inland Revenue and Excise shall continue to apply to any duties accrued under enactments hereby repealed which may not have been paid before the day last mentioned, and to all bonds, penalties, or forfeitures or proceedings relating to, or resulting from such non-payment, or the nonobservance of any enactment or provision of law respecting any such duties.

General Acts respecting Customs and Inland Revenue, to apply to duties under this Act.

Saving obligations incurred as to former duties.

SCHEDULE A.

Goods subject to duties.

Acid, sulphuric, half a cent per pound - - - -	½ c. per lb.
Acetic, twelve cents per imperial gallon - - -	12 c. per imp. gal.

Muriatic and nitric, twenty per cent. ad valorem	20 per cent.
But carboys containing acids shall be subject to the same duty as if empty.	
Agricultural implements, not otherwise herein provided for, twenty-five per cent. ad valorem	25 per cent.
Ale, beer, and porter, when imported in bottles, (six quart or twelve pint bottles to be held to contain one imperial gallon), eighteen cents per imperial gallon	18c. per imp. gal.
Ale, beer, and porter, when imported in casks or otherwise than in bottles, ten cents per imperial gallon)	10c. per imp. gal.
Animals, living, of all kinds, not elsewhere specified, twenty per cent. ad valorem	20 per cent.
Artificial flowers, thirty per cent. ad valorem	30 per cent.
Babbit metal, ten per cent. ad valorem	10 per cent.
Billiard tables, without pockets, four feet six inches by nine feet, a specific duty of twenty-two dollars and fifty cents. each	$22.50
On those of five feet by ten feet, a specific duty of twenty-five dollars each	$25
On billiard tables, with pockets, five feet six inches by eleven feet, a specific duty of thirty-five dollars each	$35
And on those of six feet by twelve feet, a specific duty of forty dollars each	$40
And in addition thereto, ten per cent. ad valorem; each table to include twelve cues, and one set of four balls, with markers, cloths, and cases, but no pool balls	& 10 per cent.
Blacking, shoe, twenty-five per cent. ad valorem	25 per cent.
Books, printed, periodicals and pamphlets bound, or in sheets, not being foreign reprints of British copyright works, nor blank account books nor copybooks, nor books to be written or drawn upon, nor Bibles, prayer-books, psalm and hymnbooks, six cents per pound	6c. per lb.
British copyright works, reprints of, six cents per pound, and in addition thereto, twelve and a half per cent. ad valorem	6c. per lb. & 12½ per cent.
Bibles, prayer-books, psalm and hymn-books, five per cent. ad valorem	5 per cent.
Books, periodicals, and pamphlets imported through the Post Office, for every two ounces in weight or fraction thereof, one cent	1c. per 2 ozs.
Blank books, bound or in sheets, twenty-five per cent. ad valorem	25 per cent.
Printed, lithographed, or copper or steel plate bill-heads, cheques, receipts, drafts, posters, cards, commercial blank forms, labels of every description, advertising pictures, or pictorial show cards or bills, thirty per cent. ad valorem	30 per cent.
Advertising pamphlets, one dollar per hundred	$1 per 100.
Maps and charts, twenty per cent. ad valorem	20 per cent.
Printed music, bound or in sheets, six cents per pound	6c. per lb.
Playing cards, thirty per cent. ad valorem	30 per cent.
Bookbinders' tools and implements, including ruling machines, and binders' cloth, fifteen per cent. ad valorem	15 per cent.
Brass, old and scrap, in bars, bolts, and sheets; in wire, round or flat; seamless drawn tubing and plain and fancy tubing, ten per cent. ad valorem	10 per cent.
Manufactures of brass, not elsewhere specified, thirty per cent. ad valorem	30 per cent.
Breadstuffs, viz.:	
Barley, fifteen cents per bushel	15c. per bush.
Buckwheat, ten cents per bushel	10c. „
Indian corn, seven and a half cents per bushel	7½c. „
Oats, ten cents per bushel	10c. „
Rice, one cent per pound	1c. per lb.
Rye, ten cents per bushel	10c. per bush.
Wheat, fifteen cents per bushel	15c. „
Pease, ten cents per bushel	10c. „
Beans, fifteen cents per bushel	15c. „
Buckwheat meal or flour, one fourth of one cent. per pound	¼c. per lb.
Cornmeal, forty cents per barrel	40c. per barrel.

Oatmeal, one-half cent per pound	½c. per lb.
Rye flour, fifty cents per barrel	50c. per barrel.
Wheat flour, fifty cents per barrel	50c. per barrel.
Rice and sago flour, two cents per pound	2c. per lb.
Brick, for building, twenty per cent. ad valorem	20 per cent.
Brooms and brushes, twenty-five per cent. ad valorem	25 per cent.
Butter, four cents per pound	4c. per lb.
Buttons of all kinds, twenty-five per cent. ad valorem	25 per cent.
Candles, tallow, two cents per pound	2c. ,,
Candles, paraffine wax, five cents per pound	5c. ,,
All other candles, including sperm, twenty-five per cent. ad valorem	25 per cent.
Carriages, waggons, railway cars and carriages, sleighs, wheelbarrows, and other like articles, thirty per cent. ad valorem	30 per cent.
Cement, raw, or in stone from the quarry, one dollar per ton of thirteen cubic feet (*see* Stone)	$1 per ton.
Cement, burnt and unground, seven and a half cents per one hundred pounds	7½c. per 100 lbs.
Cement, hydraulic, or waterlime, ground, including barrels, forty cents per barrel	40c. per barrel.
Cement, in bulk or in bags, nine cents per bushel	9c. per bushel.
Cement, Portland or Roman, twenty per cent. ad valorem	20 per cent.
Cheese, three cents per pound	3c. per lb.
Chicory, raw or green, three cents per pound	3c. ,,
Chicory, or other root or vegetable used as a substitute for coffee, kiln dried, roasted or ground, four cents per pound	4c. per lb.
China and porcelain ware, twenty per cent. ad valorem	20 per cent.
Clocks and parts thereof, thirty-five per cent. ad valorem	35 per cent.
Coal, anthracite and bituminous, fifty cents per ton of two thousand pounds	50c. per ton.
Coal tar and coal pitch, ten per cent. ad valorem	10 per cent.
Cocoa nuts, one dollar per one hundred	$1 per 100.
Cocoa paste and chocolate, not sweetened, twenty per cent. ad valorem	20 per cent.
Cocoa paste and other preparations of cocoa containing sugar, one cent per pound and twenty-five per cent. ad valorem	1c. per lb. & 25 per cent.
Coffee, green, two cents per pound	2c. per lb.
Coffee, roasted or ground, and all imitations of and substitutes for, three cents per pound	3c. per lb.
Coke, fifty cents per ton of two thousand pounds	50c. per ton.
Copper, old and scrap, in pigs, bars, rods, bolts, ingots, sheets, and sheathing, not planished or coated; copper wire, round or flat, and copper seamless drawn tubing, ten per cent. ad valorem	10 per cent.
Copper rivets and burrs, and all manufactures of copper not elsewhere specified, thirty per cent. ad valorem	30 per cent.
Cordage for ships' purposes, ten per cent. ad valorem	10 per cent.
Cordage, all other, twenty per cent. ad valorem	20 per cent.
Corks, and other manufactures of cork-wood or cork-bark, twenty per cent. ad valorem	20 per cent.
Cotton, Manufactures of, viz.:	
Grey or unbleached and bleached cottons, sheetings, drills, ducks, cotton or Canton flannels, not stained, painted or printed, one cent per square yard, and fifteen per cent. ad valorem	1c. per sq. yard. and 15 per cent.
All cotton jeans, denims, drillings, bed-tickings, ginghams, plaids, cotton or Canton flannels, ducks and drills, dyed or coloured, checked and striped shirtings, cottonades, pantaloon stuffs and goods of like description, two cents per square yard, and fifteen per cent. ad valorem	2c. per sq. yard. and 15 per cent.
All cotton wadding, batting, batts and warps, carpet warps, knitting yarn, hosiery yarn, and other cotton yarns under number forty, not bleached, dyed, or coloured, two cents per pound. and fifteen per cent. ad valorem	2c. per lb. and 15 per cent.
And if bleached, dyed, or coloured, three cents per pound, and fifteen per cent. ad valorem	3c. per lb. and 15 per cent.

Cotton warp, on beams, one cent. per yard, and fifteen per cent. ad valorem	1c. per yard, and 15 per cent.
Cotton seamless bags, two cents per pound, and fifteen per cent. ad valorem	2c. per lb. and 15 per cent.
Cotton shirts and drawers woven or made on frames, and all cotton hosiery, thirty per cent. ad valorem	30 per cent.
Cotton sewing thread, on spools, twenty per cent. ad valorem	20 per cent.
Cotton sewing thread, in hanks, twelve and a half per cent. ad valorem	12½ per cent.
Cotton duck, or canvas of hemp or flax, and sail twine, when to be used for boats' and ships' sails, five per cent. ad valorem	5 per cent.
All clothing made of cotton, or of which cotton is the component part of chief value, including corsets, thirty per cent. ad valorem	30 per cent.
All manufactures of cotton not elsewhere specified, twenty per cent. ad valorem	20 per cent.
Drain-tile, and drain pipes and sewer pipes, glazed or unglazed, twenty per cent. ad valorem	20 per cent.
Earthenware and stoneware, brown or coloured, and Rockingham ware, twenty-five per cent. ad valorem	25 per cent.
Earthenware, white granite or ironstone ware, and "C.C.," or cream-coloured ware, thirty per cent. ad valorem	30 per cent.
Electro-plated ware. (*See* Plated ware.)	
Essences, viz.: Of apple, pear, pine-apple, raspberry, strawberry, and other fruits, and vanilla, one dollar and ninety cents per imperial gallon, and twenty per cent. ad valorem	$1.90 per imp. gallon, and 20 per cent.
Essential oils for manufacturing purposes, twenty per cent. ad valorem	20 per cent.
Excelsior for upholsterers' use, twenty per cent. ad valorem	20 per cent.
Feathers, ostrich and vulture, undressed, fifteen per cent. ad valorem, and dressed, twenty-five per cent. ad valorem	15 per cent. 25 per cent.
Fire-brick or tiles for lining stoves and furnaces, twenty per cent. ad valorem	20 per cent.
Fish, fresh, salted, or smoked, except fish free of duty, as provided by the Treaty of Washington, one cent per pound	1c. per lb.
Flax, fibre, scutched, one cent per pound	1c. per lb.
„ hackled, two cents per pound	2c. per lb.
Flax, tow of, scutched or green, one-half cent per lb.	½c. per lb.
Flax seed, ten cents per bushel	10c. per bushel.
Fruit, dried, viz.: Apples, two cents per lb.	2c. per lb.
Currants, dates, figs, plums, prunes, raisins, and all other not elsewhere specified, twenty-five per cent. ad valorem	25 per cent.
Fruit, green, viz.:	
Apples, forty cents per barrel	40c. per barrel.
Blackberries, gooseberries, raspberries, and strawberries, two cents per quart	2c. per quart.
Cherries and currants, one cent per quart	1c. per quart.
Cranberries, plums, and quinces, thirty cents per bushel	30c. per bushel.
Grapes, one cent per pound	1c. per lb.
Peaches, forty cents per bushel	40c. per bushel.
Oranges and lemons, twenty per cent. ad valorem	20 per cent.
Fruits in air-tight cans, including cans, three cents per pound, if sweetened, and two cents per pound, if not sweetened	3c. per lb. and 2c. per lb.
Fruits preserved in brandy or other spirits, one dollar and ninety cents per imperial gallon	$1.90 per imp. gall.
Furs, viz.:	
Fur skins dressed, fifteen per cent. ad valorem	15 per cent.
Caps, hats, muffs, tippets, capes, coats, cloaks, and other manufactures of fur, twenty-five per cent. ad valorem	25 per cent.
Furniture, house, cabinet or office, finished or in parts, including hair and spring mattresses, show cases, caskets, and coffins, of any material, thirty-five per cent. ad valorem	35 per cent.
Gas, coal oil or kerosene fixtures, or parts thereof, thirty per cent. ad valorem	30 per cent.

Glass and Manufactures of, viz. :	
Carboys and demijohns, pressed bottles, flasks and phials of every description, telegraph and lightning-rod insulators, and fruit jars and glass balls, thirty per cent. ad valorem - -	30 per cent.
Lamp and gas-light shades, lamps and lamp-chimneys, globes for lanterns, lamps and gas-lights, thirty per cent. ad valorem -	30 per cent.
Ornamented, figured, and enamelled stained glass, stained, tinted, painted, and vitrified glass, and stained glass windows ; figured, enamelled, and obscured white glass ; thirty per cent. ad valorem - - - - - - - -	30 per cent.
Common and colourless window glass, and coloured glass, not figured, painted, enamelled, or engraved, twenty per cent. ad valorem - - - - - - - -	20 per cent.
All other glass and manufactures of glass not herein otherwise provided for twenty per cent. ad valorem - - -	20 per cent.
Gunpowder and other explosives, viz. :	
Gun, rifle, and sporting powder, in kegs, half-kegs, or quarter kegs, and other similar packages, five cents. per pound -	5c. per lb.
Cannon and musket powder in kegs and barrels, four cents. per pound - - - - - - - -	4c. per lb.
Canister powder, in pound and half-pound tins, fifteen cents per pound - - - - - - - -	15c. per lb.
Blasting and mining powder, three cents per pound - -	3c. per lb.
Giant powder, dualin, dynamite, and other explosives in which nitro-glycerine is a constituent part, five cents per pound and twenty per cent. ad valorem.	5c. per lb. and 20 per cent.
Nitro-glycerine, ten cents per pound and twenty per cent. ad valorem.	10c. per lb. and 20 per cent.
Gutta-percha, manufactures of, twenty-five per cent. ad valorem -	25 per cent.
Hair, curled, twenty per cent. ad valorem - - - - -	20 per cent.
Hats, caps and bonnets, not elsewhere specified, twenty-five per cent. ad valorem - - - - - - -	25 per cent.
Hatters' plush of silk or cotton, ten per cent. ad valorem -	10 per cent.
Honey, bees, in the comb or otherwise, three cents per pound -	3c. per lb.
Hops, six cents per pound - - - - - - -	6c. per lb.
India rubber, viz. : boots and shoes and other manufactures of, twenty-five per cent. ad valorem - - - - - -	25 per cent.
Iron and manufactures of, viz. :	
Pig, two dollars per ton - - - - - -	$2 per ton.
Old and scrap, two dollars per ton - - - - -	$2 per ton.
In slabs, blooms, loops, or billets, puddled or not, and muck and puddled bars or billets, twelve and one half per cent. ad valorem	12½ per cent.
In bars, rolled, or hammered, including flats, rounds, and squares, nail and spike rods, and all other iron not otherwise provided for, seventeen and one half per cent. ad valorem - -	17½ per cent.
Rolled, round, wire rods in coils, under half an inch in diameter, ten per cent. ad valorem - - - - - -	10 per cent.
Iron rails or railway bars for railways or tramways, fifteen per cent. ad valorem - - - - - - - -	15 per cent.
Railway fish-plates, frogs, frog-points, chairs, and finger-bars, seventeen and a half per cent. ad valorem - - -	17½ per cent.
Tin plates, ten per cent. ad valorem - - - - -	10 per cent.
Band and hoop, sheet smoothed or polished, coated or galvanized and common or black, and boiler plate, number seventeen gauge or thinner, and Canada plates, twelve and one-half per cent. ad valorum - - - - - -	12½ per cent.
Iron and steel wire, galvanized or not, fifteen per cent. ad valorem	15 per cent.
Stoves and other castings, not elsewhere specified, twenty-five per cent. ad valorem - - - - - - -	25 per cent.
Gass, water and soil-pipes of cast-iron, twenty-five per cent ad valorem - - - - - - - - -	25 per cent.
Car wheels and axles, twenty-five per cent. ad valorem - -	25 per cent.
Rolled beams, channels and angle and T iron, fifteen per cent. ad valorem - - - - - - - - -	15 p. ct.

Iron bridges and structural iron-work, malleable iron castings and iron safes, and doors for safes and vaults, twenty-five per cent. ad valorem	25 p. ct.
Mill irons and mill cranks, and wrought forgings for mills and locomotives, or parts thereof, weighing 25 pounds or more, twenty per cent. ad valorem	20 per cent.
Locomotive engines and stationary fire or other steam engines and boilers, and on other machinery composed wholly or in part of iron, twenty-five per cent. ad valorem	25 per cent.
Locomotive tires of steel or Bessemer steel in the rough, ten per cent. ad valorem	10 per cent.
Drawn boiler tubing, ten per cent. ad valorem	10 per cent.
Bedsteads and other iron furniture and ornamental iron-work and wire work, twenty-five per cent. ad valorem	25 per cent.
Skates and locks of all kinds, 30 per cent. ad valorem	30 per cent.
Tinned, glazed, or enamelled hollow ware of cast or wrought iron, twenty-five per cent. ad valorem	25 per cent.
Hardware, viz.: builders, cabinet-makers, upholsterers, carriage makers, saddlers, and undertakers, including coffin trimmings of metal, thirty per cent. ad valorem	30 per cent.
Bolts, washers, and rivets, thirty per cent. ad valorem	30 per cent.
Tacks, brads, and sprigs, Hungarian and clout nails, thirty per cent. ad valorem	30 per cent.
Horse-shoes and horse-shoe nails, thirty per cent ad valorem	30 per cent.
Iron wire nails, called "points de Paris," thirty per cent. ad valorem	30 per cent.
Iron and steel screws, commonly called "wood screws," thirty-five per cent. ad valorem	35 per cent.
Scales, balances, and weighing beams, thirty per cent. ad valorem	30 per cent.
Chain cables over half an inch in diameter, whether shackled or swivelled or not, five per cent. ad valorem	5 per cent.
Nails and spikes, cut, half a cent. per pound, and ten per cent. ad valorem	½c. per lb. and 10 per cent.
Nails and spikes wrought and pressed, whether galvanized or not, three-fourths of a cent. ad valorem	¾c. per lb. and 10 per cent.
Composition nails and spikes and sheathing nails, twenty per cent. ad valorem	20 per cent.
Nuts, one cent per pound and ten per cent. ad valorem	1c. per lb. and 10 per cent.
Sewing machines, whole, or heads or parts of heads of sewing machines, two dollars each, and in addition thereto twenty per cent. ad valorem	$2 each and 20 per cent.
Ink for writing, twenty-five per cent. ad valorem	25 per cent.
Jewellery and manufactures of gold and silver, and watches twenty per cent. ad valorem	20 per cent.
Jute, manufactures of, twenty per cent. ad valorem	20 per cent.
Lard, tried or rendered, two cents per pound	2c. per lb.
Lard, untried, one and a-half cents per pound	1½c. per lb.
Lead, old and scrap, and in pigs, bars, blocks, and sheets, ten per cent. ad valorem	10 per cent.
Lead pipe and lead shot, and on all manufactures of lead, not otherwise specified twenty-five per cent. ad valorem	25 per cent.
Leather board, three cents per pound	3c. per lb.
Boot and shoe counters made from leather board, half a cent per pair	½c. per pair.
Leather, sole, tanned, but rough or undressed, ten per cent. ad valorem	10 per cent.
Morocco skins, tanned, but rough or undressed, ten per cent. ad valorem	10 per cent.
Sole leather and belting leather, tanned, but not waxed, and all upper leather, and French kid, fifteen per cent. ad valorem	15 per cent.
Leather as above, dressed and waxed, twenty per cent. ad valorem	20 per cent.
Japanned, patent, or enamelled leather, twenty per cent. ad valorem	20 per cent.

All other leather and skins, tanned, not elsewhere specified, twenty per cent. ad valorem	20 per cent.
Boots and shoes and other manufactures of leather, including gloves and mitts, and leather belting, twenty-five per cent. ad valorem	25 per cent.
Lithographic stones, not engraved, twenty per cent. ad valorem	20 per cent.
Malt, two cents per pound	2c. per lb.
Machine card clothing, twenty-five per cent. ad valorem	25 per cent.
Marble in blocks from the quarry, in the rough, or sawn on two sides only, and not specially shapen, containing 15 cubic feet or over, ten per cent. ad valorem	10 per cent.
Marble slabs sawn on not more than two sides, fifteen per cent. ad valorem	15 per cent.
Marble blocks and slabs, sawn on more than two sides, twenty per cent. ad valorem	20 per cent.
Finished marble and on all manufactures of marble, not elsewhere specified, twenty-five per cent. ad valorem	25 per cent.
Meats, fresh, or salted, on actual weight as received in Canada except shoulders, sides, bacon and hams, one cent per pound	1c. per lb.
Shoulders, sides, bacon and hams, fresh salted, dried or smoked, two cents per pound	2c. per lb.
All other dried, or smoked meats, or meats preserved in any other way than salted or pickled, not otherwise specified, two cents per pound	2c. per lb.
Mustard seed, unground, fifteen per cent. ad valorem	15 per cent.
Mustard ground, twenty-five per cent. ad valorem	25 per cent.
Nuts of all kinds, except cocoa nuts, twenty per cent. ad valorem	20 per cent.
Ochres, dry, ground, or unground, washed or unwashed, not calcined, ten per cent. ad valorem	10 per cent.
Oils, coal and kerosene, distilled, purified or refined, naphtha, benzole, and petroleum, products of petroleum, coal, shale, and lignite, not elsewhere specified, seven cents and one-fifth of a cent per gallon	$7\frac{1}{5}$c. per imp. gal.
Carbolic or heavy oil used in making wooden block pavements, for treating wood for building and for railway ties, ten per cent. ad valorem	10 per cent.
Cod liver, medicated, twenty per cent. ad valorem	20 per cent.
Lard, twenty per cent. ad valorem	20 per cent.
Linseed or flax-seed, raw or boiled, twenty-five per cent. ad valorem	25 per cent.
Neatsfoot, twenty per cent. ad valorem	20 per cent.
Olive or salad, twenty per cent. ad valorem	20 per cent.
Sesame seed, twenty per cent. ad valorem	20 per cent.
Sperm, twenty per cent. ad valorem	20 per cent.
Oil cloth for floors, stamped, painted, or printed, thirty per cent. ad valorem	30 per cent.
Opium (drug) twenty per cent. ad valorem	20 per cent.
Opium, prepared for smoking, five dollars per pound	$5 per lb.
Organs, cabinet, viz.:—On reed organs having not more than two sets of reeds, a specific duty of ten dollars each; having over two and not over four sets of reeds, fifteen dollars each; having over four and not over six sets of reeds, twenty dollars each; having over six sets of reeds, thirty dollars each; and in addition thereto, ten per cent. ad valorem on the fair market value thereof	$10 $15 $20 $30 and 10 per cent.
Organs, pipe organs, and sets or parts of sets of reeds for cabinet organs, twenty-five per cent. ad valorem	25 per cent.
Paintings, drawings, engravings, and prints, twenty per cent. ad valorem	20 per cent.
Paints and colours, ground in oil or any other liquid, twenty-five per cent. ad valorem	25 per cent.
Paints and colors not elsewhere specified, twenty per cent. ad valorem	20 per cent.
White and red lead, dry, also dry white zinc and bismuth, five per cent. ad valorem	5 per cent.
Paper-hangings, or wall paper, thirty per cent. ad valorem	30 per cent.
Paper, calendered, twenty-two and one-half per cent. ad valorem	$22\frac{1}{2}$ per cent.

Paper of all kinds, not elsewhere specified, twenty per cent. ad valorem	20 per cent.
Envelopes, and all manufactures of paper not otherwise specified, twenty-five per cent. ad valorem	25 per cent.
Union collar cloth paper, in sheets, not shapen, ten per cent. ad valorem	10 per cent.
Mill board not straw board, ten per cent. ad valorem	10 per cent.
Paper collars, cuffs, and shirt fronts, twenty-five per cent. ad valorem	25 per cent.
Pencils, lead, in wood or otherwise, twenty-five per cent, ad valorem	25 per cent.
Perfumery, including toilet preparations, viz.:—	
Hair oils, tooth and other powders and washes, pomatums, pastes, and all other perfumed preparations used for the hair, mouth, or skin, thirty per cent. ad valorem	30 per cent.
Phosphor bronze, in blocks, bars, sheets, and wire, ten per cent. ad valorem	10 per cent.
Pianofortes, viz.:—	
All square pianofortes, whether round cornered or not, not over seven octaves, twenty-five dollars each; on all other square pianofortes, thirty dollars each; on upright pianofortes, thirty dollars each; on concert, semi-concert, or parlour grand pianofortes, fifty dollars each; and in addition thereto, ten per cent. ad valorem.	$25 $30 $30 $50 and 10 per cent.
Parts of pianos, twenty-five per cent. ad valorem	25 per cent.
Pitch (coal) and coal tar, ten per cent ad valorem	10 per cent.
Plants, viz., fruit, shade, lawn, and ornamental trees, shrubs, and plants, twenty per cent. ad valorem	20 per cent.
Plaster of Paris, or gypsum, ground, twenty per cent. ad valorem	20 per cent.
Plaster of Paris, calcined or manufactured, fifteen cents per one hundred pounds, or forty-five cents per barrel of not over three hundred pounds	15 c. per 100 lb.
Plated ware electro-plated, and gilt of all kinds, thirty per cent. ad valorem	30 per cent.
Plates engraved on wood and on steel or other metal, twenty per cent. ad valorem	20 per cent.
Playing cards, thirty per cent. ad valorem	30 per cent.
Plumbago, ten per cent. ad valorem, and all manufactures of plumbago not elsewhere specified, twenty per cent. ad valorem	10 per cent. 20 per cent.
Pomades, French or flower odours preserved in fat or oil for the purpose of conserving the odours of flowers which do not bear the heat of distillation, when imported in tins of not less than ten pounds each, fifteen per cent. ad valorem	15 per cent.
Printing presses of all kinds, fifteen per cent. ad valorem	15 per cent.
Proprietary medicines, commonly called patent medicines, or any medicine or preparation of which the recipe is kept secret, or the ingredients whereof are kept secret, recommended by advertisement, bill, or label for the relief of any disorder or ailment, in liquid form, fifty per cent. ad valorem; and all other, twenty-five per cent. ad valorem	50 per cent. 25 per cent.
Prunella, and cotton and woollen netting, for boots, shoes, and gloves, ten per cent. ad valorem	10 per cent.
Pumice stone, ground or powdered, twenty per cent. ad valorem	20 per cent.
Putty, twenty-five per cent. ad valorem	25 per cent.
Quills, twenty per cent. ad valorem	20 per cent.
Quinine, sulphate of, twenty per cent. ad valorem	20 per cent.
Sails for boats and ships, also tents and awnings, twenty-five per cent. ad valorem	25 per cent.
Salt (except salt imported from the United Kingdom or any British possession, or imported for the use of the Sea or Gulf Fisheries, which shall be free of duty) in bulk, eight cents per one hundred pounds; in bags, barrels, and other packages, twelve cents per one hundred pounds	8 c. per 100. 12 c. per 100.
Saltpetre, twenty per cent. ad valorem	20 per cent.
Sand paper, glass and emery paper, twenty per cent. ad valorem	20 per cent.

Seeds, viz., flower, garden, field, and other seeds, for agricultural purposes, when in bulk or in large parcels, fifteen per cent. ad valorem; when put up in small papers or parcels, twenty-five per cent. ad valorem	15 per cent. 25 per cent.
Seed, mustard, unground, fifteen per cent. ad valorem; ground, twenty-five per cent. ad valorem	15 per cent. 25 per cent.
Shingles, twenty per cent. ad valorem	20 per cent.
Ships and other vessels, built in any foreign country, whether steam or sailing vessels, on application for Canadian register, on the fair market value of the hull, rigging, machinery and all appurtenances, ten per cent. ad valorem	10 per cent.
Silk, in the gum, not more advanced than singles, tram, and thrown organzine, fifteen per cent. ad valorem	15 per cent.
Sewing silk and silk twist, twenty-five per cent. ad valorem	25 per cent.
Silk velvets, and all manufactures of silk or of which silk is the component part of chief value, not elsewhere specified, except church vestments, thirty per cent. ad valorem	30 per cent.
Silver, rolled and German silver, in sheets, ten per cent. ad valorem	10 per cent.
Slate, for roofing, twenty per cent. ad valorem	20 per cent.
Slate slabs, square or in special shapes, twenty per cent. ad valorem	20 per cent.
Slate mantels, thirty per cent. ad valorem	30 per cent.
School and writing slates, twenty-five per cent. ad valorem	25 per cent.
Soap, common brown and yellow, not perfumed, one cent per pound	1 cent. per lb.
Soap, Castile and white, two cents per pound	2 cents per lb.
Soap, perfumed or toilet, thirty per cent. ad valorem	30 per cent.
Spelter, in blocks or pigs, ten per cent. ad valorem	10 per cent.
Spices, viz.:	
Ginger and spices of all kinds (except nutmegs and mace), unground, twenty per cent. ad valorem, ground, twenty-five per cent. ad valorem	20 per cent. 25 per cent.
Nutmegs and mace, twenty-five per cent. ad valorem	25 per cent.
Starch, including farina, corn starch or flour, and all preparations having the qualities of starch, two cents. per pound	2 cents. per lb.
Spirits and strong waters, not having been sweetened or mixed with any article so that the degree of strength thereof cannot be ascertained by Sykes' hydrometer, for every Imperial gallon of the strength of proof by such hydrometer, and so in proportion for any greater or less strength than the strength of proof, and for every greater or less quantity than a gallon, viz.: Geneva, gin, rum, whiskey, and unenumerated articles of like kinds, one dollar and thirty-two and one-half cents per imperial gallon; brandy, one dollar and forty-five cents per imperial gallon	$1.32½ imp. gal. $1.45 imp. gal.
"Old Tom" Gin, one dollar and thirty-two and one-half cents per imperial gallon, in bulk	$1.32½ imp. gal.
Spirits sweetened and mixed, so that the degree of strength cannot be ascertained as aforesaid, viz.: Rum-shrub, cordials, Schiedam schnapps, tafia, bitters, and unenumerated articles of like kinds, one dollar and ninety cents per imperial gallon	$1.90 imp. gal.
On spirits and strong waters not elsewhere specified, one dollar and ninety cents per imperial gallon	$1.90 imp. gal.
Spirits and strong waters imported into Canada, mixed with any ingredient or ingredients, and although thereby coming under the denomination of proprietary medicines, tinctures, essences, extracts, or any other denomination not elsewhere specified, shall be, nevertheless, deemed spirits or strong waters, and subject to duty as such, one dollar and ninety cents per imperial gallon	$1.90 imp. gal.
Cologne water and perfumed spirits, in bottles or flasks not weighing more than four ounces each, forty per cent. ad valorem	40 per cent.
Cologne water and perfumed spirits in bottles, flasks, or other packages weighing more than four ounces each, one dollar and ninety cents per imperial gallon, and thirty per cent. ad valorem	$1.90 imp. gal. and 30 per cent.

Wines of all kinds, except sparkling wines, including ginger, orange, lemon, strawberry, raspberry, elder, and currant wines, containing twenty-six per cent. or less of spirits of the strength of proof, by Sykes' hydrometer, imported in wood or in bottles (six quart or twelve pint bottles to be held to contain an imperial gallon), twenty-five cents per imperial gallon, and for each degree of strength in excess of twenty-six per cent. of spirits as aforesaid, an additional duty of three cents until the strength reaches forty per cent. of proof spirits; and in addition thereto, thirty per cent. ad valorem - - - -	25c. per imp. gal. and 3c. per imp. gal. for each degree from 26 up to 40 and 30 per cent.
Champagne, and all other sparkling wines in bottles, containing each not more than a quart and more than one pint, three dollars per dozen bottles; containing not more than a pint each and more than one half-pint, one dollar and fifty cents per dozen bottles; containing one half-pint each or less, seventy-five cents per dozen bottles. Bottles containing more than one quart each shall pay in addition to three dollars per dozen bottles, at the rate of one dollar and fifty cents per imperial gallon on the quantity in excess of one quart per bottle; in addition to the above specific duty there shall be an ad valorem duty of thirty per cent. - - - -	$3 per dozen. $1.50 per dozen. 75c. per dozen. $1.50 per gal. for all over 1 quart per bottle, and 30 per cent.
But any liquors imported under the name of wine, and containing more than forty per cent. of spirits of the strength of proof by Sykes' hydrometer, shall be rated for duty as unenumerated spirits.	
Stationery of all kinds, not elsewhere specified, twenty per cent. ad valorem - - - - - - - -	20 per cent.
Steel and manufactures of, viz.: On and after the first day of January 1881, steel in ingots, bars, sheets and coils, and railway bars or rails and fish plates, ten per cent. ad valorem - - -	10 per cent.
Shovels, spades, hoes, hay, manure and potatoe forks, rakes and rake teeth, carpenters, coopers, cabinet-makers, and all other mechanics' tools, including files, edge tools of every description, axes, scythes, and saws of all kinds, thirty per cent ad valorem	30 per cent.
Firearms; viz.: muskets, rifles, pistols, and shot guns, cutlery, and on all manufactures of steel and of iron and steel, not elsewhere specified, twenty per cent. ad valorem - -	20 per cent.
Knife blades or knife blanks, in the rough, unhandled, for use by electro-platers, ten per cent. ad valorem - - -	10 per cent.
Stereotypes and electrotypes of standard books, ten per cent. ad valorem - - - - - - - -	10 per cent.
Stereotypes and electrotypes for commercial blanks and advertisements, twenty per cent. ad valorem - - - -	20 per cent.
Stone, viz.: rough freestone, sandstone, and all other building stone except marble, one dollar per ton of thirteen cubic feet - -	$1 per ton.
Water lime stone or cement stone, one dollar per ton (*see* cement)	$1 per ton.
Grindstones, in the rough, one dollar and fifty cents per ton -	$1.50 per ton.
Dressed freestone, and all other building stone, except marble, and all manufactures of stone or granite, twenty per cent. ad valorem - - - - - - -	20 per cent.
Sugars, Syrups, and Molasses:	
Sugar above number 14, Dutch standard in colour, one cent per lb. and thirty-five per cent. ad valorem - - -	1c. per lb. 35 per cent.
Sugar equal to number 9, and not above number 14, Dutch standard, three-fourths of a cent per pound, and thirty per cent. ad valorem - - - - - -	¾c. per lb. 30 per cent.
Sugar below number 9, Dutch standard, half a cent per pound, and thirty per cent. ad valorem - - - -	½c. per lb. and 30 per cent.
Provided that the ad valorem duty shall be levied and collected on sugar and melado when imported direct from the country of growth and production, upon the fair market value thereof at the place of purchase, without any addition for the cost of hogsheads or other packages, or other charges and expenses prior to shipment, anything contained in section 34 of the Act	

40 Victoria, chap. 10. to the contrary notwithstanding; the said section nevertheless remaining in force as to regulations to be made under it, in cases where the sugar or melado is not imported direct from the country of growth or production.	
Syrups, cane juice, refined syrup, sugar-house syrup, syrup of sugar, syrup of molasses, or sorghum, five-eighths of a cent per pound and thirty per cent. ad valorem - - -	$\frac{5}{8}$c. per lb. and 30 per cent.
Melado, concentrated melado, concentrated cane juice, concentrated molasses, concentrated beet root juice, and concrete, three-eighths of one cent. per pound, and thirty per cent. ad valorem - - - - - - - -	$\frac{3}{8}$c. per lb. and 30 per cent.
Molasses, if used for refining, clarifying, or rectifying purposes, or for the manufacture of sugar, when imported direct from the country of growth and production, twenty-five per cent. ad valorem - - - - - - - -	25 per cent.
And for the same purposes when not imported direct from the country of growth and production, thirty per cent. ad valorem - - - - - - - -	30 per cent.
Molasses, when not so used, when imported direct from the country of growth and production, fifteen per cent. ad valorem - - - - - - - -	15 per cent.
And when not imported direct from the country of growth and production, twenty per cent. ad valorem - - -	20 per cent.
Sugar candy, brown or white, and confectionery, one cent per pound and thirty-five per cent. ad valorem - - -	1c. per lb. and 35 per cent.
Glucose or grape sugar, to be classed and rated for duty as sugar according to grade by Dutch standard in colour.	
Glucose syrup, half of one cent per pound and thirty-five per cent. ad valorem - - - - - - -	$\frac{1}{2}$c. per lb. and 35 per cent.
Tallow, one cent per pound - - - - - - -	1c. per lb.
Tea, viz., black tea two cents per pound, and ten per cent. ad valorem	2c. per lb. and 10 per cent.
Green and Japan tea three cents per pound, and ten per cent. ad valorem - - - - - - - -	3c. per lb. and 10 per cent.
Tin, in blocks, pigs, bars, plates and sheets, ten per cent. ad valorem	10 per cent.
Tinware, stamped and japanned ware, and all manufactures of tin not elsewhere specified, twenty-five per cent. ad valorem - -	25 per cent.
Tobacco, manufactured tobacco and snuff, twenty-five cents per pound, and in addition thereto, twelve and a half per cent. ad valorem -	25c. per lb. and $12\frac{1}{2}$ per cent.
Cigars and cigarettes, fifty cents per pound, and twenty per cent. ad valorem - - - - - - - -	50c. per lb. and 20 per cent.
Turpentine, spirits of, twenty per cent. ad valorem - - -	20 per cent.
Trunks, satchels, valises, and carpet bags, twenty-five per cent. ad valorem - - - - - - - -	25 per cent.
Twines, manufactured of flax and not otherwise specified, twenty-five per cent, ad valorem - - - - - -	25 per cent.
Type, for printing, twenty per cent. ad valorem - - -	20 per cent.
Type metal, ten per cent. ad valorem - - - -	10 per cent.
Varnish, not elsewhere specified, twenty cents per imperial gallon, and twenty per cent. ad valorem - - - - -	20c. per imp. gal. and 20 per cent.
Vegetables, viz.:	
Potatoes, ten cents per bushel - - - - -	10c. per bushel.
Tomatoes, thirty cents per bushel - - - -	30c. per bushel.
And all other vegetables, twenty per cent. ad valorem - -	20 per cent.
Vinegar, twelve cents per imperial gallon - - - -	12c. per imp. gal.
Watches, watch movements, and watch cases, twenty per cent. ad valorem - - - - - - - - -	20 per cent.
Wire of brass and copper, ten per cent. ad valorem - - -	10 per cent.
Wire cloth of brass and copper, twenty per cent. ad valorem -	20 per cent.
Wood and manufactures of, and wooden ware, viz.:	
Pails, tubs, churns, brooms, brushes, and other manufactures of wood not elsewhere specified, twenty-five per cent. ad valorem - - - - - - - -	25 per cent.

Hubs, spokes, felloes, and parts of wheels, rough-hewn or sawn only, twenty per cent. ad valorem - - - -	20 per cent.
Lumber and timber not elsewhere specified, twenty per cent. ad valorem - - - - - - - -	20 per cent.
Wool and Woollens, viz.:	
Manufactures composed wholly or in part of wool, worsted, the hair of the alpaca, goat or other like animals, viz.: shawls, blankets, and flannels of every description, cloths, doeskins, cassimeres, tweeds, coatings, overcoatings, cloakings, felt cloth of every description not elsewhere specified, horse-collar cloth, yarn, knitting yarn, fingering yarn, worsted yarn, under number 30, knitted goods, viz.: shirts, drawers, and hosiery of every description, seven and a half cents per pound, and in addition thereto, twenty per cent. ad valorem - -	7½c. per lb. and 20 per cent.
Clothing ready made, and wearing apparel of every description, including cloth caps, composed wholly or in part of wool, worsted, the hair of the alpaca, goat, or other like animals, made up or manufactured wholly or in part by the tailor, seamstress, or manufacturer, except knit goods, ten cents per pound, and in addition thereto twenty-five per cent ad valorem - -	10c. per lb. and 25 per cent.
All manufactures, composed wholly or in part of wool, worsted, the hair of the alpaca, goat, or other like animals, not herein otherwise provided for, twenty per cent. ad valorem - -	20 per cent.
Treble ingrain, three-ply and two-ply carpets composed wholly of wool, ten cents per square yard, and in addition thereto twenty per cent. ad valorem - - - - -	10c. per sq. yd. and 20 per cent.
Two-ply and three-ply ingrain carpets, of which the warp is composed wholly of cotton, or other material than wool, worsted, the hair of the alpaca, goat or other like animals, five cents per square yard, and in addition thereto twenty per cent. ad valorem - - - - - - -	5c. per sq. yd. and 20 per cent.
Felt for boots and shoes, when imported by the manufacturers for use in their factories, fifteen per cent. ad valorem - -	15 per cent.
Felt for glove linings and endless felt for paper makers, when imported by the manufacturers for use in their factories, ten per cent. ad valorem - - - - - -	10 per cent.
Whips, twenty-five per cent. ad valorem - - - -	25 per cent.
Wire, of brass and copper, ten per cent. ad valorem - - -	10 per cent.
Wire cloth, of brass and copper, twenty per cent. ad valorem -	20 per cent.
Zinc, in pigs, blocks, and sheets, ten per cent. ad valorem - -	10 per cent.
Seamless drawn tubing, ten per cent. ad valorem - -	10 per cent.
Manufactures of zinc, not elsewhere specified, twenty-five per cent. ad valorem - - - - - -	25 per cent.

All goods not enumerated in this Act as charged with any duty of Customs and not declared free of duty by this Act, shall be charged with a duty of twenty per cent. ad valorem, when imported into Canada, or taken out of warehouse for consumption therein.

SCHEDULE.

Free Goods.

Agaric.
Agates, unmanufactured.
Alkanet root.
Aloes.
Aluminium.
Alum.
Ambergris.
Ammonia, crude.
Aniline dyes.
Aniline oil, crude.
Aniline salts.
Animals brought into Canada temporarily, and for a period not exceeding three months, for the purpose of exhibition or competition for prizes offered by any agricultural or other association. (But a bond shall be first given in accordance with regulations to be prescribed by the Minister of Customs, with the condition that the full duty to which such animals would otherwise be liable shall be paid in case of their sale in Canada, or if not re-exported within the time specified in such bond.)

Animals for the improvement of stock under regulations to be made by the Treasury Board and approved by the Governor in Council.
Annato, liquid or solid.
Annato, seed.
Anchors.
Antimony.
Ashes, pot, pearl, and soda.
Apparel, wearing and other personal and household effects, not merchandise, of British subjects dying abroad, but domiciled in Canada.
Argol, dust.
Argols, crude.
Arsenic.
Arseniate of aniline.
Articles for the use of the Governor-General.
Articles for the use of foreign Consuls-General.
Articles imported by and for the use of the Dominion Government, or any of the Departments thereof, or for the Senate or House of Commons.
Army and Navy and Canadian Militia, for the use of, viz.:—
Arms.
Clothing.
Musical instruments for bands.
Military stores and munitions of war.
Bamboo reeds, not further manufactured than cut into suitable lengths for walking sticks or canes, or for sticks for umbrellas, parasols, or sunshades.
Bamboos, unmanufactured.
Barrels of Canadian manufacture exported filled with domestic petroleum and returned empty, under such regulations as the Minister of Customs may prescribe.
Barilla.
Barytes, unmanufactured.
Bells for churches.
Berries for dyeing, or used for composing dyes.
Bolting cloths.
Bones, crude and not manufactured, burned, calcined, ground, or steamed.
Bone dust and bone ash for manufacture of phosphates and fertilizers.
Borax.
Botany, specimens of.
Bristles.
Brimstone, crude, or in roll or flour.
Brim moulds for gold beaters.
Bromine.
Broom corn.
Buchu leaves.
Bullion, gold and silver.
Burgundy pitch.
Burr-stones in blocks, rough or unmanufactured, and not bound up into mill-stones.
Carriages of travellers and carriages laden with merchandise, and not to include circus troops nor hawkers, under regulations to be prescribed by the Minister of Customs.
Cabinets of coins, medals, and other collections of antiquities.
Casts, as models for the use of schools of design.
Cornelian, unmanufactured.
Canvas for manufacture of floor oil-cloth, not less than forty-five inches wide and not pressed nor calendered.
Caoutchouc, unmanufactured.
Cat-gut strings or gut cord for musical instruments.
Cat-gut or whip-gut, unmanufactured.
Chalk and cliff-stone, unmanufactured.
Chamomile flowers.
Chloride of lime.
Citrons, and rinds of, in brine for candying.
Clays.
Clothing, donations of, for charitable purposes.
Cobalt, ore of.
Cochineal.
Cocoa, bean, shell, and nibs.
Coins, gold and silver, except United States silver coin.
Communion plate, and plated ware for use in churches.
Coir and coir yarn.
Colcothar, dry oxide of iron.
Conium cicuta, or hemlock seed and leaf.
Cotton waste and cotton wool.
Cork-wood or cork-bark, unmanufactured.
Colours, viz.:—Bichromate of potash, blue black, Chinese blue, Castile lakes, scarlet and marone in pulp, Paris green, Prussian blue, satin and fine-washed white, ultramarine, umber raw.
Cream of tartar, in crystals.
Diamonds, unset, including black diamonds for borers.
Diamond dust or bort.
Dragons' blood.
Duck for belting and hose.
Dyeing or tanning articles in a crude state, used in dyeing or tanning, not elsewhere specified.
Eggs.
Emery.
Entomology, specimens of.
Esparto, or Spanish grass, and other grasses, and pulp of, for the manufacture of paper.
Extract of logwood.
Felt, adhesive, for sheathing vessels.
Fire clay.
Fibre, Mexican.
Fibre, vegetable, for manufacturing purposes.
Fibrilla.
Fish-bait.
Fish-oil and fish of all kinds, the produce of the fisheries of the United States (except fish of the inland lakes and of

the rivers falling into them, and fish preserved in oil).

Fish-hooks, nets and seines, and lines and twines, for the use of the fisheries, but not to include sporting fishing tackle or hooks with flies or trawling spoons.

Fur skins, of all kinds not dressed in any manner.

Flint, flints, and ground flint stones.

Foliæ digitalis.

Fossils.

Fuller's earth.

Gentian root.

Ginseng root.

Goldbeaters' moulds and goldbeaters' skins.

Grease and grease scrap, for manufacture of soap.

Gravels.

Guano and other animal and vegetable manures.

Gums, amber, Arabic, Australian, British, copal, damar, mastic, sandarac, shellac, and tragacanth.

Gunny cloth and gunny bags.

Gut, and worm gut, manufactured or unmanufactured, for whip and other cord.

Gutta-percha, crude.

Gypsum, crude (sulphate of lime).

Hair, angola, buffalo and bison, camel, goat, hog, horse, and human, cleaned or uncleaned, but not curled or otherwise manufactured.

Hatters' furs, not on the skin.

Hemlock bark.

Hemp, undressed.

Hides, raw, whether dry, salted, or pickled.

Hoofs, horns, and horntips.

Hyoscyamus, or henbane leaf.

Ice.

India-rubber, unmanufactured.

Indian hemp (crude drug).

Indigo.

Iris, orris root.

Istle or tampico fiber.

Ivory and ivory nuts, unmanufactured.

Ivory veneers, sawn only, not planed nor polished.

Iron masts for ships, or parts of.

Jalap, root.

Junk, old.

Jute-butts.

Jute.

Kelp.

Kryolite.

Lac, dye, crude, seed, button, stick, and shell.

Lava, unmanufactured.

Leeches.

Licorice root.

Litharge.

Litmus and all lichens, prepared and not prepared.

Lemons and rinds of, in brine, for candying.

Logs, and round unmanufactured timber, not elsewhere provided for.

Lumber and timber, plank and boards, sawn, of boxwood, cherry, walnut, chestnut, mahogany, pitch-pine, rosewood, sandalwood, Spanish cedar, oak, hickory, and whitewood, not shaped, planed, or otherwise manufactured.

Locomotives and railway passenger baggage and freight cars, being the property of railway companies in the United States, running upon any line of road crossing the frontier, so long as Canadian locomotives and cars are admitted free under similar circumstances in the United States, under regulations to be prescribed by the Minister of Customs.

Madder and munjeet, or Indian madder, ground or prepared, and all extracts of.

Manilla grass.

Medals of gold, silver, or copper.

Meerschaum, crude or raw.

Mineralogy, specimens of.

Models of inventions and other improvements in the arts, but no article or articles shall be deemed a model or improvement which can be fitted for use.

Moss, Iceland and other mosses, crude.

Moss, seaweed, and all other vegetable substances used for beds and mattresses, in their natural state, or only cleaned.

Menageries, horses, cattle, carriages, and harnesses of, under regulations to be prescribed by the Minister of Customs.

Machinery for worsted or cotton mills; of kinds which are not manufactured in Canada.

Nitrate of soda, or cubic nitre.

Nut-galls.

Newspapers received by mail.

Nickel.

Oak-bark.

Oakum.

Oil-cake, cotton seed cake, palm nut cake and meal.

Oils, cocoanut and palm, in their natural state.

Oranges and rinds of, in brine, for candying.

Ores of metals of all kinds.

Osiers.

Oxalic acid.

Paintings, in oil, by artists of well-known merit, or copies of the old masters by such artists.

Palm-leaf, unmanufactured.

Pearl, mother of, not manufactured.

Persis, or extract of archill and cudbear.

Philosophical instruments and apparatus, including globes and pictorial illustrations of insects, &c., when imported by and for the use of colleges and schools, scientific and literary societies.

Phosphorus.

Pelts.
Pipe-clay.
Pitch (pine).
Pumice and pumice stone.
Plaits, straw, Tuscan and grass.
Precipitate of copper, crude.
Rags, of cotton, linen, jute, and hemp, paper waste or clippings, and waste of any kind, fit only for manufacture of paper.
Rattans and reeds, unmanufactured.
Rennet, raw or prepared.
Resin.
Rhubarb root.
Salt, imported from the United Kingdom or any British possession, or imported for the use of the sea or gulf fisheries.
Saffron and safflower, and extract of.
Saffron-cake
Sal ammoniac.
Sal soda.
Sand.
Sea-weed, not elsewhere specified.
Sea grass.
Senna, in leaves.
Silex, or crystallized quartz.
Silk, raw, or as reeled from the cocoon, not being doubled, twisted, or advanced in manufacture in any way, silk cocoons and silk waste.
Skins, undressed, dried, salted, or pickled.
Soda ash.
Soda, caustic.
Soda, silicate of.
Settlers' effects, viz. :—
Wearing apparel, household furniture, professional books, implements and tools of trade, occupation, or employment, which the settler has had in actual use for at least six months before removal to Canada, not to include machinery or live stock, or articles imported for use in any manufacturing establishment, or for sale.
Provided that any dutiable article entered as settlers' effects shall not be sold or otherwise disposed of without payment of duty until after two years' actual use in Canada.
Until the first day of January 1881, steel in ingots, bars, sheets, and coils, railway bars or rails and fish-plates, shall be free of duty.
Sulphur, in roll or flour.
Tails, undressed.
Tampico, white and black.
Tanners' bark.
Tar (pine).
Terra-japonica.
Teasels.
Tobacco, unmanufactured, for Excise purposes, under conditions of Act 31 Vic, c. 51.
Tortoise and other shells, unmanufactured.
Travellers' baggage, under regulations to be prescribed by the Minister of Customs.
Turmeric.
Turpentine, raw or crude.
Turtles.
Tree-nails.
Varnish, black and bright, for ships' use.
Vitriol, blue.
Veneers of wood and ivory, sawn only.
Verdigris, or sub-acetate of copper, dry.
Vegetable fibres, natural, not produced by any mechanical process.
Whiting or whitening.
Whalebone, unmanufactured.
Whale-oil, in casks from on shipboard, and in the condition in which it was first landed.
Willow for basket-makers.
Wire rigging for ships and vessels.
Wool, unmanufactured, hair of the alpaca, goat, and other like animals.
Yellow metal, in bolts, bars, and for sheathing.

SCHEDULE C.

GOODS FREE IN THE CASES THEREIN MENTIONED.

The following articles when the natural products, or the manufactures of the Colony of Newfoundland, viz.:—

Fish, fresh, dried, salted, or smoked.
Fish-oil and all products of fish.
Seal-oil.
Animals of all kinds.

SCHEDULE D.

The following articles shall be prohibited to be imported under a penalty of two hundred dollars, together with the forfeiture of the parcel or package of goods in which the same may be found, viz. :—

Books, printed papers, drawings, paintings, prints, photographs, or representations of any kind of a treasonable or seditious, or of an immoral or indecent character.
Coin, base or counterfeit.

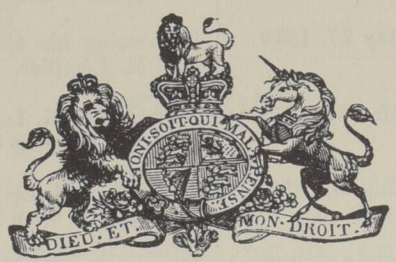
LONDON:
Printed by GEORGE E. EYRE and WILLIAM SPOTTISWOODE,
Printers to the Queen's most Excellent Majesty.
For Her Majesty's Stationery Office.

CORRESPONDENCE

RESPECTING

THE CASE OF M. LETELLIER.

Presented to both Houses of Parliament by Command of Her Majesty.
August 14, 1879.



LONDON:
PRINTED BY GEORGE EDWARD EYRE AND WILLIAM SPOTTISWOODE,
PRINTERS TO THE QUEEN'S MOST EXCELLENT MAJESTY.
FOR HER MAJESTY'S STATIONERY OFFICE.

1879.

[C.—2445.] *Price* 1*s.* 5*d.*

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CORRESPONDENCE, &c.

No. 1.

The MARQUIS OF LORNE, K.T., to the Right Hon. Sir MICHAEL HICKS BEACH, Bart. (Received March 20, 1879.)

Sir, Government House, Ottawa, March 5, 1879.

I have the honour of forwarding to you, for your information, copies of a Return to an Address of the Dominion House of Commons for papers relating to his Honour the Lieutenant-Governor of the Province of Quebec.

I have, &c.
(Signed) LORNE.

The Right Hon. Sir M. E. Hicks Beach, Bart., &c. &c. &c.

Enclosure in No. 1.

Return to Address.—Copies of the Petition addressed to the Governor in Council by the Hon. Messrs. Chapleau, Church, and Angers, praying for the dismissal of his Honour Luc Letellier, Lieutenant-Governor of the Province of Quebec; and of the Answer made to the said Petition by the said Lieutenant-Governor; and of the Reply made by the said Hon. Messrs. Chapleau, Church, and Angers to the said Answer; and all Correspondence and Papers relating to the said subject.

Return (19) to an Address of the House of Commons, dated 20th February 1879, for copies of the Petition addressed to the Governor in Council by the Hon. Messrs. Chapleau, Church, and Angers, praying for the dismissal of his Honour Luc Letellier, Lieutenant-Governor of the Province of Quebec; of the Answer made to the said Petition by the said Lieutenant-Governor; and of the Reply made by the said Hon. Messrs. Chapleau, Church, and Angers to the said Answer, and all Correspondence and Papers relating to the subject.

By command.

J. C. Aikins,
Secretary of State.

Department of the Secretary of State,
27th February 1879.

PETITION.

Canada, Province of Quebec.

To His Excellency General Sir Patrick Leonard McDougall, Knight Commander of the most distinguished Order of Saint Michael and Saint George, Administrator of the Government of Canada, &c. &c. &c., in Council.

Joseph Adolphe Chapleau, of the city of Montreal, member of the Legislative Assembly of the Province of Quebec, for the county of Terrebonne; Levi Ruggles Church, of the said city of Montreal, member of the Legislative Assembly of the Province of Quebec, for the county of Pontiac; and Auguste Real Angers, of the city of Quebec, Queen's Counsel, by this their petition respectfully represent—

That on the 8th March 1878 the Legislative Assembly of the Province of Quebec adopted the following Address to be presented to his Excellency the Governor-General of Canada, to the Senate, to the House of Commons, and to his Honour the Lieutenant-Governor of the Province of Quebec, to wit:—

Exhibit No. 1.—"The humble address of the Legislative Assembly of the Province of Quebec respectfully showeth:—

"That it appears from the explanations given by the Honourable Mr. Angers, and from the official correspondence communicated to this House, that his Excellency the Lieutenant-

Governor acknowledges that the members of the De Boucherville Cabinet have acted in good faith in the discharge of their duties.

" That his Excellency has allowed the measures submitted by his Government to this House and to the Legislative Council to be discussed and voted upon without order on his part to suspend them.

" That, whilst asserting their devotion to our gracious Sovereign and their respect towards his Excellency the Lieutenant-Governor of this Province, this House is of opinion: That the dismissal from office of the De Boucherville Cabinet having taken place without reason constitutes an imminent danger to the existence of responsible government in this Province, is an abuse of power in contempt of the majority of this House, whose confidence they possessed and still possess, and is a violation of the liberties and will of the people.

" And your petitioners will ever humbly pray."

That on the same day the Honourable Legislative Council of the Province of Quebec adopted the following address to be presented to his Excellency the Governor-General, to the House of Commons, to the Senate, and to his Honour the Lieutenant-Governor, to wit:—

Exhibit No. 2.—" The humble address of the Honourable the Legislative Council of the Province of Quebec respectfully showeth:—

" That it appears from the explanations given by Hon. M. de Boucherville, and from official correspondence communicated to this House, that his Excellency the Lieutenant-Governor acknowledges that the members of the De Boucherville Cabinet acted in good faith in the discharge of their duties.

" That his Excellency permitted the Bills submitted to this House and to the Legislative Assembly to be discussed and voted upon without any order on his part to suspend them.

" That whilst expressing its loyalty and devotion to our gracious Sovereign, and its respect for the Lieutenant-Governor of this Province, this House is of opinion that the dismissal from office of the De Boucherville Cabinet having taken place without sufficient cause constitutes an imminent danger to the maintenance of responsible government in this Province, is an abuse of power exercised in contempt of the majority of both Houses, (whose confidence they possessed and still possess), and a violation of the rights and will of the people."

That the circumstances under which the Legislative Assembly and the Legislative Council of the Province of Quebec adopted the above resolutions are contained in the ministerial explanations given to the Legislature on the 8th March 1878, of which the following is a copy extracted from the Votes and Proceedings of the 9th of the same month:—

Exhibit No. 3.—" M. De Boucherville had received permission from the Lieutenant-Governor to give explanations respecting his dismissal from office at the sitting on Monday, the 4th March instant. Between half-past 1 and 2 o'clock of the same day he received from his Excellency a notice not to give any explanations until the new Cabinet had been formed.

" This event having been announced, the late De Boucherville Government has the right, in virtue of the permission so obtained, to give its explanations to the House and to the country.

" It is my duty to announce to the House that the De Boucherville Government did not resign. A Government possessing the confidence of the great majority of the representative Assembly, and of almost the whole of the Legislative Council, has no right to resign if it has really at heart the interests of the country and a respect for its duty. This Government was dismissed from office by the Lieutenant-Governor. The facts which preceded and followed this event are entered in a journal kept from day to day and from hour to hour, under the dictation of the ex-Premier, and the following is an exact and faithful recital thereof:

" On the 26th February 1878, at about half-past 4 o'clock p.m., the Premier received from the Lieutenant-Governor, through his aide-de-camp, the following letter:—

" To the Hon. C. B. De Boucherville, Premier of the Province of Quebec.

Government House, Quebec,
February 25, 1878.

" The Lieutenant-Governor desires the Executive Council to prepare for his consideration a factum, including a copy of the following documents:—

" 1. A copy of the Acts of the Dominion Parliament authorising the construction of

the railway now known under the name of the 'Quebec, Montreal, Ottawa, and Occi-'dental Railway,' as well as a copy of the Acts of the Legislature of Quebec respecting the same railway.

"2. A copy of the Acts of the Legislature of the Province of Quebec respecting the construction of the railway between Quebec and Montreal, commonly known as the North Shore Railway.

"3. A copy of the byelaws of each of the municipal corporations by which they agreed to assist in the construction of the said road.

"4. A statement of the amount of the grant paid by each of those corporations, and a copy of the correspondence exchanged between the Government, the Railway Commissioners, or the contractors of the said road, and the said municipal corporations with respect to their said grant or subsidy.

"5. A copy of the several contracts entered into for the construction of the said roads.

"6. A copy of the official or confidential reports of the engineers to whom was entrusted the location of these lines of railway, in whole or in part.

"7. A copy of the report of the Railway Commissioners laid before both Houses during the present session respecting the said roads.

"8. Copy of the representations made to the Government by the municipal corporations interested, or by the ratepayers of these municipalities, respecting the condition of their grant or subsidy.

"9. Copy of the resolutions proposed to the Provincial Legislature during the present session respecting the said subsidies, and to facilitate the payment and survey of the same.

"10. Copy of the Bill, based upon the said resolutions, which was introduced into the House during the present session.

"11. A plan showing the locations of each of the said railways, or of any portion thereof.

"12. A detailed statement of the reasons which induced the Provincial Government not to content themselves with the provisions of the statute and common law, and with those of the civil code of this Province, for the recovery of the sums of money which might become due by the said corporations, but without having in any manner previously consulted with the Lieutenant-Governor, to propose an *ex post facto* legislation to compel them thereto.

"Another very important measure to provide for the imposition of new taxes was also similarly proposed to the Legislature without having been previously submitted to the Lieutenant-Governor.

"The Lieutenant-Governor is perfectly aware that measures of secondary importance which have previously been sufficiently explained to him may be, as a matter of routine, proposed to both Houses without an express order from himself, but he cannot allow the Executive to communicate to the Legislature on his behalf any important or new measures without his special order, and without his having been previously fully informed and advised thereof.

(Signed) Luc Letellier,
Lieutenant-Governor.

"The Premier prepared his answer during the nights of the 26th and 27th February. This answer was delivered by him in person to the Lieutenant-Governor at Spencer Wood about 10 o'clock a.m. on the 27th. It reads as follows:—

"To His Excellency the Hon. L. Letellier de St. Just, Lieutenant-Governor of the Province of Quebec.

"May it please Your Excellency, Quebec, February 27, 1878.

"I have the honour to acknowledge the receipt of the memorandum sent me yesterday afternoon by your Excellency, through your aide-de-camp, who at the same time informed me that you were ill in bed. I submitted this memorandum to the Executive Council, and I shall see, as your Excellency desires, that all due diligence be used in order that all the documents required may be transmitted to you as soon as possible.

"In anticipation of the factum desired by your Excellency, which will contain a more detailed statement of the motives which induced the Provincial Government to bring in the measures to which you draw my attention, I consider it my duty to represent that the reasons which, amongst others, caused the Government to submit to the Legislature

a law obliging the municipalities to pay their subscriptions for the construction of the Provincial Railway, on the decision of the Lieutenant-Governor in Council, after a sworn report made by a competent engineer, and after a notice of 15 days, to give such municipalities an opportunity of being heard, are the ill-will of certain municipalities, shown by some in their neglect to comply with the requests of the treasurer, by others in their formal refusal to pay, and in certain cases by resolutions adopted asking new conditions respecting the agreements which they had made with the Government.

" The Government was of opinion that, without such legislation, the object of which is to avoid the delays of ordinary legal proceedings, the result of the ill-will of these municipalities would have been either to necessitate a new loan by the Province, and, consequently, to cause a burden to be unjustly imposed upon municipalities which had entered into no engagements, and which would derive no immediate benefit from the construction of the road, or the complete stoppage of the works already begun, together with the inevitable loss of interest on the enormous capital already laid out upon this enterprise, and the other damages resulting therefrom.

" The Government, while undertaking, in the first place, by the said law, to fulfil the conditions which it had agreed upon with the said municipalities, considered that, in substituting for the ordinary courts the Lieutenant-Governor, with an Executive Council responsible to the Legislature and to the people, it offered to the parties interested a tribunal which afforded as many guarantees as the ordinary courts.

" I would also take the liberty of calling your Excellency's attention to the fact that similar provisions are already in our statutes.

" I would cite to your Excellency chapter 83 of the Consolidated Statutes of Canada, and also chapter 47 of 36 Victoria of the statutes of Ontario.

" I humbly submit to your Excellency that a law devised for the better securing of the execution of a contract cannot have a retro-active effect. It enacts for the future and its objects are the respective interests of the parties.

" Now, I beg your Excellency to note, that while you were at Rivière Ouelle, I had the honour of requesting your authorisation to lay the question of finances before the House, and that you were kind enough to reply that you sent me a blank form by mail, and I considered this, at the time, as a great mark of confidence on your part. I did, in effect, receive a blank form with your signature, which I handed to the treasurer, who had it filled up by your aide-de-camp.

" Later on I had the honour of requesting your Excellency's authorisation generally to lay money questions before the House, and this your Excellency granted with your usual condescension. This permission, moreover, had invariably been accorded me by your predecessor, the late lamented Mr. Caron.

" I must admit that with this authorisation and the conviction in my mind that your Excellency had read the Treasurer's Budget speech, in which he announced the taxes which were afterwards proposed, I considered I had a right to inform my colleagues that I had your permission for all questions respecting money.

" I beg your Excellency to believe that I never had any intention of arrogating to myself the right of having measures passed without your approval, and that under existing circumstances, having had occasion to speak to your Excellency in reference to the law respecting the Provincial railway, and not having received any order to suspend it, I did not think your Excellency would discover in this measure any intention on my part to slight your prerogatives, which no one is more disposed than I am to respect and uphold.

" Your, &c. &c.

(Signed) " C. B. De Boucherville."

" After some conversation, the Lieutenant Governor having heard M. De Boucherville's explanations, admitted that, if there had been any misunderstanding, it was in good faith on the part of the latter in authorising his colleagues to say that they were authorised to submit the legislation in reference to money matters.

" He afterwards told him, in reply to his question on the subject, that the only difficulty remaining was the question of the Quebec, Montreal, Ottawa and Occidental Railway, and that he would give an answer on the following day, the 28th February.

" On the 28th February, at about half-past 7 in the evening, Mr. De Boucherville went to Spencerwood to convey to the Lieutenant-Governor the documents asked for in the letter of the 25th (which documents were prepared by the Honourable the Secretary and were accompanied by a synopsis). He asked him if he would soon give his answer, The Lieutenant-Governor told him he would examine the documents and probably give it to him on the following day, the 1st March.

" On leaving, Mr. De Boucherville said : ' If I understand you rightly, you are hesi-

tating between giving your sanction to the Railway Bill and reserving it.' He replied: ' That is it.'

" On the 2nd of March, at 5 minutes to 1 in the afternoon, the aide-de-camp of the Lieutenant-Governor handed to Mr. De Boucherville the letter given hereafter.

" Before the aide-de-camp left he was asked how his Excellency was. The aide-de-camp replied that he was not so well, and then asked when we intended closing the Session. Mr. De Boucherville replied that he could not say, as many matters were in arrear.

" The following is the letter in question :—

" To the Honourable C. B. De Boucherville, Premier, Quebec :—

" Government House, Quebec, March 1, 1878.

" The Lieutenant-Governor, taking into consideration the communication made to him verbally (on the 27th February) by the Premier, and also taking into consideration the letter which the Premier then gave to him, is prepared to admit that there had been no intention on the part of the Premier to slight the prerogatives of the Crown, and that there was only on his part an error committed in good faith in the interpretation that he gave to words used by the Lieutenant-Governor in the interview which they had on the 19th February instant; words which did not imply the authorisation attributed to them by the Premier.

" With this interpretation and the instructions given in consequence by the Premier to the Honourable Messrs. Angers and Church, these gentlemen did not willingly do anything against the duties of their office.

" As to the blank which the Lieutenant-Governor addressed to him from Rivière Ouelle the Lieutenant-Governor knew that such blank was to be used for the purpose of submitting the estimates to the House.

" This act was a token of confidence on his part, as stated by the Premier in his letter of the 27th, but it was confidential.

" The Lieutenant-Governor deems it his duty to observe that in his memorandum of the 25th February last he in no way expressed the opinion that he thought that the Premier ever had the intention of arrogating to himself the right of having measures passed without his approval, or of slighting the prerogatives of the representative of the Crown.

" But the Premier must not lose sight of the fact that although he had not so intended, the fact remains as he was told by the Lieutenant-Governor.

" The fact of having submitted several new and important measures to the Legislature without having previously, in any manner, consulted the Lieutenant-Governor, although without any intention of slighting his prerogatives, gives rise to one of those false positions which places the representative of the Crown in a difficult and critical situation with references to both Houses of the Legislature.

" The Lieutenant-Governor cannot admit that the responsibility of this state of things rests upon him.

" So far as concerns a bill entitled ' An Act respecting the Quebec, Montreal, ' Ottawa, and Occidental Railway,' the Premier cannot apply to the measure the pretended general authorisation mentioned by him in his letter, for their interview took place on the 19th February, and the bill had then been before the House for several days, without the Lieutenant-Governor having been in any manner informed of it by his advisers.

" The Lieutenant-Governor then told the Premier how much he regretted such legislation ; he represented to him that he considered it to be contrary to the principles of law and justice. Notwithstanding this, the measure was pushed on until it was adopted by both Houses.

" It is true that the Premier gives in his letter as one of his reasons for so acting ' that ' this permission of making use of the name of the representative of the Crown had been, ' moreover, always allowed him by the predecessor of the present Lieutenant-Governor, ' the late lamented Mr. Caron.'

" This reason cannot avail with the Lieutenant-Governor, for by so doing he would abdicate his position as representative of the Crown, a proceeding which neither the Lieutenant-Governor nor the Premier could reconcile with the duties of the Lieutenant-Governor towards the Crown.

" The Lieutenant-Governor regrets being compelled to state, as he told the Premier, that he has generally not been explicitly informed of the measures adopted by the Cabinet, although the Lieutenant-Governor often gave occasion therefore to the Premier. especially during the course of last year.

"The Lieutenant-Governor, from time to time, since the last meeting of the Legislature, drew the attention of the premier to several matters respecting the interests of the province of Quebec, amongst others:—

"1. To the enormous expenditure occasioned by very large subsidies to several railways when the province was burdened with the construction of the branch line of railway from Quebec to Ottawa, which should prevail over all others; and that at a time when our finances compelled us to raise loans disproportionate to our revenues.

"2. On the necessity of reducing the expenses of the Civil Government and those of Legislation, in place of having recourse to new taxes, with a view of avoiding financial embarassment.

"The Lieutenant-Governor, although with regret, expressed to the Premier the opinion that the Orders in Council, for the increase of the salaries of civil service employées, seemed to him inopportune at a time when the Government had effected with the Bank of Montreal a loan at the rate of seven per cent. for half a million, on condition of increasing this loan to one million, and, in fact, to-day even (1st March) the Lieutenant-Governor was obliged to allow an Order in Council to be passed to secure the last half million for the Government, without which the Government would be unable to meet its obligations, as stated to him by the Honourable the Treasurer, by order of the Premier.

"The Premier did not either then or since inform the Lieutenant-Governor that the Government were in so impecunious a condition as to require special legislation to increase the public burdens.

"The Lieutenant-Governor therefore stated and repeated these facts to the Premier, and now deems it his duty to record them here, in order that they may serve as a memorandum for himself and the Premier. It results therefore:—

"1. That although the Lieutenant-Governor had made several representations, in his quality of representative of the Crown, to the Premier on those various subjects of public interest, his advisers have taken administrative and legislative steps contrary to such representations, and without having previously advised him.

"2. That the Lieutenant-Governor has, without evil motives, but in fact, been placed in a false position, by being exposed to a conflict with the desires of the Legislature, desires which he acknowledges to be paramount, when expressed in a constitutional manner.

"The Lieutenant-Governor has attentively read and examined the memorandum and documents which the Premier was kind enough to bring him yesterday.

"In the record are petitions from several municipal corporations, and from citizens of different localities, addressed to the Lieutenant-Governor, against the resolutions and the Government Bill respecting the Quebec, Montreal, Ottawa and Occidental Railway.

"The Lieutenant-Governor was only yesterday in a position to take communication of some of those petitions, inasmuch as they had not been transmitted to him before the record.

"The Lieutenant-Governor, after mature deliberation, cannot accept the advice of the Premier in reference to the sanction to be given to the Railway Bill entitled 'An Act 'relating to the Quebec, Montreal, Ottawa and Occidental Railway.'

"For all these reasons, therefore, the Lieutenant-Governor cannot consider this memorandum without expressing to the Premier the regret which he feels in being no longer able to retain him in his position, contrary to the rights and prerogatives of the Crown.

(Signed) L. Letellier,
Lieut.-Governor.

"On the 2nd March, about 2 o'clock, p.m., Mr. De Boucherville went to Spencer Wood; when he arrived he was admitted to the presence of the Lieutenant-Governor and told him that according to the memorandum received from him that day, he understood that he was dismissed from the office of Premier.

"The Lieutenant-Governor told him he was to take his own interpretation from the letter. Upon this Mr. De Boucherville handed him the letter, which will be found further on, as being his answer.

"The Lieutenant-Governor, without opening it before him, made some remarks on the difficulty in which the legislation had placed him.

"Mr. De Boucherville replied that in 'his present position, he thought he had no opinion to express on the subject.' He then bowed himself out. When he had proceeded a short distance from the house, he caused the vehicle to return, having forgotten

to ask permission from the Lieutenant-Governor to give explanations to the House. After having been a second time admitted to the presence of the Lieutenant-Governor, he asked permission to give explanations and to make known the memorandum of the Lieutentant-Governor and his replies thereto.

"The Lieutenant-Governor told him he had no objection, and asked him as to the person he should send for. Mr. De Boucherville replied that he looked upon himself, having been dismissed, as being in a different position from a minister who, although defeated in the House, still retained the confidence of the Sovereign; that he had had a majority of 25 in one of the late votes, that under these circumtstances he did not think he could advise him in the matter. He then left him, and while in the ante-room, the Lieutenant-Governor recalled him, and said: 'Please delay the explanations until Monday.'

"The following is a copy of a letter which Mr. De Boucherville handed to the Lieutenant-Governor, when the latter told him that he was to take his own interpretation of his memorandum:

"To His Excellency the Lieutenant-Governor of the Province of Quebec.

"May it Please Your Excellency, Quebec, March 2, 1878.

"I have the honour to acknowledge the receipt of your memorandum in which you come to the conclusion that you cannot retain me in my position as Premier.

"I have therefore no other duty to perform beyond submitting to my dismissal from office communicated by your Excellency, reiterating at the same time my profound respect for the rights and prerogatives of the Crown, and my devotion to the interests of our Province.

"I have, &c.

"(Signed) C. B. De Boucherville."

"On the 28th January 1878, Mr. De Boucherville had sent to his Excellency the Lieutenant-Governor, who was then at Rivière Ouelle, the following telegraphic despatch:—

"'Can you send me authorisation resolution respecting finances?'

The Lieutenant-Governor, on the following day, the 29th, telegraphed to Mr. De Boucherville: 'Blank mailed to-day. If presence necessary, telegraph. Return Friday.'

"The resolutions respecting the North Shore Railway were submitted to the House only on the 29th January, after the telegram had been received from the Lieutenant-Governor that a form signed in blank had been mailed to Mr. De Boucherville in reply to his despatch of the previous day, saying: "Can you send me authorisation resolutions respecting finances?" On the 30th January, the first resolution was reported from Committee of the whole. On the 31st it was adopted by the House.

"On the 1st February the House again went into committee of the whole, and reported the other resolutions on the same subject. But it was only on the 5th that the adoption of the report of the committee was carried, the House throwing out the motion of non-confidence on this point by 38 to 21.

"On the 5th February a Bill based on these resolutions was introduced; the second reading was delayed until the 18th of February; the third reading took place on the 19th during all this time the Lieutenant-Governor, to whom the votes and proceedings were sent daily, remained silent.

"On the 19th February Mr. De Boucherville met the Lieutenant-Governor, and in the converation which took place on the subject of the measure, thought he had satisfied him as to its legality and the urgency of its being passed. The Lieutenant-Governor was so far from being explicit as to his intention that Mr. De Boucherville left him with the impression that he was authorised.

"The Lieutenant-Governor does not contend in his memorandum of the 1st March 1878 that he had given orders to suspend the legislation.

"Sent up to the Legislative Council, this Bill had gone through its third reading before the first letter was received from the Lieutenant-Governor, date the 25th February last, but only delivered at 4.30 p.m., on the 26th. In fact, the Lieutenant-Governor, in his letter of the 1st March, admits that he did not in any way in his memorandum of the 25th February, express the opinion that he considered the Premier had intended to arrogate to himself the right of getting measures passed without his approval, or of slighting the prerogatives of the representative of the Crown.

" Having ascertained that a misunderstanding existed as to the interpretation of the authorisation asked by telegraphic despatch on the 23rd January, and answered on the 29th, by a message stating that a form signed in blank was sent, and in view of the impressions left by the conversation of the 19th February in Mr. De Boucherville's mind, should the Lieutenant-Governor have waited to make known for the first time the existence of this misunderstanding until the 26th February, at which date the whole of the legislation of which he complains had been discussed and voted in the affirmative by both Houses.

" The confidence shown by the Lieutenant-Governor on the 29th January in Mr. De Boucherville by forwarding the form signed in blank, was calculated to justify him in interpreting the silence of the Lieutenant-Governor at least as not meaning dissent.

" After these interviews of the 19th February the silence observed until the 26th February was also of a nature to lead him to believe that he had a general authorisation to submit to the House all measures which the public service required.

" On the 31st of January, 26 days previous to the first memorandum of the Lieutenant-Governor, the Honourable Treasurer made his budget speech, in which he announced the new taxes which it would be necessary to levy to meet the obligations of the province, obligations contracted during several previous years, and resulting from the policy then inaugurated on railways, and which had received the concurrence of several members belonging to the party opposing the Government.

" Can this speech, published *in extenso* by the press of the whole country, have escaped the notice of the Lieutenant-Governor ?

" On the 19th February the resolutions demanding those taxes, but at a lower rate than the one mentioned by the Treasurer in his speech were presented, and on the 20th were adopted by a vote of 39 against 22.

" The Lieutenant-Governor in his memorandum of the 1st March complains that Mr. De Boucherville did not let him know that the Government was in an impecunious condition requiring special legislation to increase the public taxes.

" The Premier would have formed an erroneous idea of the situation if he had so qualified the temporary embarrassment, caused by the ill-will of the municipalities which had subscribed for the construction of the provincial railway in neglecting to faithfully fulfil their obligations. He would have formed an erroneous idea of the situation in presence of the results obtained so far without any burden having been imposed in order to obtain them.

" On the 22nd February notice was given of resolutions respecting railways in the eastern townships and on the south shore of the St. Lawrence.

" On the 23rd of the same month the resolutions were introduced and subsequently adopted by a vote of 41 to 16. These resolutions do not in any way increase the actual debt of the Province. The Lieutenant-Governor said in the same memorandum : ' That ' the construction of the railway from Quebec to Ottawa should prevail over that of other ' railways.' The legislation of many years past on this subject establishes no priority in favour of the provincial railway to the detriment of railways in the eastern townships and on the south shore. The De Boucherville government would have contravened the law if they had adopted any other view of the matter.

" In the same memorandum the Lieutenant-Governor declares, ' That he cannot accept ' the advice of the Premier in reference to the sanction to be given to the Railway Bill, ' intituled, ' An Act respecting the Quebec, Montreal, Ottawa, and Occidental Railway.' This declaration is premature, the Premier never having been called upon to give his opinion as to the sanction to be given ; and if, had he been called upon to do so, he would, under the circumstances, have recommended that it be reserved for the decision of the Governor-General, being in doubt as to the Lieutenant-Governor having the right, of his own accord, *ex proprio motu*, to exercise the prerogative of veto, and thus to decide finally on the fate of a measure passed by both Houses, when the British North America Act of 1867 seems to leave such power to the Governor General.

" The memorandum of his Excellency refers to petitions of several corporations and citizens of different places, addressed to the Lieutenant-Governor, against the resolutions and the measures of the Government concerning the Quebec, Montreal, Ottawa, and Occidental Railway.

" It is sufficient to consider that these petitions came from debtors from whom the law intends to force payment, to arrive at the correct conclusion that the opinion of both Houses should prevail over that expressed in such petitions.

" The Lieutenant-Governor in the same memorandum refers to Acts of administration which date from before the session, and to which he has given his assent. As he alludes

to matters for which the Government is responsible to both Houses, as advisers of the Crown, and as they are foreign to the question of prerogative raised by the Lieutenant-Governor, they cannot be adduced in this memorandum as reasons for the conclusion arrived at by his Excellency that he cannot continue to retain Mr. De Boucherville in his position against the rights and prerogatives of the Crown ; therefore, to avoid being carried away by this side issue or *hors d'œuvre*, there is no reason to question them now.

" The Lieutenant-Governor further expresses the opinion that the state of our finances forced us to make loans disproportionate to our resources.

" The necessity of here repeating this phrase is to be regretted, but the credit of the Province requires that it should be contradicted. The mere reading of the budget speech will suffice to reassure alarmists.

" From all the above facts from admissions contained in the last memorandum of the Lieutenant-Governor, from the transmission of the form signed in blank and sent by him in reply to a request by Mr. De Boucherville, asking his authorisation to introduce resolutions respecting finances, and from the silence of the Lieutenant-Governor, up to the 26th February last, it results that no measures have been introduced into the House in opposition to the prerogatives of the representative of the Sovereign.

" Nothing more remains now for me to do but to reiterate the declaration I made in commencing these explanations. The De Boucherville Cabinet has not resigned. It has been dismissed from office by the Lieutenant-Governor.

" The Conservative party is no longer in power. But it is in this House a power, a qualified power, a majority in the Opposition. The majority here, the majority in the Council, the majority in the country. The Conservative party has been dismissed from office ; but it stands uncompromised, without compromise, without division, devoted to the constitution and to the welfare of the country.

" (Signed) A. R. Angers,
" Ex-Attorney General,
" Member for the Electoral District of Montmorency."

That on the 7th March, the Legislative Assembly, having heard of the dismissal from office of the De Boucherville Government, adopted before the formation of his honour the Lieutenant-Governor Luc Letellier's new Cabinet, the following address :—

Exhibit No. 4.—" We, Her Majesty's dutiful and loyal subjects, the legislative expres-
" sion of Quebec, in Provincial Legislature assembled, desire to reiterate the assembly
" of our loyalty and attachment to Her Majesty Queen Victoria, and our perfect sub-
" mission to the Constitution.

" We renew the declaration of our confidence in the De Boucherville Administration,
" so often and decidedly expressed during the present session.

" We desire firmly and emphatically to declare that we have not, and cannot have,
" confidence in any administration which may be substituted for the one dismissed, inas-
" much as such dismissal occurred whilst the De Boucherville administration enjoyed the
" entire confidence of the large majority of the representatives of the people in Provincial
" Legislature assembled, unless such administration to be appointed be a strong and
" efficient one, chosen from the party represented by the majority in this House."

That on the 9th March Mr. Loranger, member for Laval, seconded by Mr. Lynch, member for Brome, moved that the following address be by the Speaker of the Legislative Assembly presented at the Bar of the Honourable Legislative Council to his Honour the Lieutenant-Governor at the prorogation of the Legislature :—

Exhibit No. 3, p. 226.—" The Legislative Assembly of the Province of Quebec deem it their duty to humbly represent that the Cabinet of which the Honourable Henri Gustave Joly is the chief, was defeated three different times, at the sitting of the 8th 8th instant, by majorities varying from 20 to 22 votes.

" And they regret to state that the Constitution has been disregarded by the advisers of his Excellency to the extent that they persist in retaining power against the will of the majority of this House, and of the country.

" The Legislative Assembly believes it, moreover, their duty to express their regret that they have been put to the necessity of suspending the passage of the Supply Bill until justice has been extended to the majority of this House.

" The Legislative Assembly desires respectfully to represent to your Excellency that there exists in the House a political party possessing the confidence of the country, and country, and having a large majority in the House, that this party is competent to

administer the public business, and that the prorogation of the Legislature presently, would be prejudicial to the legislation and to the interests of the country.

"The Legislative Assembly desires to represent to your Excellency that the fact of the minority having a control over public affairs in the cause of the embarrassment under which the Province labours through the suspension of the Supply Bill; and that a prompt solution of the difficulty may be arrived at by acting in conformity with the Constitution.

"The Legislative Assembly desires also to represent to your Excellency that inasmuch as there exists in the House a political party strong enough to command a large majority, there is no necessity for a dissolution of the Legislature, a step which will cause considerable and useless expense to the province, and seriously threaten the peace and tranquility of the people of this province."

The House, after voting by 33 against 12 that the resolutions above mentioned were in order, was unexpectedly interrupted before their adoption by a message of his Honour the Lieutenant-Governor, requesting the attendance of the House in the Legislative Council, and then and there was by him prorogued.

That the Lieutenant-Governor addressed to his Excellency the Governor-General an "explanatory case," bearing date the 19th March 1878. This document, most materially different from the one sent to Mr. de Boucherville informing him of the reasons for which the Lieutenant-Governor was no longer able to retain him in his position, is as follows:—

"Exhibit No. 5. (*Translation.*)

"To the Right Honourable the Earl of Dufferin, K.P., K.C.B., G.C.M.G., Governor-General of Canada, Ottawa.

"My Lord, Government House, Quebec, March 18th, 1878.

"I have the honour now to submit for your Lordship's consideration documents and details which I could not lay before the public, but from which it would have been more clearly understood that the dismissal of M. de Boucherville's Cabinet, was forced upon me by circumstances.

"These details are not contained in the correspondence which I authorised M. de Boucherville to place before the House, and which are hereunto annexed.

"From the day that I was by your Excellency raised to the position I occupy at present, all my private relations with the members of my Cabinet, up to the time of their dismissal from office, were, I must admit, generally of an agreeable nature; but in those of an official character with the premier, I almost invariably felt that I did not enjoy that entire confidence on his part, which is the chief element of a cordial understanding between the representative of the Crown and his advisers.

"After having studied the general state of the affairs of our Province, after having become convinced that legislative and administrative changes were becoming more and more necessary, I decided upon using with moderation, and with the greatest possible discretion, the influence attached to my position in order to obtain the realization of that which I deemed to be of the greatest advantage to the Province.

"I regret to state to your Excellency that, although M. de Boucherville did, on most occasions, take my advice in good part, and generally approved of it, he nevertheless, almost always acted as though he had never received it. Nevertheless, far from using my authority to obstruct his action in any way, I invariably treated him with great indulgence, as will appear to your Excellency by the following facts:

"1st. During the session of 1876, a bill had been read three times in one of the two branches of the Legislature, and only twice in the other.

"This bill, bearing all the certificates which were necessary to induce me to believe that it had been regularly passed and adopted, was submitted to me by the Premier for my sanction.

In consequence of being left in ignorance of these facts by my advisers, I sanctioned the bill.

"Not long afterwards I was informed of the irregularity, and I immediately spoke of it to the Premier; I made the observation that such an act would entail too serious consequences to allow of its being passed over.

"As a favour to him, however, I passed over this instance of irregular legislation, which was then irreparable.

"2nd. During the same session another bill was submitted to me for my sanction.

On examining it, I perceived a blank which had not been filled up, which I pointed out to the Premier, in the following letter:—

"'Private.

"'My Dear Premier, Quebec, December 27th, 1878.

"'A Bill (E.) which originated in the Council was passed by the Legislative Assembly, without amendment; upon reading it before adding my certificate of sanction, I noticed that a blank had not been filled up in the seventh line of the sixth section.

"'You followed the usual practice in not fixing the amount of the penalty in the Legislative Council; but the matter passed unperceived, or the officers, through some mistake, omitted to insert the amount fixed by the House, or it may have been an error in the proof sheets.

"'While on the subject of these mistakes, you will find another in the second section of the same Act, wherein the word amender is in the infinitive mood. I notice this latter inaccuracy, to which I do not attach much importance, only because I discovered another in an Act in which I had to point out to you—an omission which I consider fatal.

"'Yours, &c.

"'(Signed) L. Letellier.'

"The Premier came to me and said that he regretted the omission; he requested me to give my sanction to the Bill in the state in which it was. The conciliatory spirit which I showed in granting my consent seemed to please him.

"3rd.—In March, 1877, (*vide* Appendix A,) my advisers caused me to make an appointment of a municipal councillor for the south ward of the village of Montmagny, under the pretext that there had been no election, or that if such election had taken place, it was illegal.

"The whole of the circumstances connected with this case, I deem it my duty to explain to your Excellency, on account of the important principle involved therein.

"After due personal examination of the petitions and other accompanying documents relating to that election, I called on the Premier, at his own office, to beg of him not to hurry the appointment, which he was asked to make, of a municipal councillor for that locality, before receiving more ample information.

"I pointed out to him that it appeared that a municipal election had taken place, and that in such case, as a principle, the Executive Council should not interfere.

"I added that from the moment that a legal, or even an illegal election had taken place, the duty of deciding it rested with the courts, in accordance with the ordinary course of law, of which they are the interpreters.

"I then intimated to M. De Boucherville that I maintained on principle, that all matters cognisable by the judiciary should be invariably left to the courts, which from their organisation are better fitted than the executive to inquire into matter of fact and of evidence, and that I would never allow the substitution of the powers of the executive for those of the courts, when the latter had jurisdiction.

"The Premier admitted that that opinion, and the principle on which I based it, were in conformity with his ideas, and necessary for the proper administration of justice. He asked me if I would consent to see Mr. Angers, the Attorney-General, on the subject.

"I at once consented, and the Attorney-General was immediately sent for; the facts connected with that election difficulty and my views regarding them, were then communicated to him. He promised that before any appointment should be made by the Lieutenant-Governor he would make inquiry.

"Shortly afterwards he reported to me that he had made an inquiry into the facts of the case, and, at his suggestion, I appointed Jules Bélanger to be councillor.

"In the beginning of March 1877, difficulties and quarrels arose at Montmagny, in consequence of that election.

"After that appointment those quarrels broke forth afresh in the municipal council itself, from which the Councillor whom I had thus been caused to appoint, was expelled with violence. That appointment I was recommended to make, notwithstanding the fact that an election had taken place; that it had been held and presided over by the Mayor, that Eugène Fournier had been returned by acclamation, that he had been sworn in according to law, and that at the very time when the appointment of Jules Bélanger was recommended to me, the person thus elected had in fact taken his seat, had been sworn, and had sat at the said Council, as appears by the minutes of the Council.

"When I afterwards learned these facts, I communicated them to the Premier, whom I

requested to prepare a revocation of the appointment which I had thus been caused to make, contrary to the principles above set forth, and the justice of which he had himself admitted.

"The Premier answered that the matter was of a very delicate nature, and such a proceeding would be contrary to the recommendation of Mr. Angers, his Attorney-General; he concluded by saying that he would get him to prepare a report on the subject.

"I received that report some days later. After having read it I again intimated to Mr. De Boucherville, that in the interests of peace, and in conformity with the principle that executive should not be substituted for judicial power in matters within the province of the latter, I insisted upon the revocation being made.

"After waiting several days for an answer, and not having received any from the Premier, I addressed a letter to him, of which the following is a copy :—

"'Private and confidential.

"'My Dear De Boucherville, Quebec, March 14, 1877.

"'I have not received any answer on the subject of the appointment of a councillor at Montmagny.

"'Those who deceived the Government in order to induce me to perform an executive act in connexion with a question which they then knew to be within the judicial power, do not, in my opinion, deserve consideration, which cannot but be injurious to the Government and myself.

"'The remedy is very simple, rescind the appointment ; allow the parties interested to fight it out before the Courts.

"'Yours, &c.

"'(Signed) L. Letellier.'

"If, my Lord, I insist upon this latter point, it is to show your Excellency that the Prime Minister was then perfectly aware of my views on that point, and should not, in consequence, have introduced during the last Session of our Legislature, any legislative measure, or perform any administrative act tending, to substitute executive for judicial power without notifying me, and especially without advising me on the subject.

"It was easy for the Premier to understand from my remarks and the frequent conversations which I had with him, that I could not consent to see Her Majesty's subjects despoiled of the right guaranteed to them by Magna Charta; that their property should never be interfered with, except in virtue of a judgment rendered by the tribunals of the of the country.

"4th.—On the 19th March 1877, being on the eve of absenting myself for a few days, I wrote to the Hon. Mr. Chapleau; and in a postcript I said : 'Please oblige me by 'telling the Premier that if he needs my concurrence, Mr. Gauthier may bring down to 'me the documents requiring my signature.'

"M. De Boucherville should have understood from that, that if I was ready to give him my concurrencc, it was on condition of having all documents submitted to me before signing them.

"I leave you, my Lord, to judge in what manner my views were interpreted.

"5th. Under date of the 6th of November last I addressed to the Honourable M. De Boucherville the letter of which the following is a copy :—

"'(Private.)

"'My dear De Boucherville, Quebec, November 6th, 1877.

"'In the last "Official Gazette" were published, under my signature, two proclamations which I had not signed.

"'One was for the summoning of Parliament, which I had reserved in order to confer with you ; the other, which I did not even see, appoints a day of thanksgiving.

"'These proceedings, the nature of which I shall not characterise, entail, apart from their impropriety, invalidities which you will easily understand.

"'Yours very truly,

"'The Hon. C. B. De Boucherville, (Signed) L. Letellier.

"'Premier.'

"The following are the notes which I took of the conversation which I had with M. De Boucherville on the subject :—

"'M. De Boucherville came on the same day he received the letter to tell me that he

regretted that the thing had occurred, and that it was no fault of his. I accepted the excuse, and I then told him that I would not tolerate my name being used when necessary for any duty of my office unless the documents requiring my signature had been previously submitted to me, and unless information was afforded to me, which M. De Boucherville assured me would be the course followed in future.

" ' (Signed) L. L.'

" 6th. But, my Lord, there is another point still more important, which I cannot any longer refrain from mentioning.

" From the conversations which I have held with M. De Boucherville there results a fact which, if it were known, would of itself have sufficiently justified me in believing that he did not possess the confidence of the people of this province.

" On two different occasions, some time after the session of 1876, I pointed out to him that millions had been voted to aid railways in general at a time when our finances did not appear to me to be in a condition to warrant, all at once, a lavish expenditure in subsidising these numerous undertakings, particularly as, apart from that, our credit was so heavily pledged towards the building of the Quebec, Montreal, Ottawa, and Occidental Railway.

" He very frankly avowed that these grants, though they were for the development of the Province, had been necessitated by political considerations; that without them the support of the members whose counties were traversed by those railways would cease to be secured to Government; that there would be no means of having a majority; that those members formed combinations, ' rings,' to control the House.

" M. De Boucherville is not unaware that I thereupon told him that it was better to save the Province than a Government, and that if his administration was not strong enough to resist those influences it would be better for him to form a combination of honest and well-meaning men from both sides of the House, rather than submit to the dictations of those ' rings,' and to the control of those combinations.

" When he made no attempt to escape from that deleterious influence, after his own avowal that the Legislature was controlled by those ' rings,' when, by his legislation, he sought to favour them anew during the last session without having previously advised with me, had I not the right, as the representative of my Sovereign, to believe and to be convinced that M. de Boucherville did not possess a constitutional majority in the Legislative Assembly?

" 7th.—In communicating to both Houses, my memoranda of the 25th February and 1st March last, the premier and Mr. Attorney-General Angers, in violation of their duty, overstepped the authorisation which I had given by my letter of the 4th of March last, for that purpose. They added to that communication a report of pretended conversations, the correctness of which I contest and the impropriety of which I maintain.

" I shall point out, my Lord, one fact alone to prove that incorrectness and that impropriety; the Hon. Messrs. De Boucherville and Angers, in their explanations of the two Houses, lay great stress on the telegram which Mr. De Boucherville despatched to me at Rivière Ouelle, to ask my permission to introduce resolutions concerning the finances, and on the blank signature that I sent up in answer to it.

" But these gentlemen themselves had that blank signature filled up by my private secretary, so as to give to the telegram the meaning which I attributed to it, namely, a request for permission to introduce the supplies. The following is a copy of the message produced with that blank signature.

" Mr. Treasurer Church presented a message from His Excellency the Lieutenant-Governor, as follows:—

" ' L. Letellier,

" ' The Lieutenant-Governor of the Province of Quebec transmits to the Legislative Assembly the supplementary estimates for the current year, and for the fiscal year ending 30th June 1879, which, in conformity with the provisions of the 54th section of the British North America Act, 1867, he recommends to the Legislative Assembly.

" ' Government House,

" ' Quebec, 30th January 1878.'

" My ministers never had, by their own admission, any other authorisation from me for the introduction of their railway and taxation resolutions than the blank signature above mentioned, in which not a word is said of them. Besides which, it will be noticed that the railway resolutions were introduced on the 29th January, whereas the message is dated the 30th.

" It is for this reason, my Lord, that I bring to your knowledge all the facts and details which are connected with the relations which I have had with M. De Bouchrville and his colleagues.

" Were the controversy with me and alone as a private individual, I would abstain from any remonstrance against the injustice of their reflections upon the conduct of the representative of the Crown, which they have made in violation of their duty ; but in this matter the maintenance of the Constitution is at stake.

" If, without any authority from me, proclamations, have been published which I never signed, is it surprising that messages were communicated in my name to the Houses, respecting which I had never been consulted ?

" It is because as the representative of my Sovereign, I have been unjustly and shamefully dragged before the public, that I make known to you, my Lord, that in the performance of my duty as Her representative, my object has not only been to protect the dignity of my office, but to afford to the people of this province an opportunity of knowing that, under existing circumstances, the exercise of Royal Prerogative has not been hostile to their constitutional liberties ; but that, on the contrary, it has afforded them the means of freely exercising their judgment.

" There results, my Lord, from what I have now stated :—

" 1st. That in general, the recommendations which I have made to my Cabinet did not receive the consideration which is due to the representative of the Crown.

" 2nd. That my name has been used by the members of the Government in the signature of the document which I had never seen.

" 3rd. That a proclamation, summoning the Legislature, was published in the ' Official Gazette ' without my being consulted or informed of it, and before my signature had been attached thereto.

" 4th. That a like proclamation, fixing a day of thanksgiving, was also published under similar circumstances.

" 5th. That, although I had intimated to the Premier, by my advice and by my letter of the 14th March 1877, my firm determination to protect the inhabitants of this Province against the arbitrary decisions of the Executive in matters within the jurisdiction of the Courts of Justice, he thought proper, without my participation and without advising me, to propose to both Houses, in legislating for the Quebec, Montreal, Ottawa and Occidental Railway, to substitute the power of the Executive for that of the Judiciary.

" 6th. That, without having advised me, and without having received authorisation of any sort whatever from me, the Government of M. de Boucherville proposed to the Legislature a measure of almost general taxation upon the ordinary contracts and transactions of life, transfers of bank stock, &c., while no message from me had been asked for this object, nor signed by me to authorise its proposition to the Houses.

" 7th. That, after its dismissal, the Government of M. de Boucherville again failed in its duty by assigning reasons for the adjournment of the House from day to day, different from those agreed on between myself and the Premier, at the risk of prejudicing public opinion against the representative of the Crown.

" 8th. That, at the time of the communication of the causes which rendered necessary the dismissal of the Cabinet, in the explanations which were given by the Premier to the Legislative Council, and by the Attorney-General to the Legislative Assembly, both of them referred to pretended conversations which they had no authority whatever to communicate to the Legislature, since the Premier had, by his answer to the letter of the Lieutenant-Governor of the 4th March last, limited his explanations to the communications to both Houses of my memoranda of the 25th February and 1st March, and the answers of the Premier of the 27th February and of the 2nd and 4th March instant.

" 9th. That, therefore, the additions and comments made by the Premier before the Legislative Council, and by the Attorney-General before the Legislative Assembly were contrary to the conditions agreed upon between the Lieutenant-Governor and the Premier.

" 10th. That the Premier and his colleagues, by making use of pretended private conversations to explain the causes of their dismissal, in contravention to their duty to the Crown and to what they had pledged themselves to observe with regard to it, have placed the Lieutenant-Governor under the necessity of bringing under the notice of your Excellency all the reasons for that dismissal.

" I have, &c.

" (Signed) L. Letellier,

" Lieutenant-Governor."

Appendix A.

(*Translation.*)

"Summary of official record.—In January 1877, an election had taken place for the south ward of the village of Montmagny; that election having been declared null and void by the Court, it ordered a fresh election and appointed Eugène Hamond to preside thereat.

"On the day fixed, Eugène Hamond, refusing to preside, Naz. Bernatchez, Esq., Mayor of the Municipality, the senior magistrate present presided.

"The meeting elected Eugène Fournier.

"Eugène Hamond wrote to the Lieutenant-Governor that he had not presided at the meeting—without adding, however, that there had been no election. He recommended, at the same time, that Jules Bélanger be appointed.

"Eugène Fournier, elected at the meeting of the 19th February, took the oath of office and took his seat on the 23rd February.

"On the 3rd March the Attorney-General (Mr. Angers) recommended the appointment of Jules Belanger, who was accordingly appointed on the 7th of the same month.

"On the 10th of March Mr. Bernatchez, Mayor of Montmagny, addressed to the Lieut.-Governor a memorial setting forth the facts, and praying that the appointment be cancelled."

"On the 15th March the Attorney-General made a report recommending that the appointment of Jules Belanger be maintained.

"On the 27th March the Lieut.-Governor revoked that appointment on a report of the Government."

Appendix B.

(*Translation.*)

"Quebec, March 4th, 1878.

"The Lieut.-Governor desires that his two memoranda of the 25th February, and 1st March, addressed to the Hon. M. De Boucherville, and the answers made to those memoranda by the Hon. M. De Boucherville (of the 27th February and 3rd of March) be not now communicated to both Houses.

"'That communication authorised by the Lieut.-Governor at the request of the Hon. M. DeBoucherville, should be made as soon as the arrangements for the formation of a new Executive Council are completed.

"'The Hon. M. De Boucherville may communicate to the Houses that the adjournment from day to day is rendered necessary by the last-mentioned cause.

"'To the Hon. C. B. De Boucherville, (Signed) L. Letellier.

"'Quebec.'"

(*Translation.*)

"'Your Excellency, "'Quebec, 4th March, 1878.

"'In conformity with your wish, expressed in a letter of to-day's date, I shall withhold until the formation of a new Executive Council, the explanations I was authorised by your Excellency to communicate to the Houses.

"'I have, &c.

"'(Signed) C. B. De Boucherville.'"

"'That on the 3rd April 1878, the Honourable M. De Boucherville addressed to his Excellency the Governor-General the following despatch, with an extract of the votes and proceedings of the Legislative Assembly, No. 42, to wit:—

"'To his Excellency the Right Honorable the Earl of Dufferin, K.P., K.C.B., G.C.M.G., Governor-General of Canada, Ottawa.

"'My Lord, "'Ottawa, April 2nd, 1878.

"'The explanatory case addressed to your Excellency by his Honour M. Letellier and accompanying the documents and details which related to my recent dismissal from office, and by you transmitted to the Senate and House of Commons, containing as it does statements of facts, the accuracy of which I respectfully deny, imposes upon me the duty of submitting for your information and consideration the following:—

"'As your Excellency is doubtless aware, M. Angers laid upon the table of the Legislative Assembly on the 8th March last, copies of the correspondence and explana-

tions by him made at my request relating to the dismissal from office of the De Boucherville Government.

" ' This correspondence and explanations with some comments of his own, are contained in the copy of the votes and proceedings of that House of the 9th March, and I respectfully beg to be permitted to annex them as forming part hereof, I beg, however, to add to these explanations of M. Angers a few words upon two subjects, viz. :—

" ' 1. In the memorandum which I had the honour to address to his Honour M. Letellier, under date 27th February, I said : ' Later I had the honour to ask your Ex- ' cellency for a general permission to submit to the House measures concerning money ' matters which your Excellency gave me with your ordinary courtesy. This per- ' mission, I may say, had always been granted me by your predecessor, the lamented ' M. Caron.' I do not think that the meaning of these phrases is correctly rendered in the paragraph in his Honour's letter to me, under date the 1st of March, wherein he says :—

" ' It is true that the Premier gives in his letter as one of the reasons for acting as he did, that this permission of using the name of the representative of the Crown had always been granted him by the predecessor of the present Lieutenant-Governor the lamented M. Caron.'

" ' This reason cannot be one for the Lieutenant-Governor, for in so acting, he would have abdicated his position as representative of the Crown which act neither the Lieutenant-Governor or the Premier could reconcile with the obligation of the Lieutenant-Governor of the Crown.

" ' It is manifest that I desire to say, and that, in fact, I did say, that the late M. Caron had given me that authority for money matters only.

" ' My Lord, I respect too highly the memory of that virtuous and distinguished statesman to allow any such misinterpretation of my meaning to pass unchallenged, by which I am made to intimate that the deceased M. Caron had abdicated to me his position as the representative of the Crown. Every person who knew the late M. Caron and his high legal and constitutional attainments, will share with me my regretful surprise that any such imputation should be cast upon his memory.

" ' 2nd. That, not having kept any memorandum of such conversations as I had with the Lieutenant-Governor, except those which took place since the 25th February last, I have no remarks to make upon the paragraph, wherein it is stated :—

" ' The Premier did not let the Governor know, then or since, that the Government was in such a state of penury as to necessitate special legislation to increase public taxation ; unless it be that this statement does not seem to me to accord with a preceding paragraph, wherein it is stated that the Lieutenant-Governor drew my attention to the necessity of reducing the expenses of Government and of the Legislature, instead of having recourse to new taxes in view of avoiding financial embarrassment.

" ' I acknowledge that I never did inform the Governor that the Province was in a state of penury, simply because I was convinced of the contrary.

" ' The Lieutenant-Governor expressed also, but with regret to the Premier, that the orders passed in Council to increase the salaries of Civil Service servants seemed to him inopportune.

" ' Upon this matter I merely desire to remark that these Orders in Council were authorised by a law passed during the session of 1876.

" ' I propose now my Lord, to deal with the specific allegations made against me by his Honour Mr. Letellier, in his explanatory case, and for convenience sake, I take the liberty to quote from His Honour's memorandum : " 1st. During the session of 1876, a " Bill had been read three times in one of the two branches of the legislature, and only " twice in the other."

" ' This Bill bearing all the certificates which were necessary to induce me to believe that it had been regularly passed and adopted was submitted to me by the Premier for my sanction.

" ' In consequence of being left in ignorance of these facts by my advisers, I sanctioned the Bill.

" ' Not long afterwards I was informed of the irregularity, and I immediately spoke of it to the Premier ; I made the observation that such an act would entail too serious consequences to allow of its being passed over.

" ' As a favour to him, however, I passed over this instance of irregular legislation, which was then irreparable.'

" ' In relation to this, the facts will furnish a sufficient answer. The Act in question was a Bill entitled : " An Act to authorise the formation of Societies for the improve-

" ment of country roads and for the destruction of noxious weeds in the Province of " Quebec." ' It was introduced in the Legislative Council duly passed that House and was sent down to the Legislative Assembly for its concurrence.

" ' Apparently in the hurry of the last hours of the Session, after it had been read twice, the Clerk by mistake, certified it as passed without an amendment and it was thus sent back to the Legislative Council. His Honour came down on the following day to prorogue the Legislature, and his assent was given to this Bill along with others. " The error was immediately discovered by the Attorney-General who made a report for transmission to Ottawa, stating the error and suggesting that the Act should be disallowed.

" ' The Hon. Mr. Blake, then Minister of Justice, reported in reply that this was unnecessary, that the Act not having received all its stages, was but blank paper, and as a consequence it was not printed in the statutes.

" ' In view of this fact it is difficult to understand the statement of His Honour the Lieuteuant-Governor that " as a favour " to me, he " passed over this instance of irregular legislation which was then irreparable."

" ' 2. During the same session another Bill was submitted to me for my sanction. On examining it I perceived a blank which had not been filled up, which I pointed out to the Premier in the following letter :—

(Private.)

" ' My Dear Premier, " ' Quebec, December 20th, 1876.

A Bill (E) which originated in the Council was passed by the Legislative Assembly without amendment ; upon reading it, before adding my certificate of sanction I noticed that a blank had not been filled up in the seventh line of the sixth section.

" ' You followed the usual practice in not fixing the amount of the penalty in the Legislative Council, but the matter passed unperceived, or the officers through some mistake, omitted to insert the amount fixed by the House, or it may have been an error in the proof sheets.

" ' While on the subject of these mistakes, you will find another in the second section of the same Act, wherein the word amender is in the infinitive mood. I notice this latter inaccuracy to which I do not attach much importance, only because I discover another in an Act, in which I had to point out to you an omission which I consider fatal.

" ' Yours, &c.

" (Signed) L. Letellier.

" ' The Premier came to me and said that he regretted the omission ; he requested me to give my sanction to the Bill in the state in which it was.

" ' The conciliatory spirit which I showed in granting my consent seemed to please him. In relation to this I have to say that the Act in question was " An Act to provide for " the safety and protection of the public in theatres, edifices, and public halls." As stated it was passed first in the Legislative Council, where the blank, being the amount of the penalty could not be inserted. By inadvertance it passed the Legislative Assembly in the same form. After its passage the omission was discovered, and a short Bill was introduced to remedy it. The Act in which the omission occurred is numbered 19, and the Act supplying the omission is numbered 20, of the statutes of 1876, and both were sanctioned by His Honour the Lieutenant-Governor at the same time.

" ' 3. In March 1877, (*vide* Appendix A,) my advisers caused me to make an appointment of a Municipal Councillor, for the South Ward of the village of Montmagny, under the pretext that there had been no election, or that if such election had taken place it was illegal, &c.'

" As to the third complaint of his Honour it is difficult to understand, seeing that it had no relation to the dismissal of myself and my colleagues why it is introduced.

" Whether wisely or not the municipal code of the province of Quebec provides that in a certain contingency the Lieutenant-Governor of the province shall appoint a councillor. In the opinion of the law adviser of his Honour, upon a petition sent in from the village of Montmagny, that contingency had arisen, and he made a report recommending an appointment. That report was approved, and the appointment made by his Honour. Subsequently other information was received, which induced his Honour to urge the revocation of the appointment, and out of deference to him, while seeing no reason to change its opinion, the Government yielded, and the appointment was cancelled.

" ' 4th. On the 19th of March 1877 being on the eve of absenting myself for a few days I wrote to the Honourable M. Chapleau, and in a postcript I said :—Please oblige

me by telling the Premier that if he needs any concurrence M. Gauthier may bring down to me the documents requiring my signature.

" ' M. De Boucherville should have understood from that, that if I was ready to give him my concurrence it was on condition of having all documents submitted to me before signing them.

" ' I leave you my Lord to judge in what manner my views were interpreted.'

" It would seem somewhat remarkable that a statement to which his Honour appears to attach so much importance should have appeared as a postcript to what I have reason to believe was a private letter, in no sense relating to public business. I may say, however, that a reference to dates will show that the documents referred to had relation to the Montmagny councillorship, which was at the time a subject of discussion and was not intended to have, and had not any such significance as that attempted now to be attached to it.

" 5th. Under date of the 6th of November last I addressed to the Honourable M. De Boucherville the letter of which the following is a copy :—

" (*Private.*)

" ' The Honourable C. B. De Boucherville, Premier.

" ' My Dear De Boucherville, Quebec, November 6th, 1877.

In the last *Official Gazette* were published over my signature two proclamations which I had not signed.

" ' One was for the summoning of Parliament, which I had reserved in order to confer with you; the other, which I did not even see, appoints a day of thanksgiving.

" ' These proceedings, the nature of which I shall not characterise, are productive, apart from their impropriety, of nullities, which you will easily understand.

" Yours truly,

" (Signed) L. Letellier.

" ' The following are the notes which I took of the conversation which I had with M. De Boucherville on the subject :—M. De Boucherville came on the same day he received the letter, to tell me that he regretted that the thing had occurred, and that it was no fault of his. I accepted the excuse, and I then told him that I would not tolerate my name being used when necessary for any duty of my office, unless the documents requiring my signature had been previously submitted to me, and unless information was afforded to me, which M. De Boucherville assured me would be the course followed in future.

" (Signed) L. L."

" It is a sufficient answer to this complaint to say that the proclamation for the summorning of the Legislature for the despatch of business was not published until the 24th November, and it could not, therefore, be that proclamation to which his Honour referred in the letter of the 6th November. The proclamation to which he refers was the mere formal one by which the meeting of the Legislature is further postponed from time to time, and I am informed that the Order in Council for the particular proclamation to which his Honour referred was signed by him, and is of record, so signed, with the proper officer.

" As to the proclamation fixing a day of thanksgiving, I have to remark that this was the result of a communication from the Premier of Canada, the Honourable Alexander Mackenzie, to the Lieutenant-Governor, and handed to me by his Honour with the request that I would carry out the suggestion. It will appear sufficiently strange under these circumstances that I should be accused of acting without his knowledge, even if the clerical duty of obtaining his signature had been omitted. I am informed, however, that in this case also the Order in Council, as well as the proclamation, were signed by his Honour, and are of record, bearing his signature, in the office of the proper officer.

" 6th. But, my Lord, there is another point still more important, which I cannot any longer refrain from mentioning. From the conversations which I have held with M. De Boucherville there results a fact which, if it were known, would of itself have sufficiently justified me in believing that he did not possess the confidence of the people of this province.

" On two occasions, some time time after the session of 1876, I pointed out to him that millions had been voted to him to aid railways in general at a time when our finances did not appear to me in a condition to warrant all at once a lavish expenditure

in subsidising these numerous undertakings, particularly as apart from that, our credit was so heavily pledged towards the building of the Quebec, Montreal, Ottawa, and Occidental Railway.

"He very frankly avowed that these grants, though they were for the development of the province, had been necessitated by political considerations; that without them the support of the members whose counties were traversed by those railways would cease to be secured to Government; that there would be no means of having a majority; that the members formed combinations—rings—to control the House.

"'M. De Boucherville is not unaware that I thereupon told him that it was better to save the province than a government, and that if his administration was not strong enough to resist those influences, it would be better for him to form a combination of honest and well-meaning men from both sides of the House, rather than submit to the dictation of those 'rings' and to the control of those combinations.

"'When he made no attempt to escape from that deleterious influence, after his own avowal that the Legislature was controlled by those 'rings;' when by his legislation he sought to favour them anew during the last session, without having previously advised with me, had I not the right, as the representative of my Sovereign, to believe and to be convinced that M. De Boucherville did not possess a constitutional majority in the Legislative Assembly?"

"I have no desire to enter into a discussion as to the precise conversations that may have taken place beween his Honour and myself in the frequent intercourse which we had together; but I submit as my answer to this most serious imputation, 'that I confessed to being controlled by 'rings' in relation to the railway legislation while I was the leader of the Provincial Government, the following facts:—

"I took office in 1874. In the session following a measure was introduced to increase the subsidies granted by previous legislation to a number of railways; several amendments were moved to the resolutions, all of them looking to an increase in the grants, and for these the opposition, under the leadership of Mr. Joly, voted. The general elections took place subsequent to that session, and, whether the legislation was good or bad, it was sustained by a very large majority of the people, and is therefore no longer a proper subject of discussion in the connexion in which his Honour introduced it. At the first session after the elections the Government, at the request of the municipalities of Montreal and Quebec, assumed the task of constructing the North Shore and Northern Colonisation railways, now known as the Quebec, Montreal, Ottawa, and Occidental Railway. Great pressure was brought to bear upon the Government to increase the subsidies to the other roads at that time, but this pressure was resisted. As a matter of fact it is not true that 'millions have been voted to aid railways in general' at a time when 'our credit was so heavily pledged towards the building of the Quebec, Montreal, 'Ottawa, and Occidental Railway.' On the contrary, since our credit became so pledged not one dollar has been added to the debt or liabilities of the Province on account of those 'railways in general.'

"In the session of 1876 a measure was introduced authorising a portion of the subsidy on some of these railways from the unbuilt portion, to be used on that which was under construction, to enable them to be carried to particular points which it was considered important in the public interests should be reached, and a lapsed subsidy of 200,000 dollars was divided among other roads of a similar class, the Bill passing the Legislature without division.

"In relation to this Act, his Honour M. Letellier in proroguing the Legislature used these words: 'I trust that the result of your labours will be to give a new impetus to the 'great improvements which have been undertaken in this Province.' During the last session this progress of 'doubling up' of the subsidy was again adopted, but without adding to the public liability. This Act was carried through its final stages in the Legislative Council after the change of Government, and was assented to by his Honour the Lieutenant-Governor.

"'7th. In communicating to both Houses my memoranda of the 25th February and 1st March last, the Premier and Mr. Attorney-General Angers, in violation of their duty, overstepped the authorisation which I had given by my letter of the 4th March last for that purpose. They added to that communication a report of pretended conversations the correctness of which I contest, and the impropriety of which I maintain, &c.'

"As this relates to what occurred after the dismissal of the late Government, it can hardly be held to justify that dismissal. It is sufficient to refer to the correspondence, which shows that there was no stipulation on my part as to the precise form of explanations to be made to the House; and in view of the fact that we were a dismissed ministry I must claim that we had a duty, not only to ourselves, but to the majority of the repre-

sentatives of the people whose confidence we enjoyed, to make the explanations as full as possible. As to the introduction without authorisation of the railway and finance Bills, I conceived myself to have been fully authorised, and the explanations which I offered to his Honour on this point, and which were accepted by him, do not require to be repeated.

" To sum up after the manner of his Honour:—

" 1st. That in general the recommendations which I made to my Cabinet did not receive the consideration which is due to the representative of the Crown.'

" As responsible ministers we considered it to be our duty to advise his Honour not to be bound to act upon advice from him. At the same time, as is seen in the case of the Montmagny councillorship, we were disposed, as far as possible, to pay proper deference to his views and wishes.

" '2nd. That my name has been used by the members of the Government in the signature of documents which I had never seen.'

" I have simply to say that I know of no such case, unless it refers to the proclamations mentioned in the 'explanatory case,' and the answer on that point is sufficiently distinct.

" '3rd. That a proclamation summoning the Legislature was published in the " Official Gazette " without my being consulted or informed of it, and before my signature had been attached thereto.'

" No proclamation summoning the Legislature was so published without the knowledge and signature of his Honour, and the Legislature was, in fact, not summoned for the despatch of business for nearly three weeks after his Honour's letter of complaint on the subject.

" 4th. That a like proclamation fixing a day of thanksgiving was also published under similar circumstances.

" The thanksgiving day was fixed at the request of his Honour himself, and the Order in Council fixing it was signed by him.

" 5th and 6th. That although I had intimated to the Premier, by my advice and by my letter of the 14th March 1877, my firm determination to protect the inhabitants of this Province against the arbitrary decisions of the executive in matters within the jurisdiction of the courts of justice, he thought proper without my participation, and without advising me, to propose to both Houses, in legislating for the Quebec, Montreal, Ottawa, and Occidental Railway, to substitute the power of the executive for that of the judiciary.

" That without having advised me, and without having received authorisation of any sort whatever from me, the Government of M. De Boucherville proposed to the Legislature a measure of almost general taxation upon the ordinary contracts and transactions of life, transfers of bank stock, &c., while no message from me had been asked for this subject, nor signed by me to authorise its proposition to the Houses.

" In relation to these measures I considered myself authorised by the reply of his Honour to my request for an authorisation for resolutions respecting finances, and my explanations, as is seen by his letter to me, were accepted, and the Government relieved from all imputation of intentional discourtesy.

" 7th. That, after its dismissal, the Government of the late M. De Boucherville again failed in its duty by assigning reasons for the adjournment of the House from day to day different from those agreed on between myself and the Premier, at the risk of prejudicing public opinion against the representative of the Crown."

" No reasons were assigned by me for the adjournment of the Legislative Council, neither the Speaker nor myself being present at any sitting of that House during the crisis, and the reasons assigned by M. Angers for the adjournment of the Legislative Assembly were in these words:—

" The Lieutenant-Governor signified his desire that the explanations respecting the " dismissal from office of the members of the Executive Council be not given this day, " but only after a new Cabinet shall have been formed," that reason being substantially that given in the letter of his Honour of the 4th March.

" 8th. That at the time of the communication of the causes which rendered necessary the dismissal of the Cabinet, in the explanations which were given by the Premier to the Legislative Council, and by the Attorney-General to the Legislative Assembly, both of them referred to pretended conversations which they had no authority whatever to communicate to the Legislature, since the Premier had, by his answer to the letter of the Lieutenant-Governor of the 4th March last, limited his explanations to the communication to both Houses, of my memoranda of the 25th February and 1st March, and the answers of the Premier of the 27th February and the 2nd and 4th March instant."

" My letter of the 4th March makes or accepts no such limitation, and, for the reason I have already stated, I considered myself fully justified in making the explanations that were made.

" 9th. That therefore the additions and the comments made by the Premier before the Legislative Council, and by the Attorney-General before the Legislative Assembly, were contrary to the conditions agreed upon between the Lieutenant-Governor and the Premier."

" As I have stated, there were no such conditions agreed upon between the Lieutenant-Governor and myself.

" 10th. That the Premier and his colleagues, by making use of pretended private conversations to explain the causes of their dismissal, in contravention to their duty to the Crown, and to what they had pledged themselves to observe with regard to it, have placed, the Lieutenant-Governor under the necessity of bringing under the notice of your Excellency all the reasons for their dismissal."

" The conversations reported by me were not 'pretended' but real, of which notes were taken immediately after they occurred, and which were necessary to explain fully the circumstances preceding my dismissal. If they have compelled his Honour to state 'all the reasons for that dismissal,' I venture the opinion that it would have been more respectful to the Legislature, whose confidence I enjoyed had 'all the reasons' been communicated to it.

" The observations I have made upon these additional reasons, will, I hope, serve to convince your Excellency that they were not such as to strengthen the position of the Lieutenant-Governor.

" I have, &c.

" (Signed) C. B. De Boucherville,

" M. L."

That the Senate on the 16th April 1878, adopted the following resolution by a vote of 37 against 20 :—

Debates of the Senate, pp. 595 and 676.—" To resolve, that the messages of his Excellency the Governor General of the 26th March and 8th April, be now read, and that it be resolved that the course adopted by the Lieutenant-Governor of the Province of Quebec towards his late Ministry, was at variance with the constitutional principles upon which 'responsible government should be conducted.'

That on the 11th April 1878, the Right Honourable Sir John A. Macdonald, moved the following resolution before the House of Commons :—

Debates of the Commons, p. 1878.—" That Mr. Speaker do not now leave the Chair, but that it be resolved that the recent dismissal by the Lieutenant-Governor of Quebec of his Ministers was, under the circumstances, unwise and subversive of the position accorded to the advisers of the Crown since the concession of the principle of responsible Government to the British North American Colonies."

The then Government opposed the same as inopportune, seeing that the electors of the Province of Quebec within a few days would pronounce its verdict upon the events which made the subject of the above resolution.

Here is the verdict pronounced by the Province of Quebec after the general elections which followed the *coup d'état.*

The Legislative Assembly on the 11th of June 1878, amended the last paragraph of the resolutions proposed in answer to the speech at the opening of the Session, by adding at the end thereof the following words :—

Exhibit No. 7.—" That this House, while expressing its firm determination to insist on the strictest economy in every branch of the public service, and on the closest supervision over the expenses of the administration, regrets that the present advisers of his Excellency the Lieutenant-Governor should have persisted in remaining in power without having been supported by the majority of the Legislative Assembly upon their taking office, and without yet being supported by such majority."

That, on the 14th June 1878, the Honourable Legislative Council adopted the following resolution, by amending the ninth paragraph of the resolutions proposed in answer to the speech at the opening of the Session :—

Exhibit No. 8.—" But that this House desires to express anew its regret that his Excellency the Lieutenant-Governor was advised to dismiss his Ministers in March last, at the time they enjoyed the confidence of both branches of the Legislature and of this Province."

" That this House is of opinion that in acting on this advice, dismissing his ministers and appointing a new Cabinet from the ranks of the minority, his Excellency was advised contrary to the recognised principles of responsible government.

" That to complete and corroborate the answer made by the Honourable M. De Boucherville to the 'explanatory case' addressed by the Lieutenant-Governor to his Excellency the Governor General, in which he states: 'That a proclamation summoning the Legislature was published in the Official Gazette without my being consulted or informed of it, and before my signature had been attached thereto; that a like proclamation, fixing a day of thanksgiving, was also published under similar circumstances.' "

Reference may be made to—

Exhibit No. 9, pp. 3 and 4. 1st. An Order in Council, dated the 19th of November 1877, and approved by the Lieutenant-Governor on the 20th, recommending that a proclamation be prepared and published calling the Legislature for the despatch of business for the 19th December 1877. 2nd. A proclamation, dated 23rd November 1877, registered the same day and published in the Quebec Official Gazette, on the 24th November 1877.

It bears the signature of his honour the Lieutenant-Governor, " L. Letellier."

" Copy of a report of a Committee of the honourable the Executive Council, dated 19th November 1877, approved by the Lieutenant-Governor on the 20th November 1877. No. 372.

" On the calling together of the Parliament of the Province,—

" The Honourable the Commissioner of Agriculture and Public Works, in a memorandum dated 19th November instant, 1877, recommends that a proclamation be prepared and published, calling together the Legislature of this Province for the despatch of business, for the nineteenth of December eighteen hundred and seventy-seven.

" The Committee concurs in this recommendation, and submits it to the approval of the Lieutenant-Governor.

" Certified.

" (Signed) Felix Fortier,
Clerk, Executive Council, Canada.

" To the Honorable the Provincial Secretary, &c. &c."

" Canada, Province of Quebec. L. Letellier.
" (L.S.)

" Victoria, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith, &c., &c. &c.

" To our Beloved and Faithful the Legislative Councillors of the Province of Quebec, and the Members elected to serve in the Legislative Assembly of Our said Province, and summoned and called to a Meeting of the Legislature of Our said Province, at Our City of Quebec, on the third day of the month of December next, to have been commenced and held—Greeting.

Proclamation:

" Whereas the Meeting of the Legislature of the Province of Quebec stands prorogued to the third day of the month of December next; nevertheless, for certain causes and considerations, We have thought fit further to prorogue the same to Wednesday, the nineteenth day of the month of December next, so that neither you, nor any of you, on the said third day of December next, at our said City of Quebec to appear, are to be held and constrained for We do will that you and each of you and all others in this behalf interested, that on Wednesday, the Nineteenth day of the month of December next, at our said City of Quebec, personally you be and appear for the despatch of business, to treat, do, act, and conclude upon those things which in our Legislature of the Province of Quebec, by the Common Council of Our said Province, may by the favour of God be ordained.

" In testimony whereof, We have caused these Our Letters to be made Patent, and the Great Seal of Our said Province of Quebec to be hereunto affixed. Witness, Our Trusty and Well Beloved, the Honourable Luc Letellier de Saint Just, Lieutenant-Governor of Our said Province of Quebec.

" At Our Government House in Our City of Quebec, in our said Province, this

twenty-third day of November, in the year of Our Lord one thousand eight hundred and seventy-seven, and in the forty-first year of Our Reign.'

" By command,
" (Signed) L. H. Huot,
" Clerk of the Crown in Chancery."

Exhibit No. 9, pp. 4 and 5.—Reference may also be made for the same purpose to 1st. An Order in Council dated the 30th October 1877, and the same day approved by the Lieutenant-Governor, recommending that a day of Thanksgiving be fixed for the 22nd of November then next; 2nd. A Proclamation dated the 30th October 1877, and published in the Quebec *Official Gazette* on the 3rd of November 1877. It also bears the signature of his Honour the Lieutenant-Governor " L. Letellier."

" Copy of the Report of a Committee of the Honourable the Executive Council, dated 30th October 1877, approved by the Lieutenant-Governor on the 30th October 1877.

" (No. 348.)

" The Honourable the Commissioner of Agriculture and Public Works, in a Report dated 30th October instant, 1877, sets forth that Divine Providence having protected this Province from the calamities which affect other nations, and favoured this country with an abundant harvest;

" That it is the duty of the inhabitants of this Province to recognise by public Thanksgiving that all good comes from God, and the earth would be sterile without the assistance of His Divine Will;

" The Honourable Commissioner therefore recommends that a Proclamation be issued by his Excellency the Lieutenant-Governor making the twenty-second of November next a day of Thanksgiving to the Almighty, to thank Him for having protected our hearts from calamity, and for having blessed the labours of the people of this Province by granting to it an abundant harvest.

" The Committee concurs in the above Report, and submits it to the approval of the Lieutenant-Governor.

" Certified.

" (Signed) Felix Fortier,
" Clerk, Executive Council.

" To the Honourable the Provincial Secretary,
&c. &c. &c."

" Canada, Province of Quebec.

" (L.S.) L. Letellier.

" Victoria, by the Grace of God of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith, &c. &c. &c.

" To all to whom these presents shall come, or to whom the same may concern—Greeting:

" A Proclamation.

" A. R. Angers, Attorney-General. } Whereas the Almighty has been pleased in His divine goodness to avert from Our Province the calamities which afflict other nations, and to bless this country with an abundant harvest; and whereas it is the duty of the inhabitants of Our said Province to return public thanks to Divine Providence for such a signal favour;

" Now know Ye, that by and with the advice and consent of the Executive Council of Our Province of Quebec, We have fixed and appointed, and do hereby fix and appoint Thursday, the Twenty-second day of November next, as a day of Public Thanksgiving, to return thanks to the Almighty for the favours which he has been pleased to grant to the inhabitants of Our said Province;

" Of all which our loving subjects, and all others whom these presents may concern, are hereby required to take notice and to govern themselves accordingly.

" In testimony whereof, We have caused these Our Letters to be made Patent, and the Great Seal of Our said Province of Quebec to be hereunto affixed; witness, Our trusty and well-beloved the Honourable Luc Letellier de Saint Just, Lieutenant-Governor of the Province of Quebec;

" At Our Government House, in Our City of Quebec, in Our said Province of Quebec, this Thirtieth day of October, in the year of Our Lord One thousand eight hundred and seventy-seven, in the Forty-first year of Our reign.

" By command,

" (Signed) PH. J. JOLICŒUR,

" Assistant Secretary."

These four documents were copied from the originals, and laid before the House by the present Government of Quebec.

Exhibit No. 5, p. 9.—Seeing the facts established by them, it is impossible to explain how his Honour the Lieutenant-Governor can have stated with accuracy, in an official despatch to his Excellency the Governor-General, " that a Proclamation summoning the " Legislature, and published in the *Official Gazette*, without my being consulted or in- " formed of it, and before my signature had been attached thereto, that a like Procla- " mation fixing a day of Thanksgiving was also published, under similar circumstances."

The Order in Council approved on the 20th November 1877, shows that the Lieutenant-Governor was consulted and informed concerning the calling of the Legislature, and the original Proclamation dated 23rd November 1877 bears his signature, "L. Letellier," as shown by the copy laid before the House by the present Government.

The Order in Council approved on the 30th October 1877, shows also that the Lieutenant-Governor was consulted and informed concerning the day of Thanksgiving, and the original Proclamation, dated 30th October 1877, bears his signature " L. Letellier," as shown by the copy laid before the House by the present Government.

All the documents above referred to are authentic, and are contained partly in votes and proceedings of the Senate and of the House of Commons of Canada, and in the sessional papers, and partly in the votes and proceedings of the Legislative Council and Legislative Assembly of Quebec, official copies thereof are hereunto annexed.

From the foregoing, it results that the dismissal from office, by his honour the Lieutenant-Governor of Quebec, of the De Boucherville Government was, under the circumstances, unjustifiable, unwise, and subversive of the position accorded to the advisers of the Crown since the concession of the principle of responsible government to the British North American Colonies; and that in his communications with his Excellency the Governor-General, respecting the aforesaid dismissal, and the reasons which he alleges as having moved him to make such dismissal, he has made statements unsupported by, and contradictory of, the official documents to which they relate.

And that in the opinion of the undersigned, such erroneous statements as appear from the foregoing details, could not have been made by mistake or failure of memory.

Wherefore, the violation of the principles of responsible government committed by the Lieutenant-Governor, and his actions as above represented, are of a nature to imperil the peace and prosperity of the Dominion of Canada, and to bring into disrespect the dignity of the Crown, and should be dealt with under the authority granted the Honourable the Privy Council of Canada by the 59th section of the British North America Act, 1867.

And your Petitioners, as in duty bound, will ever pray.

(Signed) J. H. CHAPLEAU,
L. RUGGLES CHURCH.
A. R. ANGERS.

Montreal, 7th November 1878.

LIST OF EXHIBITS.

No. 1.—Votes and Proceedings of the Legislative Assembly of the Province of Quebec, 8th March 1878.

No. 2.—Journals of the Legislative Council, 8th March 1878.

No. 3.—Votes and Proceedings of the Legislative Assembly, Province of Quebec, 9th March 1878.

No. 4.—Votes and Proceedings of the Legislative Assembly, Province of Quebec, 7th March 1878.

No. 5.—Message from his Excellency the Governor-General to the Senate and House of Commons, 22nd and 26th March 1878.

No. 6.—Message from his Excellency the Governor-General to the House of Commons, 8th April 1878.

No. 7.—Votes and Proceedings of the Legislative Assembly of the Province of Quebec, 11th June 1878.

No. 8.—Journals of the Legislative Council, 14th June 1878.

No. 9.—Return to an Address of the Legislative Assembly.

Lieutenant-Governor's Answer to Petition.

Sir, Government House, Quebec, December 9, 1878.

I have had under consideration Mr. Under Secretary's letter of the 22nd ultimo, transmitting the copy of a memorial from Messrs. Chapleau, Church, and Angers, representing that I had made statements to his Excellency the Governor-General "unsupported "by and contradictory of the official documents to which they relate; that such erroneous "statements could not have been made by mistake or failure of memory, and further "representing that the violation of the principles of responsible government committed by "the Lieutenant-Governor, and his actions as above represented, should be dealt with "under the authority granted the honourable the Privy Council of Canada by the 59th "section of the British North America Act, 1867."

Before replying to the very serious charges preferred against me by three members of the late Executive Council of the Province of Quebec, I must call your attention to a very extraordinary error committed by the memoralists, all of whom are members of the legal profession, and one of them an ex-attorney-general. In the 59th section of the British North America Act there is no reference to the Privy Council, which is not even named in that section. It declares that the Lieutenant-Governor shall hold Office "during the pleasure of the Governor-General," whose office and position are wholly ignored by the memoralists—a circumstance which I notice, chiefly because it is in strict accordance with the practice which they followed as executive councillors towards the Lieutenant-Governor of Quebec.

The charges preferred against me are, 1st, a violation of the principles of responsible government; 2nd, erroneous statements willfully made.

With regard to the first charge, I have to state that I have always understood that responsible or parliamentary government, in the same sense in which it is understood in England and in the administration of the affairs of the Dominion, was also the rule in the province of Quebec.

Notwithstanding the wide difference between the powers of the Imperial Parliament, of the Dominion Parliament, and of the Provincial Legislatures, the principles on which the government of each is conducted are considered the same.

As the representative of the Crown in the Province of Quebec I claim the right to be consulted on all matters on which it is necessary that the influence of the Crown should be used.

The right of consultation has been repeatedly acknowledged by English statesmen of all parties, as well as by the best writers on constitutional law.

Although I deem it unnecessary to refer to precedents in support of my views on the question, yet I may state that I have been assured on unquestionable authority that during the government of the Earl of Elgin, who initiated the system of responsible government in Canada, his ministers were most scrupulous in consulting him on every question that arose, whether of administration or legislation.

I shall venture to assume that in claiming for the Lieutenant-Governor of the Province of Quebec the right to be consulted by his executive council, which by the 63rd clause of the British North America Act is to be composed of such persons as "the Lieutenant-"Governor from time to time thinks fit." I am strictly claiming what the Governor-General would claim in regard to Dominion affairs, and what our Most Gracious Sovereign would claim with regard to questions of Imperial character.

I shall proceed to consider the application of the principle to the circumstances which led to the dismissal of the Hon. M. De Boucherville.

It will not, I presume, be disputed that no measures of greater importance were introduced during the first session of 1878 than the Bill imposing new taxes and the Bill relating to the Quebec, Montreal, Ottawa, and Occidental Railway.

It appears in the documents accompanying the memorial that I never was consulted on either of these important measures.

Has my positive assertion been denied?

The contention of the Hon. M. De Boucherville is "that I ought to have read the "treasurer's budget speech, in which he announced the proposed taxes," and my reply is that "I should have been consulted" before the delivery of that speech!

In regard to the Railway Bill, the Hon. M. De Boucherville contends that a telegram addressed to me during a brief absence at Riviére Ouelle, in which he asked my authority "to put the question of finance before the House," and in accordance with which I sent my signature to my private secretary for the message to accompany the estimates, was an adequate consultation on a railway bill which contained provisions substituting to the judiciary the Lieutenant-Governor in Council, as a tribunal to decide as to the liability of municipalities for the payment of money which they disputed.

I re-affirm in the most unequivocal terms that I never was consulted either as to the proposed new taxes or as to the railway bill: and with regard to the latter measure the Hon. M. De Boucherville was fully aware, from what I said to him when the Montmagny case was under deliberation, that I had insuperable objections to the substitution of the executive authority for the legal tribunals of the province.

I may here notice a remarkable discrepancy between the statements of the Hon. M. De Boucherville and those of Mr. Angers, which could hardly have been unintentional on the part of the latter, who desired to convey the idea that I had given the Hon. M. De Boucherville full authority to introduce in the name of the Government all such bills as he and his colleagues might think proper. In the conversation which took place on the 19th February, about three weeks after the introduction of the railway measure, the Hon. M. De Boucherville alleges that I gave him "authorisation generally to lay money ques- "tions before the House," and adds "I considered I had a right to inform my colleagues "that I had your permission for all questions respecting money." Such a permission would have been wholly inconsistent with my repeated requests that everything should be submitted to me. But Mr. Angers, in order to cover the railway bill, changes the Hon. M. De Boucherville's language from "questions respecting money" to "all "measures which the public service required."

It is contended by those who are responsible for the omission to consult me at the proper time, that I ought to have notified them that I objected to their Bill at an earlier period.

I was placed in a position of great embarrassment, owing to the Hon. M. De Boucherville's reticence on the subject of the Government measures, and to the concealment from me of the petitions against the Bill, which I only had cognizance of after my request for information on the 25th of February.

When, in addition to the various reasons already given, I found that there was a strong objection to the Government measure on the part of the municipalities interested, I came to the conclusion that it would be most unwise to sanction such legislation, and that the removal of the Hon. M. De Boucherville as Premier was rendered necessary.

It has been made a subject of complaint by the Legislative Assembly, that I did not send for a member of the party in the majority of the existing House to form a new administration; but on reference to the documents accompanying the memorial, it will appear that I requested the Hon. M. De Boucherville to name the person for whom I should send, and that he declined to advise me.

Under the circumstances, I contend that in sending for the leader of the Opposition, I followed the constitutional practice.

The Hon. M. De Boucherville was the acknowledged leader of the party commanding the majority in the Legislature; but he had, in my judgment, failed in his duty to me as Lieutenant-Governor, and had in consequence forfeited my confidence.

To him chiefly I objected, and if proof were wanted that my judgment was in accordance with public opinion, it is only necessary for me to state that I have been assured, on authority on which I can rely, that at a meeting of the members of the party which supported the Hon. M. De Boucherville, M. Chapleau, whose signature stands first to the memorial, was chosen leader of the party, so that the correctness of my judgment has been acknowledged by the members of his own party.

Before closing this branch of the complaint of the memorialists, I may refer to their allegation that the appeal to the country, made on the advice of my present Council, was unsuccessful.

In support of that allegation they furnish a copy of a resolution adopted by a majority of one, when the House was not full, concealing the fact that the following resolution

was immediately adopted in a full House as an amendment and an addition to the one alluded to by the memorialists: " That nevertheless under the present circumstances, " this House believes it to be its duty to give a general and independent support to the " Government, in such a manner that the measures which it proposes may be submitted " to the judgment of this House."

They do not mention that out of the five elective members of the Hon. M. De Boucherville's Cabinet, three failed to secure their return to the House of Assembly, and that a considerable number of their supporters shared the same fate, while the Hon. M. Joly and his five colleagues in the Assembly were returned.

I may also add that all the measures introduced by the Government were adopted by the Legislative Assembly.

Although I have thought it right to notice this branch of the complaint, yet it is obviously not one affecting me personally. The dissolution was resorted to in strict accordance with constitutional practice, and the present Cabinet can only hold office while enabled by the Legislature to carry on the public business.

With regard to the second head of the complaint of the memorialists, I may observe that my letter to the Governor-General of the 18th March 1878, has been by numbers misunderstood.

It has been assumed that my object, in that letter, was to prefer new charges against the Hon. M. De Boucherville and his colleagues, on which to justify his dismissal. Such was far from being my intention. I conceived that in accordance with the practice followed by the Governor-General, who communicates freely and fully with the Imperial authorities on all subjects of interest, it was my duty, especially after the unauthorised statement made by M. Angers, in the House of Assembly, to apprise the Governor-General of all important circumstances preceding the dismissal of the Hon. M. De Boucherville.

The statement of M. Angers is defended by M. De Boucherville, although in my letter of the 4th March I defined, in the most precise manner, the documents which were to be communicated to the House.

As I had never seen M. Angers' memorandum I could not have permitted it to be communicated, and it is not denied that permission was necessary in order to justify the explanations.

I may observe that neither the Hon. M. De Boucherville, nor the memorialists, seem to have appreciated my objections to their first communication to the House of Assembly, which, in my letter to the Governor-General, I referred to as different from what was agreed on between the Hon. M. De Boucherville and myself.

It will be found, on reference to the papers, that when the Hon. M. De Boucherville, on the 2nd March, asked permission to give explanations, he expressly referred to " the " memorandum of the Lieutenant-Governor, and his replies thereto," the same documents to which I referred in my letter of the 4th March.

On the 2nd, I requested the Hon. M. De Boucherville, verbally, to delay the explanations, but, on the 4th, I addressed a letter to him, requesting him to communicate to the Houses that the adjournment from day to day was rendered necessary owing to the arrangements for the formation of a new Executive not having been completed.

I consider that I had just ground of complaint that M. Angers in making that communication announced that the Ministry had been dismissed; the consequence of which was that a prejudice was created against me, several days before the various documents could be laid before the House.

With regard to the two Bills in which irregularities had occurred, the Hon. M. De Boucherville confirms the accuracy of my statements regarding them.

If the Montmagny case was referred to by me in my letter to the Earl of Dufferin, it was in order to establish the fact that the Hon. M. De Boucherville was fully cognisant of my strong objection to any acts tending to substitute executive for judicial power, and that he therefore ought not to have introduced the provisions in the Railway Bill, substituting the Lieutenant-Governor in Council for the legal tribunals, without consulting me specially on the point.

The proclamations which were published in the " Official Gazette " without my signature were referred to in order to establish the fact that I had specially called the Hon. M. De Boucherville's attention to the irregularity of such proceedings, and that he had therefore no excuse for using my name without my special sanction.

The Hon. M. De Boucherville in alleging that the two proclamations mentioned in my memorandum were signed, omitting at the same time to state when, has endeavoured to create an impression that my statement is incorrect; I must re-affirm my previous statement, that both the proclamations referred to " were published with my signature in " the ' Official Gazette ' before my signature thereto was given."

In both cases I signed the proclamations after their publication, so as to prevent any irregularity, but I remonstrated at once with the Hon. M. De Boucherville verbally, and in a letter, dated 6th November. He expressed to me his regret at the occurrence, &c., &c.

I referred to these irregularities merely to prove that I had taken all possible means to convey to the Hon. M. De Boucherville my desire that my name should not be used without my express permission.

While referring to these proclamations I may observe, that by introducing words never used by me, viz., " for the despatch of business," the Hon. M. De Boucherville has endeavoured to convey the idea that I referred to the proclamation summoning Parliament " for the despatch of business," whereas it was what he terms " the mere formal one " on which I desired to confer with him, before the proclamation was published.

My attention having been drawn by my private secretary to the fact that these proclamations had been published before the original proclamations were signed, I sent my letter of the 6th November to the Hon. M. De Boucherville, who came at once to my office, where my private secretary brought a copy of the " Official Gazette " (the one of the 3rd November, 1877) to compare with the original proclamations, and it was only then, after the explanations alluded to, that I signed the originals in the presence of these gentlemen, for the reasons already alluded to.

I am not aware that there is any charge brought forward by the memorialists that I have not fully met, but if it should appear that there is, I undertake, on its being pointed out, to refute it in a satisfactory manner.

I venture to assert that various documents submitted by the memorialists do not establish the case on which they rely. It is, however, possible, that charges made in their petition may not strike me as of importance, or may be viewed in a different light by others, and I therefore deem it necessary to request that I may have the opportunity of refuting any specific allegations that may seem to be warranted by the allegations of the memorialists.

I have endeavoured to meet the various charges preferred against me in the memorial of Messieurs Chapleau, Church, and Angers, as explicitly as the nature of the case would admit.

I confess that I am not altogether clear as to the specific charges of the memorialists, some of which are of such character that I decline to qualify them, and I therefore may have omitted to notice some that may appear to others more formidable than they do to me. I will therefore simply affirm the correctness of every statement in my letter to his Excellency the Earl of Dufferin, of the 18th March last, and I will request that, if there is the least doubt as to any of them, or of any others that I may have made during the discussions consequent on the change of Ministry in March last, I may be afforded an opportunity of further explanations.

I have, &c.

The Hon. the Secretary of State for Canada, Ottawa.

(Signed) L. Letellier.

Department of the Secretary of State, Canada,
December 12, 1878.

Sir,

I am directed to acknowledge the receipt of your despatch of the 9th ultimo, in reply to the memorial of the Honourable Messrs. Chapleau, Church, and Angers, a copy of which was transmitted to you in my letter of the 22nd ultimo.

I have, &c.

(Signed) Edouard J. Langevin,
Under Secretary of State.

To his Honour the Lieutenant-Governor of Quebec.

Department of the Secretary of State, Canada,
December 17, 1878.

Sir,

I have been instructed to transmit to you herewith for your information, a copy of a letter from his Honour the Lieutenant-Governor of the Province of Quebec, in

answer to the memorial of yourself and the Honourable Messrs. Church and Angers, a copy of which was transmitted to his Honour on the 22nd ultimo.

I have, &c.

(Signed) EDOUARD J. LANGEVIN,
Under Secretary of State.

The Hon. J. A. Chapleau, Montreal.

(*Translation.*)

Department of the Secretary of State,
November 22, 1878.

SIR,

I AM instructed to transmit to you the enclosed copy of a petition of the Hon. Messrs. J. A. Chapleau, L. R. Church, and A. R. Angers, dated 17th November instant, and to request you to be good enough to transmit your remarks thereupon to the Department.

I have, &c.

(Signed) EDOUARD J. LANGEVIN,
Under Secretary of State.

His Honour
The Lieutenant-Governor of the Province of Quebec, Quebec.

REPLY OF PETITIONERS.

Canada, Province of Quebec.

To his Excellency the Right Hon. Sir John Douglas Sutherland Campbell, Marquis of Lorne, one of her Majesty's most honourable Privy Council, Knight of the most ancient and most noble Order of the Thistle, and Knight Grand Cross of the most distinguished Order of St. Michael and St. George, &c., &c., &c., in Council.

JOSEPH ADOLPHE CHAPLEAU, LEVI RUGGLES CHURCH, and AUGUSTE REAL ANGERS, by this their reply to the answer of the Lieutenant-Governor of Quebec, by them received this 18th day of December instant, to their petition, communicated to him by his Excellency the Administrator in Council, on the 22nd day of November last, respectfully say—

That the Lieutenant-Governor's plea to the jurisdiction of the Governor-General in Council on that subject-matter of the petition of the undersigned, is not well founded. It does not appear to the undersigned that there is any necessity to demonstrate that the petitioners had the right to petition the Governor-General in Council in this matter, and to conclude praying the Honourable the Privy Council to apply the provisions of the 59th section of the British North America Act of 1867 to the Lieutenant-Governor of Quebec :—" When it is necessary that the authority of the Crown should be exercised in public acts of government a Privy Council is convened, from whence Orders in Council and proclamations are promulgated." Todd, Vol. 1, page 233, of 1867.

This interpretation of the British North American Act of 1867 has been universally accepted, viz., that whenever the statute enacts that the Governor-General shall do anything, it has always been understood to mean the Governor-General in Council; the language of section 59 is in that respect identical with that of sections 24, 26, 32, 34, and 96, concerning the appointment of judges and senators; and the undersigned have yet to learn that any one has seriously contended that such powers were exercised by his Excellency individually and without the advice of his Council; and, moreover, the provision of section 59, which imposes the necessity of communicating the cause assigned for the removal of a Lieutenant-Governor to the Senate and House of Commons (to which the Governor-General is not personally responsible), shows that the act is not a personal one and done without the advice of his Council.

Moreover, the Lieutenant-Governor, in objecting to the jurisdiction of the Governor in Council, has, at the same time, undeservedly imputed motives to the undersigned by stating that the " memorialists had wholly ignored the office and position of the " Governor-General, a circumstance which he said he chiefly noticed, because it was in " accordance with the practice which they followed as Executive councillors towards " the Lieutenant-Governor." It will appear strange that the Lieutenant-Governor should have indulged in these comments, when in his own letter of the 1st March 1878, to the Honourable M. De Boucherville, referring to Messrs. Angers and Church,

he admits that " those gentlemen had done nothing willingly not in conformity with the " duties of their office." The undersigned can only protest against such insinuations against their loyalty and devotion to the Crown and the Representative of the Sovereign, whilst they resent the unfair and untrue suggestions of the motives which it is claimed actuated them. The ability of his Honour, Mr. Letellier, to interpret the Constitutional Act may be judged of by the manner in which he has dealt with the question of jurisdiction.

The whole question raised by the Lieutenant-Governor to justify the dismissal of his ministers is really reduced to this:—" I have never been consulted upon two important " questions of the session, and my positive assertion upon this point has never been " denied."

Not only is this pretension contested, but the explanations given by Mr. De Boucherville to the Lieutenant-Governor, in his letter of the 27th of March, were accepted and considered by him as sufficient to establish the perfect good faith of the Prime Minister and his colleagues.

What are the facts?

On the 28th of January a general authorisation respecting finances is asked from the Lieutenant-Governor; on the 29th that authorisation is transmitted in blank to the Prime Minister; the resolutions concerning the collection of the municipal subscriptions to the Government railway are introduced on the 30th; on the 31st the estimates are laid before the House, with a complete financial *exposé* by the Treasurer, explaining his ways and means for the next year, and announcing in the most distinct manner the new tax required for the public service and for which a bill was announced. A lively debate is immediately engaged, both in the House and the public press on the subject of those two financial questions. On the following days the Railway Bill, affecting municipal subscriptions, is introduced and goes through its various stages. On the 19th of February a conversation takes place with respect to the Railway Bill between the Prime Minister and the Lieutenant-Governor. The latter, as he himself admits in his letter of the 1st of March, then expressed, it is true, his regret at seeing that measure before the House, but in no way does he demand that it should be withdrawn, or even suspended. Notwithstanding the official knowledge that the Lieutenant-Governor had of the progress of these two measures in the House, a fact that he has never yet denied, the Lieutenant-Governor does not think it his duty to interfere and ask his ministers to withdraw that legislation. Confident that he possessed the authorisation of the Lieutenant-Governor, and relying upon the acquiescence implied by the conversation which took place between them, that these measures might be submitted and discussed in the House, the Prime Minister had them passed through both Houses. And in the face of all this can the Lieutenant-Governor pretend that this legislation was never made known to him, and that he was never consulted about it?

Such a pretension was so untenable that the Lieutenant-Governor, wishing to prevent the effect of the ministerial explanations and of the solemn protest of both Houses, transmitted to the Governor-General and to the Federal Parliament, thought it necessary to address to his Excellency Lord Dufferin, his explanatory case, dated the 18th of March 1878.

Dealing with that part of the Lieutenant-Governor's answer which bears upon one of the charges contained in the petition, and in which he states, in contradiction to official and authentic documents, that he signed the proclamations referred to " after their publication," the undersigned represent that this explanation is of no value, it cannot be received to contradict authentic documents and is of no value in presence of the facts established by the proclamations bearing his signature and the dates at which they were signed; it is difficult to understand how the Lieutenant-Governor can bear evidence against his own signature and expect that his statement upon the point can be credited, and it is to be noted that such statement was omitted in the Lieutenant-Governor's despatch to the late Governor General, the Earl of Dufferin.

To disprove his expressions of confidence in Mr. De Boucherville in sending him a blank signed in answer to a demand of authorization to introduce " resolutions respecting finances," the Lieutenant-Governor now states that this blank was sent to his private secretary. This statement is inaccurate; it was sent to the honourable Mr. De Boucherville, as admitted by the Lieutenant-Governor in his letter of the 1st day of March last.

In proof of the fact that the day of thanksgiving was appointed after consulting with the Lieutenant-Governor, as shown by the Order in Council previously approved by him, and moreover, at his special request, the undersigned refer to the letter of the Hon.

Mr. Mackenzie to the Lieutenant-Governor on the subject, which may be found at Ottawa.

The charge of concealment from the Lieutenant-Governor of petitions against the Railway Bill is a new one; it is gratuitous and unsupported by any evidence; they had not been laid 24 hours before the Executive Council when they were communicated to the Lieutenant-Governor.

The Lieutenant-Governor states again that the explanations given by Mr. Angers to the House were unauthorised. In refutation, and to make this point clear, it is only necessary to refer to Mr. De Boucherville's statement in which he affirms he was verbally authorised to communicate to the House the correspondence exchanged between him and the Lieutenant-Governor, and to give explanations, and also to the written answer made by Mr. De Boucherville to the Lieutenant-Governor's letter on the 4th day of March last.

Referring to what the Lieutenant-Governor calls discrepancies between the statements of the Hon. Mr. De Boucherville and those of Mr. Angers by simply reading the latter's explanations to the Legislative Assembly they show that he did not quote the Hon. Mr. De Boucherville, but gave what was understood to be the extent of the authorisation which Mr. De Boucherville had from the Lieutenant-Governor.

In relation to the fact whether Mr. De Boucherville's statement corroborates the allegation of the Lieutenant-Governor on the two Bills in which inaccuracies had occurred, reference may be had to Mr. De Boucherville's letter of the 2nd April last, to the Governor-General. It completely disproves the allegation that Mr. De Boucherville requested the Lieutenant-Governor to give his sanction to the Bill to provide for the safety of the public in theatres, &c., in the state in which it was; "the conciliatory spirit which I showed," said the Lieutenant-Governor, "in granting my consent seemed to please him." This statement is shown to be erroneous by the Statute Book of 1876, cap. 20, amending cap. 19, and there was no occasion for the pretended consent to pass the Bill in the state in which it was "nor for the satisfaction of Mr. De Boucherville at the pretended" conciliatory spirit of the Lieutenant-Governor.

The allegation that the Lieutenant-Governor passed over the instance of irregular legislation in the case of a Bill to authorise the formation of Societies for the improvement of country roads, &c, is also completely explained in the same letter of Mr. De Boucherville of the 2nd April last. Reference might be made to the reports of the Attorney-General of Quebec and of the Honourable the Minister of Justice on this subject, and then it will appear most strange that the Lieutenant-Governor should say; "as a favour to him (Mr. De Boucherville) I passed over this instance of irregular "legislation which was then irreparable."

The constant reference made by the Lieutenant-Governor to the Montmagny case may require once for all the remark that there never was in this case, or in any other, the intentions to substitute the action of the executive to that of the judiciary, and that the Government in this matter acted in strict accordance with the law, as shown by the report of Mr. Angers, dated 15th March 1877 (*vide* return to Legislative Assembly, p. 12). But in this instance the application of the law did not suit the views of the party opposing the Government, and they corresponded with the Lieutenant-Governor not as is required by constitutional practice through his ministers, but with him personally (*vide* same return, p. 16), thereby delivering himself over to external and irresponsible advisers, and they prevailed upon him to cancel the appointment of Jules Belanger, made by himself upon the advice of his minister, to which cancellation the Government seeing the persistency of the Lieutenant-Governor on the subject, in opposition to the Attorney-General's report, acquiesced out of deference to the Lieutenant-Governor, and so stated to him at the time such acquiescence was made.

The Lieutenant-Governor, attempting to offer a justification for neglecting to accept the protest of the majority of the House, declaring that it had not and could not have any confidence in any Government which might be formed out of the party composing the majority, says that M. De Boucherville after his dismissal had declined to advise him on the person for whom he should send. It is plain that M. De Boucherville being dismissed could not offer any advice. It is easy to foresee of what little importance M. De Boucherville's advice would have been when the advice and protest of the House on the subject, expressed in its address, did not prevent the Lieutenant-Governor from seeking his advisers in the ranks of the minority, which fact entailed the necessity and expense to the province of a dissolution.

The Lieutenant-Governor says: " I have been assured on authority on which I can rely that at a meeting of the members of the party which supported M. De Boucherville, Mr. Chapleau, whose signature stands first to the memorial, was chosen leader of the party, so that the correctness of my judgment has been acknowledged by the members of his own party."

After the general elections it was necessary that the Conservative party should choose a leader in the Legislative Assembly, M. De Boucherville being leader and member of the Legislative Council. This was done at a private caucus of the party, but the undersigned entirely fail to see what this had to do with, or in what way it sustains, the correctness of the Lieutenant-Governor's judgment.

The Lieutenant-Governor lays great stress on the fact that at the general elections of the 1st of May last his Ministry was sustained by a majority, and that the said majority supported him in the House. That reason might perhaps be invoked by the Cabinet of Mr. Joly, and even then the English precedents ought to have convinced him that a ministry sustained by the vote of the Speaker alone, chosen and elected by ministerial influence, is not considered as having a constitutional majority in the parliamentary acceptation of the term. Only lately her Majesty refused to give her sanction to Acts passed in a British colony, where they had been carried by the preponderating vote of the Speaker, and in the present case the well known facts in connexion with the election of the Speaker of the House are hardly of a nature to increase the importance of his vote.

The resolution passed at the last Session censuring the formation of the new Government taken from the ranks of the minority, had a peculiar signification under the circumstances.

In decreeing a dissolution of the Legislature, the Lieutenant-Governor had himself declared that he desired to know in a more constitutional manner the sentiments of the people of this province on the actual state of public affairs, and on the ministerial changes which had just taken place. The First Minister had also opened the electoral campaign by an appeal to the electors of the province, in which he solicited their approbation of the course adopted on the 2nd of March.

The majority of the members of the Legislative Assembly condemned that action, but as public works of great magnitude were then in progress, they did not consider themselves justified in refusing to concur in a general and independent manner with the measures of the Government.

It is well known that the session had been called together chiefly to obtain a vote of supply, and no legislation of importance, with the exception of a measure of the late Government for handing over to the Minister of Public Works the construction of the Provincial railway, was passed.

It was with this view that the supplies were voted, but not without the solemn protest contained in the direct motion of want of confidence which preceded the granting of the supplies.

At all events this majority cannot be invoked by the Lieutenant-Governor to justify his conduct, " Le succes ne fait jamais le droit." Success is not justification, and the electors would learn with consternation that a functionary of the Federal Government (when neither the people of the Province nor their representatives can constitutionally punish nor even censure) is to be protected from all censure and all punishment from those to whom alone he is directly responsible, provided that by his violation of the constitution he can procure a majority, all the more easily obtained that one is less scrupulous as to the means of obtaining it by his certitude of absolute impunity. In his memorandum of the 18th March the Lieutenant-Governor tells his Excellency that he is reluctantly compelled to make revelations concerning the conduct of his Ministers, to maintain the dignity of his office, to prove that his object has always been to protect the constitutional liberties of the people, and, finally, " because the " existence of the constitution is at stake." We, on the contrary, most respectfully hold that never has the constitution received a more severe blow. The responsibility of the Ministers for all the acts of the head of the State, and the absolute immunity of the latter, imply, necessarily, an entire reciprocal confidence, and the inviolability of the secrecy of their advice and counsel. No one can dispense with this rule without making responsible government an impossibility. If the head of the State were allowed, after the struggle of parties has terminated in the House by the adoption of a measure,

to come and accuse his Ministers of having acted through sordid motives or in any other reprehensible way, ministerial responsibility would be no more. Such an act from a constitutional monarch would be a violation of the fundamental principles of responsible government, and would expose him to dangerous conflicts with his Parliament. How much more so does such an act by a public officer who is responsible to a higher authority deserve reproof and punishment?

The Lieutenant-Governor, after assuming his office, as he admits himself, gets persuaded that ministerial and administrative changes have become necessary, and determines to use the influence attached to his position to realise what he deems to be to the best advantage of the Province. The Prime Minister, acting in accordance with the wishes of a large majority of the national representation, follows a policy which does not commend itself to the personal opinions of the Lieutenant-Governor. Immediately the Lieutenant-Governor takes for mistrust or insubordination what was simply the respect for the people's will. The most insignificant details are carefully criticised, confidential conversations are secretly noted, involuntary mistakes of the employés are charged as grave errors of administration. Lastly, taking advantage of the confidence which his Prime Minister had placed in him, and the good faith with which he interpreted his words and acts, he knowingly allows the vote to be taken in both Houses on measures introduced by his Cabinet, and then suddenly thwarts and arrests that legislation. He respects neither the decisions of both Houses regarding these measures nor the confidence of the Houses in his Ministry, nor the energetic protestations of both branches of the Legislature claiming the free exercise of representative government. He dismisses his Ministers and brusquely dissolves Parliament.

Then, to explain his conduct, the Lieutenant-Governor forwards to his Excellency Lord Dufferin his memorandum dated the 18th of March, which alone, we humbly submit, would be enough to justify the dismissal of the Lieutenant-Governor. In that factum, under the pretence of defending the prerogative of the Crown, the Lieutenant-Governor divulges, in misconstruing them, certain acts and confidential conversations the secret of which is considered as sacred by the Sovereign himself.

The Honourable Mr. De Boucherville, in his letter to his Excellency, has replied to the said factum, and the undersigned think they have completed that answer by their present rejoinder.

Among the allegations of that factum, one stands above all the others, and constitutes, in effect, an accusation of malversation.

The Lieutenant-Governor accuses the Prime Minister and his colleagues of nothing less than having yielded to dishonest combinations or "rings" in the House, of having granted considerable sums of money, as subsidies to railway companies, while acting under their pernicious influence, and then he adds:—"When he made no attempt to escape from that deletorious influence, after his own avowal that the Legislature was controlled by those rings; when by his legislation he sought to favour them anew during the last session, without having previously advised with me, had I not the right, as the representative of my Sovereign, to believe and to be convinced that M. De Boucherville did not possess a constitutional majority in the Legislative Assembly."

In other words, the Lieutenant-Governor accuses his Ministers of having deliberately introduced legislation with the venal object of enriching private parties; of having resisted the benevolent and charitable advice that he, the Lieutenant-Governor, was giving them, and of having allowed even, "during the last session," the continuation of the said dishonest legislation without consulting him beforehand and against his former advice.

We emphatically deny the truth of these allegations.

Since the De Boucherville Government undertook the construction of the great Provincial railway, they have added nothing to the aggregate of the obligations they entered into at the outset with the railway companies. On the contrary, when the opposition (which the Lieutenant-Governor called on the 2nd March last to advise him), was asking, while in opposition, that new grants be made for the Southern railway as a compensation for the amount the public treasury was pledged to spend on the construction of the Provincial line on the North Shore of the St. Lawrence, the Government of M. De Boucherville resisted the demands. It is a fact of public notoriety that frequent and numerous delegations beseiged the Prime Minister, in view of getting some

advantages by way of increased subsidies for the railway enterprises in which those delegations were interested, and that they created quite an opposition to him on account of his refusing to yield to their demands.

But a still more remarkable fact is, that the measure introduced the Session before last by the De Boucherville Administration, concerning railway enterprises, a measure granting no new subsidies, but applying in a special way the subsidies to which the companies were entitled, and which is the measure to which the Lieutenant-Governor alludes in the passage of his memorandum just quoted, that measure was adopted and carried through without any notification by the new ministry, and afterwards sanctioned by the Lieutenant-Governor.

The undersigned respectfully contends that this accusation of the Lieutenant-Governor against his Ministers, in such a violation of the confidence he owes to his advisers, and such a misrepresentation of their conduct and of his own, that it renders impossible the service of the State under a chief who thus tries to destroy instead of defending the honour of his Ministers.

The charges now submitted to the consideration of your Excellency, are but the echo of the grievances expressed in the addresses passed by the Legislature of Quebec, and forwarded to the Governor-General, the Senate and the House of Commons, in March last. They are also to be found in the correspondence between the Lieutenant-Governor and M. De Boucherville, in the answer of M. De Boucherville to the " explanatory case" of the Lieutenant-Governor to his Excellency Lord Dufferin, and finally in the additional documents referred to in the memorial of the undersigned.

These grievances may be summed up in the following manner:

1st. The Lieutenant Governor, in dismissing his ministers when they enjoyed the confidence of both Houses of the Legislature, and when they had not been guilty, as the Lieutenant-Governor admits, of any wilful want of respect for the prerogative of the Crown, has violated the principle of responsible government.

2nd. The Lieutenant-Governor in giving as his reasons for the dismissal of his ministers, the introduction without his consent of two bills having reference to the financial interests of the Province, after he had really given his authorisation to these measures and after these measures had been fully discussed and voted upon in the Legislative Assembly, has been guilty of a breach of good faith towards his advisers and of want of respect to the Legislature.

3rd. The Lieutenant-Governor in his explanations laid before his Excellency Lord Dufferin has divulged the secrets of his advisers, giving an inaccurate version and a false interpretation to the words and actions, he has attacked the authenticity of public records, questioned measures and acts of administration which he had long before sanctioned, and has rendered illusory and impossible all guarantees for that mutual confidence which should ever exist between the chief of the executive and his advisers.

The undersigned have not attempted to follow and discuss all the matters referred to in the original memorial, nor in some instances to re-adduce proofs and reflections therein contained, which answers explain or contravert allegations made from time to time and in different documents by the Lieutenant-Governor. The record must be considered as a whole, add from it, and in it will be found ample grounds for all they have advanced and asserted against the Lieutenant-Governor, whilst it demonstrates the necessity which exists that the constitutional rights of the people should be vindicated.

Wherefore, your petitioners persist in the conclusions of their petition and pray as in and by the same they have already prayed.

(Signed) J. A. Chapleau,
L. Ruggles Church,
A. R. Angers.

Montreal, December 19, 1878.

Exhibit No. 1.

No. 41.—Votes and Proceedings of the Legislative Assembly of the Province of Quebec.—Quebec, Friday, 8th March 1878.

The following petition was received and read, namely :—

Of Benjamin Gagné, Esquire, of St. Nicholas, County of Lévis ; praying amendments to the notarial tariff.

Mr. Speaker reported to the House, that he, yesterday, presented to his Excellency the Lieutenant-Governor, the address of the Legislative Assembly, expressing their loyalty to Her Majesty Queen Victoria, and entire submission to the constitution ; that his Excellency received him graciously and gave the following reply :

L. Letellier,

Gentlemen of the Legislative Assembly ;

I thank you for the expression of loyalty and attachment to Her Majesty Queen Victoria contained in your address, and I receive with pleasure the assurance of your entire submission to the constitution.

In the exercise of the rights and prerogatives of the Crown, I, last Saturday, entrusted Mr. Joly with the duty of forming a new administration, and the result of his labours will be communicated to you to-morrow.

Government House,
Quebec, 7th March 1878.

The Honourable Mr. Laframboise, seconded by Mr. Watts, moved,—

That Bill (No. 90) for granting to Her Majesty certain sums of money required for defraying certain expenses of the civil government for the fiscal years ending on the thirtieth day of June one thousand eight hundred and seventy-eight, and on the thirtieth day of June one thousand eight hundred and seventy-nine, and for other purposes connected with the public service, be now read a second time.

Mr. Loranger, seconded by Mr. Lynch, moved,—

That the following address be presented to his Excellency the Governor-General of the Dominion of Canada, to the Senate and House of Commons of Canada, and to his Excellency the Lieutenant-Governor of the Province of Quebec.

To his Excellency the Honourable Luc Letellier de St. Just, Lieutenant-Governor of the Province of Quebec.

"The humble Address of the Legislative Assembly of the Province of Quebec, respectfully showeth :

That it appears from the explanations given by the Honourable Mr. Angers, and from the official correspondence communicated to this House, that his Excellency the Lieutenant-Governor acknowledges that the Members of the De Boucherville Cabinet have acted in good faith in the discharge of their duties ;

That his Excellency has allowed the measures submitted by his Government to this House and to the Legislative Council, to be discussed and voted upon without order on his part to suspend them ;

That, whilst asserting their devotion to Our Gracious Sovereign and their respect towards his Excellency the Lieutenant-Governor of this Province, this House is of opinion :

That the dismissal from office of the De Boucherville Cabinet, having taken place without reason, constitutes an eminent danger to the existence of responsible Government in this Province ; is an abuse of power in contempt of the majority of this House, whose confidence they possess and still possess, and is a violation of the liberties and will of the people ;

And your petitioners will ever humbly pray."

And, objection having been taken that the said proceeding was not in order, inasmuch as the proceedings of this House and debates on questions cannot be suspended to discuss questions of privilege,

Mr. Speaker ruled :

"That the question now before the House is a question of privilege, and must consequently be now taken into consideration."

And another objection having been taken, that this motion tends to censure the conduct of the Lieutenant-Governor, and is in consequence out of order,

Mr. Speaker ruled:

It is a principle of a constitutional Government that the Crown can commit no wrong. The Lieutenant-Governor represents the Crown in our Legislature. It is, therefore, necessary that there should always be around the Sovereign and the Lieutenant-Governor, advisers, Ministers who are always to bear the responsibility which cannot be laid upon the Crown, and of this responsibility there cannot be a solution of continuity. And, although in Addresses the words "Lieutenant-Governor" are used as in measures brought before the House, by the very nature of our constitution these words are addressed only to the Ministers, who are responsible to the House. The Sovereign, in the person of Her representative, is never in question. In the present case the reproaches contained in the motion are addressed to the advisers of his Excellency the Lieutenant-Governor. I, therefore, rule it to be in order.

Mr. Speaker, under the provision of chapter 4 of the Statutes of the Province of Quebec, 31st Victoria, called upon Mr. Taillon to take the Chair during his temporary absence.

After a short time, Mr. Speaker resumed the Chair.

The House having continued to sit until twelve o'clock midnight.

Saturday, 9th March 1878.

The question on Mr. Loranger's motion, having been put, was agreed to on the following division:

YEAS.

MM. Alleyn, Angers, Baker, Champagne, Chapleau, Charlebois, Church, Deschenes, Dulac, Dupont, Fortin (Gaspé), Fradette, Garneau, Gauthier, Houde (Maskinongé), Houde (Nicolet), Kennedy, Lacerte, Lalonde, Larochelle, Lavallée, Le Cavalier, Loranger, Lynch, Martin, Mathieu, McGauvran, Picard, Sawyer, St. Cyr, Taillon, Tarte, Turcotte, and Wurtele.—34.

NAYS.

MM. De Beaujeu, Fortin (Montmagny), Laberge, Lafontaine, Lafromboise, Molleur, Pâquet, Préfontaine, Rinfret dit Malouin, Shehyn, Sylvestre, and Watts.—12.

Mr. Loranger, seconded by Mr. Lynch, moved that the said address be engrossed and signed by Mr. Speaker, and that it be transmitted to his Excellency the Lieutenant-Governor of the Province of Quebec, with prayer that he transmit the same to his Excellency the Governor-General of Canada, and that the said address be also transmitted to the Senate and House of Commons of Canada.

Which motion was adopted on the same division.

And the question having been again put that Bill (No. 90) for granting to Her Majesty certain sums of money required for defraying certain expenses of the civil Government for the fiscal year ending on the thirtieth day of June one thousand eight hundred and seventy-eight, and on the thirtieth day of June one thousand eight hundred and seventy-nine, and for other purposes connected with the Public Service, be now read a second time.

The Honourable Mr. Angers moved, seconded by the Honourable Mr. Church, that all the words after "Public Service" be struck out and replaced by the following: "be not now read, but that the reading thereof be suspended until such time as justice "shall have been rendered to the majority of this House, inasmuch as when the "resolutions upon which the said Bill is based were adopted, the Cabinet charged with "the public business enjoyed the confidence of this House and of the country; whilst "the present Administration does not possess that confidence."

Which amendment was agreed to on the following division:—

YEAS.

MM. Alleyn, Angers, Baker, Champagne, Chapleau, Charlebois, Church, Deschênes, Dulac, Dupont, Fortin (Gaspé), Fradette, Garneau, Gauthier, Houde (Maskinongé), Houde (Nicolet), Kennedy, Lacerte, Lalonde, Larochelle, Lavallée, Loranger, Lynch, Martin, McGauvran, Picard, Sawyer, St. Cyr, Taillon, Tarte, Turcotte, and Wurtele. —32.

NAYS.

MM. De Beaujeu, Fortin (Montmagny), Laberge, Lafontaine, Laframboise, Mathieu, Molleur, Pâquet, Préfontaine, Rinfret dit Malouin, Shehyn, Sylvestre, and Watts.—13.

The main motion as amended was then carried on the same division.

Mr. Mathieu, seconded by Mr. Champagne, moved,

That the Speaker do immediately issue his warrant, addressed to the Clerk of the Crown in Chancery for the new writs for the election of Members to serve in the present Parliament for the Electoral Division of Lotbinière, for the Electoral Division of St. Hyacinthe, for the Electoral Division of St. John's, for the Electoral Division of Rimouski, in the place of Henri Gustave Joly, Esquire, Pierre Bachand, Esquire, Felix G. Marchand, Esquire, and Alexandre Chauveau, Esquire, who, since their respective elections as representatives of the above mentioned Electoral Divisions, have accepted an office of Emolument under the Crown, by which acceptance the seats of the said Henri Gustave Joly, Pierre Bachand, Felix G. Marchand, and Alexandre Chauveau have become vacant.

The Honourable Mr. Angers, seconded by the Honourable Mr. Church, moved in amendment to the said motion,

That the words "and this House, whilst ordering the issue of the said writs, deem it "to be their duty to declare that the Administration whose formation created these "vacancies does not possess the confidence of this House, nor that of the country," be added to the end thereof.

Which amendment was agreed to on the following division:—

YEAS.

MM. Alleyn, Angers, Baker, Champagne, Chapleau, Charlebois, Church, Deschenes, Dulac, Dupont, Fortin (Gaspé), Fradette, Garneau, Gauthier, Houde (Maskinongé), Houde (Nicolet), Kennedy, Lacerte, Lalonde, Larochelle, Lavallée, Loranger, Lynch, Martin, Mathieu, McGauvran, Picard, St. Cyr, Taillon, Tarte, Turcotte, and Wurtele. —32.

NAYS.

MM. De Beaujeu, Fortin (Montmagny), Laberge, Lafontaine, Laframboise, Molleur, Pâquet, Préfontaine, Rinfret dit Malouin, Shehyn, Sylvestre, and Watts.—12.

The main motion as amended was then carried on the same division.

On motion of the Honourable Mr. Laframboise, seconded by Mr. Watts, it was

Resolved,—That when this House adjourns it do stand adjourned until three o'clock p.m. this day.

A message was received from the Legislative Council agreeing to—

Bill (No. 20), intituled "An Act to amend Chapter 77 of the Consolidated Statutes "for Lower Canada, respecting the Court of Queen's Bench, with an amendment to "which they desire the concurrence of this House."

Also the following bills without amendments:—

Bill (No. 11), intituled "An Act respecting the notification for and the attendance at "the removal of Seals and Inventories."

Bill (No. 55), intituled "An Act to amend certain articles of the Municipal Code of "the Province of Quebec."

Bill (No. 84), intituled "An Act to provide for the giving notice of Sheriff's sale to "hypothecary creditors."

Bill (No. 96), intituled "An Act to further amend the laws respecting Public "Instruction in this Province;" and

Bill (No. 100), intituled "An Act to amend Chapter 69 of the Consolidated Statutes "for Lower Canada, respecting Building Societies in the Province of Quebec."

And the House then adjourned.

(Signed) LOUIS BEAUBIEN, Speaker.

Exhibit No. 2.

FRIDAY, 8TH MARCH 1878.

The Honourable Legislative Councillors convened were:

The Honourable Henry Starnes, Speaker:

The Honourable Messieurs

Archambeault,	Gaudet,	Le Maire,	Ross,
Boucherville, de	Gingras,	Léry, de	Roy,
Bryson,	Hearn,	Panet,	Webb,
Dionne,	La Bruère, de	Proulx,	Wood.
Dostaler,	Laviolette,	Prudhomme,	

The following petitions were severally brought up and laid on the table :—

By the Honourable Mr. Ross, of the Sisters of Providence of the Cote-St. Louis.

By the Honourable Mr. Hearn, of the Board of Trade of Quebec.

The following petitions were read and received :—

Of the inhabitants of the township of Woodbridge, county of Kamouraska, praying for the refund of the amount due by them to the Government on their lots.

Of the Board of Trade of Quebec, opposing the Quebec, Montreal, Ottawa, and Occidental Railway Act.

Hon. Mr. de La Bruère, seconded by Hon. Mr. Webb, moved,—

That the following address be presented to his Excellency the Governor-General of the Dominion of Canada, to the Senate and to the House of Commons of Canada, and to his Excellency the Lieutenant-Governor of the Province of Quebec.

To his Excellency the Honourable Luc Letellier de St. Just, Lieutenant-Governor of the Province of Quebec.

"The humble address of the Honourable Legislative Council of the Province of Quebec, respectfully showeth,—

That it appears from the explanations given by the Hon. M. De Boucherville, and from official correspondence communicated to this House, that his Excellency the Lieutenant-Governor acknowledges that the members of the De Boucherville Cabinet acted in good faith in the discharge of their duties.

That his Excellency permitted the bills submitted to this House and to the Legislative Assembly to be discussed and voted upon, without any order on his part to suspend them.

That whilst expressing its loyalty and devotion to our Gracious Sovereign, and its respect for the Lieutenant-Governor of this Province, this House is of opinion :

That the dismissal from office of the De Boucherville Cabinet, having taken place without sufficient cause, constitutes an imminent danger to the maintenance of responsible government in this Province, is an abuse of power exercised in contempt of the majority of both Houses, whose confidence they possessed and still possess, and a violation of the rights and will of the people."

And, objection being taken by the Hon. Mr. Archambeault that this motion is not in order, because the notice required by the 28th Rule of this House had not been given,

The Speaker decided that the said motion is not in order.

And the decision of the Speaker being appealed from by the Hon. Mr. de La Bruère, for the reason that this motion being a motion of privilege and of urgency, does not require the usual notice demanded by the 28th Rule of this House.

The question was put, and the House reversed the decision of the Speaker.

And the question of concurrence being put on the said motion, it was unanimously resolved in the affirmative.

Then, on motion of the Hon. Mr. de La Bruère, seconded by the Hon. Mr. Webb, it was

Ordered, That the Address be engrossed and signed by the Speaker of this House, and be by him transmitted to his Excellency the Lieutenant-Governor of the Province of Quebec, praying his Excellency to transmit it to his Excellency the Governor-General of the Dominion of Canada, to the Senate and to the House of Commons of Canada.

The Order of the Day was read for the third reading of the Bill (No. 20) intituled : "An Act to amend chapter 77 of the Consolidated Statutes of Lower Canada, respect-"ing the Court of Queen's Bench."

The Hon. Mr. Archambeault moved :—

That the said Bill, as amended, be now read a third time.

The question was put whether this Bill, as amended, should pass ? It was

Resolved in the affirmative.

Ordered, that the Clerk go down to the Legislative Assembly and acquaint that House that the Legislative Council have passed this Bill with several amendments, to which they desire the concurrence of the Legislative Assembly.

The Order of the Day was read for putting the House into Committee of the Whole for the consideration of Bill (No. 11) intituled : "An Act respecting the notification for "and the attendance at the removal of seals on inventories."

The House adjourned during pleasure, and was put into Committee of the Whole.

After some time the House was resumed.

The Honourable Mr. Wood, from the said Committee, reported that they had gone through the said Bill, and had directed him to report the same without amendment.

On motion of the Honourable Mr. de La Bruère, it was

Ordered, that the said Bill be read a third time presently.

The said Bill was then accordingly read a third time.

The question was put whether this Bill shall pass? It was

Resolved in the affirmative.

Ordered, that the clerk do go down to the Legislative Assembly and acquaint that House that the Legislative Council have passed this Bill without any amendment.

The Order of the Day was read for putting the House into Committee of the Whole for the consideration of Bill (No. 55) intituled, "An Act to amend certain articles of the "Municipal Code of the Province of Quebec."

The House adjourned during pleasure, and was put into Committee of the Whole.

After some time the House was resumed.

The Honourable Mr. Bryson, from the said Committee, reported that they had gone through the said Bill, and directed him to report the same without amendment.

On motion of the Honourable Mr. Laviolette, it was

Ordered, that the said Bill be read a third time presently.

The Bill was then accordingly read a third time.

The question was put whether this Bill shall pass? It was

Resolved in the affirmative.

Ordered, that the clerk do go down to the Legislative Assembly and acquaint that House that the Legislative Council have passed this Bill without any amendment.

The Order of the Day was read for putting the House into Committee of the Whole for the consideration of Bill (No. 84) intituled, "An Act to provide for the giving "notice of Sheriff's sales to hypothecary creditors."

The House adjourned during pleasure, and was put into Committee of the Whole.

After some time the House was resumed.

The Honourable Mr. Hearn, from the said Committee, reported that they had gone through the said Bill, and had directed him to report the same without amendment.

On motion of the Honourable Mr. de La Bruère, it was

Ordered, that the said Bill be read a third time presently.

The said Bill was then accordingly read a third time.

The question was put whether this Bill shall pass? It was

Resolved in the affirmative.

Ordered, that the clerk do go down to the Legislative Assembly and acquaint that House that the Legislative Council have passed this Bill without any amendment.

The Order of the Day was read for putting the House into Committee of the Whole, for the consideration of Bill (No. 96) intituled, "An Act to further amend the laws "respecting Public Instruction in this Province."

The House adjourned during pleasure, and was put into Committee of the Whole.

After some time the House was resumed.

The Honourable Mr. Dionne, from the said Committee, reported they had gone through the said Bill, and directed him to report the same without amendment.

On motion of the Honourable Mr. Archambeault, it was

Ordered, that the said Bill be read a third time presently.

The said Bill was then accordingly read a third time.

The question was put whether this Bill shall pass? It was

Resolved in the affirmative.

Ordered, that the clerk do go down to the Legislative Assembly and acquaint that House that the Legislative Council have passed this Bill without any amendment.

The Order of the Day was read for putting the House into Committee of the Whole for the consideration of Bill (No. 100), intituled, "An Act to amend chapter 69 of the "consolidated statutes for Lower Canada, respecting building societies in the Province "of Quebec."

The House adjourned during pleasure, and was put into Committee of the Whole.

After some time the House was resumed.

The Honourable Mr. Archambeault, from the said Committee, reported that they had gone through the said Bill, and directed him to report the same without amendment.

On motion of the Honourable Mr. Hearn, it was

Ordered, that the said Bill be read a third time presently.

The said Bill was then accordingly read a third time.

The question was put whether this Bill shall pass? It was

Resolved in the affirmative.

Ordered, that the clerk do go down to the Legislative Assembly and acquaint that House that the Legislative Council have passed this Bill without amendments.

The Order of the Day was read for putting the House into Committee of the Whole for the consideration of Bill (No. 109), intituled, "An Act to further amend the law "respecting subsidies in money made to certain railway companies."

On motion of the Honourable Mr. De Boucherville, it was

Ordered, that the said Order be postponed until to-morrow.

A message was brought from the Legislative Assembly by their clerk, with a Bill (No. 12), intituled, "An Act respecting the proof of heirship or of legateeship," to which they request the concurrence of this House.

The said Bill was read for the first time.

On motion of the Honourable Mr. de La Bruère, it was

Ordered that the said Bill be read a second time to-morrow.

A message was brought from the Legislative Assembly by their clerk, with a Bill (No. 83), intituled, "An Act to amend and consolidate the Quebec License Act and "its amendments," to which they request the concurrence of this House.

The said Bill was read for the first time.

On motion of the Honourable Mr. Archambeault, it was

Ordered that the said Bill be read a second time to-morrow.

A message was brought from the Legislative Assembly by their clerk, with a Bill (No. 108), intituled, "An Act respecting the indemnity to petty jurors, in criminal "cases," to which they request the concurrence of this House.

The said Bill was read for the first time.

On motion of the Honourable Mr. Archambeault, it was

Ordered that the said Bill be read a second time to-morrow.

A message was brought from the Legislative Assembly by their clerk, with a Bill (No. 112), intituled, "An Act to amend the Act 20 Vic. ch. 25, respecting the Quebec "North Shore Turnpike Roads," to which they request the concurrence of this House.

The said Bill was read for the first time.

On motion of the Honourable Mr. Hearn it was

Ordered that the said Bill be read a second time to-morrow.

A message was brought from the Legislative Assembly by their clerk, with a Bill (No. 104), intituled, "An Act to impose a stamp duty on contract notes, and on certain "deeds and instruments," to which they request the concurrence of this House.

The said Bill was read for the first time.

The Honourable Mr. Archambault moved,—

That when this House do adjourn, it do stand adjourned until to morrow at 11 'clock A.M.

And the question of concurrence being put on the said motion, it was

Resolved in the affirmative.

Then, on motion of the Honourable Mr. De Boucherville, the House adjourned until to-morrow at 11 o'clock A.M.

Exhibit No. 3.

No. 42.—VOTES and PROCEEDINGS of the LEGISLATIVE ASSEMBLY of the PROVINCE of QUEBEC.—Quebec, Saturday, 9th March 1878.

Mr. Speaker informed the House that, in conformity with the orders given to him at yesterday's sitting, he issued his warrant for the election of Members in the counties of those Members who have accepted office as Ministers; and that he was informed by the Clerk of the Crown in Chancery that the answer of the Government was that the matter was under consideration.

The following letter and "copies of the correspondence and explanations relating to "the dismissal from office of the De Boucherville Government" were laid upon the table.

To the Honourable the Speaker of the Legislative Assembly.

SIR, Quebec, 8th March 1878.

I HAVE the honour to forward you, to be laid before the House, copy of the correspondence and explanations relating to the dismissal from office of the De Boucherville Government, which I read and communicated to the House.

I have, &c.,

A. R. ANGERS,

Ex-Attorney-General,

Member for the County of Montmorency.

Mr. Speaker,

"Mr. De Boucherville had received permission from the Lieutenant-Governor to give explanations respecting his dismissal from office at the sitting on Monday, the 4th March instant. Between half-past one and two o'clock of the same day, he received from his Excellency a notice not to give any explanations until the new Cabinet had been formed.

This event having been announced, the late De Boucherville Government has the right, in virtue of the permission so obtained, to give its explanation to the House and to the country.

It is my duty to announce to the House that the De Boucherville Government did not resign. A Government, possessing the confidence of the great majority of the Representative Assembly and of almost the whole of the Legislative Council, has no right to resign, if it has really at heart the interests of the country, and a respect for its duty. This Government was dismissed from office by the Lieutenant-Governor. The facts which preceded and followed this event are entered in a journal, kept from day to day and from hour to hour, under the dictation of the Ex-Premier, and the following is an extract and faithful recital thereof.

On the 26th February 1878, at half-past four o'clock, p.m., the Premier received from the Lieutenant-Governor, through his aide-de-camp, the following letter:

To the Honourable C. B. De Boucherville, Premier of the Province of Quebec.

Government House, Quebec, February 25, 1878.

The Lieutenant-Governor desires the Executive Council to prepare for his consideration a factum, including a copy of the following documents:—

1. A copy of the Acts of the Dominion Parliament authorising the construction of the railway known under the name of the "Quebec, Montreal, Ottawa, and Occidental railway," as well as a copy of the Acts of the Legislature of Quebec, respecting the same railway.

2. A copy of the Acts of the Legislature of the Province of Quebec, respecting the construction of the railway between Quebec and Montreal, commonly known as the "North Shore Railway."

3. A copy of the byelaws of each of the Municipal Corporations by which they agreed to assist in the construction of the said road.

4. A statement of the amount of the grant, paid by each of those corporations, and a copy of the correspondence exchanged between the Government, the railway commissioners or the contractors of the said road, and the said Municipal Corporations, with respect to their said grant or subsidy.

5. A copy of the several contracts entered into for the construction of the said road.

6. A copy of the official or confidential reports of the engineers to whom was entrusted the location of these lines of railway, in whole or in part.

7. A copy of the report of the railway commissioners, laid before both Houses during the present session, respecting the said roads.

8. A copy of the representations made to the Government by the municipal corporations interested or by the ratepayers of these municipalities, respecting the conditions of their grant or subsidy.

9. A copy of the resolutions proposed to the Provincial Legislature, during the present session, respecting the said subsidies, and to facilitate the payment and recovery of the same.

10. A copy of the Bill, based upon the said resolutions, which was introduced into the House during the present session.

11. A plan showing the locations of each of the said railways, or of any portion thereof.

12. A detailed statement of the reasons which induced the Provincial Government not to content themselves with the provisions of the statute and common law, and with those of the civil code of this province, for the recovery of the sums of money which might become due by the said corporations, but, without having in any manner previously consulted with the Lieutenant-Governor, to propose an ex post facto legislation to compel them thereto.

Another very important measure, to provide for the imposition of new taxes, was also similarly proposed to the Legislature, without having been previously submitted to the Lieutenant-Governor.

The Lieutenant-Governor is perfectly aware that measures of secondary importance, which have previously been sufficiently explained to him, may be, as a matter of routine, proposed to both Houses, without an express order from himself, but he cannot allow the Executive to communicate to the Legislature, on his behalf, any important or new measures, without his special order, and without his having been previously fully informed and advised thereof.

LUC LETELLIER,
Lieut.-Governor.

The Premier prepared his answer during the night of the 26th and 27th February. This answer was delivered by him, in person, to the Lieutenant-Governor at Spencer Wood, about ten o'clock a.m., on the 27th. It read as follows:—

To his Excellency the Hon. L. Letellier de St. Just, Lieutenant-Governor of the Province of Quebec.

MAY IT PLEASE YOUR EXCELLENCY, Quebec, February 27, 1877.

I HAVE the honour to acknowledge the receipt of the memorandum sent me yesterday afternoon by your Excellency, through your aide-de-camp, who, at the same time, informed me that you were ill in bed. I submitted this memorandum to the Executive Council, and I shall see, as your Excellency desires, that all due diligence be used in order that all the documents required may be transmitted to you as soon as possible.

In anticipation of the factum desired by your Excellency, which will contain a more detailed statement of the motives which induced the Provincial Government to bring in the measures to which you draw my attention, I consider it my duty to represent that the reasons, which, amongst others, caused the Government to submit to the Legislature a law obliging the municipalities to pay their subscriptions, for the construction of the Provincial railway, on the decision of the Lieutenant-Governor in Council, after a sworn report, made by a competent engineer, and after a notice of fifteen days, to give such municipalities an opportunity of being heard,—are the ill-will of certain municipalities; shown by some in their neglect to comply with the request of the Treasurer, by others in their formal refusal to pay, and in certain cases, by resolutions adopted asking new conditions respecting the agreements which they had made with the Government.

The Government was of opinion that without such legislation, the object of which is to avoid the delays of ordinary legal proceedings, the result of the ill-will of these municipalities would have been either to necessitate a new loan by the Province, and consequently to cause a burden to be unjustly imposed upon municipalities which had entered into no engagements and which would derive no immediate benefit from the construction of the road, or the complete stoppage of the works already begun, together with the inevitable loss of interest on the enormous capital already laid out upon this enterprise and the other damages relating therefrom.

The Government, while undertaking, in the first place, by the said law, to fulfil the conditions which it had agreed upon with the said municipalities, considered that, in substituting for the ordinary courts the Lieutenant-Governor with an Executive Council responsible to the Legislature and to the people, it offered to the parties interested a tribunal which afforded as many guarantees as the ordinary courts. I would also take the liberty of calling your Excellency's attention to the fact that similar provisions are already in our Statutes. I would cite to your Excellency chapter 83 of the Consolidated Statutes of Canada, and also chapter 47 of 36 Vict. of the Statutes of Ontario.

I humbly submit to your Excellency that a law devised for the better securing of the execution of a contract cannot have a retroactive effect. It enacts for the future, and its objects are the respective interests of the parties.

Now, I beg your Excellency to note that, while you were at Rivière Ouelle, I had the honour of requesting your authorisation to lay the question of finances before the House, and that you were kind enough to reply that you sent me a blank form by mail, and I considered this at the time, as a great mark of confidence on your part. I did, in effect, receive a blank form with your signature, which I handed to the Treasurer, who had it filled up by your aide-de-camp.

Later on, I had the honour of requesting your Excellency's authorisation generally to lay money questions before the House, and this your Excellency granted with your usual condescension. This permision, moreover, had invariably been accorded me by your predecessor, the late lamented Mr. Caron.

I must admit that, with this authorisation, and the conviction in my mind that your Excellency had read the Treasurer's Budget Speech, in which he announced the taxes which were afterwards proposed, I considered I had a right to inform my colleagues that I had your permission for all questions respecting money.

I beg your Excellency to believe that I never had any intention of arrogating to myself the right of having measures passed without your approval, and that under existing circumstances, having had occasion to speak to your Excellency in reference to the law respecting the Provincial railway, and not having received any order to suspend it, I did not think your Excellency would discover in this measure any intention on my part to slight your prerogatives, which no one is more disposed than I am to respect and uphold.

Yours, &c.,
(Signed) C. B. De Boucherville.

After some conversation the Lieutenant-Governor, having heard Mr. De Boucherville's explanations, admitted that, if there had been any misunderstanding, it was in good faith on the part of the latter, in authorising his colleagues to say that they were authorised to submit the legislation in reference to money matters. He afterwards told him, in reply to his question on the subject, that the only difficulty remaining was the question of the Quebec, Montreal, and Ottawa and Occidental Railway, and that he would give an answer on the following day, the 28th February.

On the 28th February, at about half-past seven in the evening, Mr. De Boucherville went to Spencer Wood to convey to the Lieutenant-Governor the documents asked for in the letter of the 25th (which documents were prepared by the Honourable the Secretary, and were accompanied by a synopsis). He asked him if he would soon give his answer. The Lieutenant-Governor told him that he would examine the documents and probably give it to him on the following day, the 1st March.

On leaving, Mr. De Boucherville said: "If I understand you rightly, you are hesitating between giving your sanction to the Railway Bill and reserving it." He replied, "That is it."

On the 2nd March, at five minutes to one in the afternoon, the aide-de-camp of the Lieutenant-Governor handed to Mr. De Boucherville the letter given hereafter. Before the aide-de-camp left, he was asked how his Excellency was. The aide-de-camp replied that he was not so well, and then asked when we intended closing the session. Mr. De Boucherville replied that he could not say, as many matters were in arrear.

The following is the letter in question :-

To the Hon. C. B. De Boucherville, Premier, Quebec.

Government House, Quebec, March 1, 1878.

The Lieutenant-Governor, taking into consideration the communication made to him verbally (on the 27th February) by the Premier, and also taking into consideration the letter which the Premier then gave to him, is prepared to admit that there had been no intention on the part of the Premier to slight the prerogatives of the Crown, and that there was only on his part an error, committed in good faith, in the interpretation that he gave to words used by the Lieutenant-Governor in the interview which they had on the 19th February instant—words which did not imply the authorisation attributed to them by the Premier.

With this interpretation and the instructions given in consequence by the Premier to the Honourable Messrs. Angers and Church, these gentlemen did not wittingly do anything against the duties of their office.

As to the blank, which the Lieutenant-Governor addressed to him from Rivière Ouelle, the Lieutenant-Governor knew that such blank was to be used for the purpose of submitting the estimates to the House.

This Act was a token of confidence on his part, as stated by the Premier in his letter of the 27th, but it was confidential.

The Lieutenant-Governor deems it his duty to observe that, in his memorandum of the 25th of February last, he in no way expressed the opinion that he thought that the Premier ever had the intention of arrogating to himself the "right" of "having measures "passed without his approval, or of slighting the prerogatives of the representative of the "Crown."

But the Premier must not lose sight of the fact that, although he had not so intended, the fact remains as he was told by the Lieutenant-Governor.

The fact of having submitted several new and important measures to the Legislature,

without having previously, in any manner, consulted the Lieutenant-Governor, although without any intention of slighting his prerogatives, gives rise to one of those false positions which places the representative of the Crown in a difficult and critical situation, with reference to both Houses of the Legislature.

The Lieutenant-Governor cannot admit that the responsibility of this state of things rests upon him.

So far as concerns the Bill intituled "An Act respecting the Quebec, Montreal, Ottaway and Occidental Railway," the Premier cannot apply to the measure the pretended general authorisation mentioned by him in his letter, for their interview took place on the 19th February, and the Bill had then been before the House for several days, without the Lieutenant-Governor having been in any manner informed of it by his advisers.

The Lieutenant-Governor then told the Premier how much he regretted such legislation; he represented to him that he considered it to be contrary to the principles of law and justice; notwithstanding this, the measure was pushed on until it was adopted by both Houses.

It is true that the Premier gives in his letter, as one of his reasons for so acting, "that this permission of making use of the name of the representative of the Crown had "been, moreover, always allowed to him by the predecessor of the present Lieutenant-"Governor, the late lamented Mr. Caron."

This reason cannot avail with the Lieutenant-Governor, for, by so doing, he would abdicate his position as representative of the Crown, a proceeding which neither the Lieutenant-Governor nor the Premier could reconcile with the duties of the Lieutenant-Governor towards the Crown.

The Lieutenant-Governor regrets being compelled to state, as he told the Premier, that he has generally not been explicitly informed of the measures adopted by the Cabinet; although the Lieutenant-Governor often gave occasion therefor to the Premier, especially during the course of last year.

The Lieutenant-Governor, from time to time, since the last meeting of the Legislature, drew the attention of the Premier to several matters respecting the interests of the Province of Quebec, amongst others:

1. To the enormous expenditure occasioned by very large subsidies to several railways when the Province was burdened with the construction of the trunk line of railway from Quebec to Ottawa, which should prevail over all others, and that at a time when our finances compelled us to raise loans disproportioned to our revenues.

2. On the necessity of reducing the expenses of the Civil Government, and those of legislation, in place of having recourse to new taxes, with a view of avoiding financial embarrassment.

The Lieutenant-Governor, although with regret, expressed to the Premier the opinion that the Orders in Council for the increase of the salaries of civil service employees, seemed to him to be inopportune at a time when the Government had effected with the Bank of Montreal a loan at the rate of 7 per cent. for half a million, on condition of increasing this loan to one million; and, in fact, to-day even (1st March) the Lieutenant-Governor was obliged to allow an Order in Council to be passed to secure the last half million for the Government, without which the Government would be unable to meet its obligations, as stated to him by the honourable the treasurer, by order of the Premier.

The Premier did not, either then or since, inform the Lieutenant-Governor that the Government were in so impecunious a position as to require special legislation to increase the public burdens.

The Lieutenant-Governor therefore stated and repeated these facts to the Premier, and now deems it his duty to record them here, in order that they may serve as a memorandum for himself and the Premier.

It results therefore—

1. That, although the Lieutenant Governor had made several representations in his quality of representative of the Crown to the Premier on those various subjects of public interest, his advisers have taken administrative and legislative steps contrary to such representations, and without having previously advised him.

2. That the Lieutenant-Governor has, without evil motives, but in fact, been placed in a false position, by being exposed to a conflict with the desires of the Legislature, desires which he acknowledges to be paramount, when expressed in a constitutional manner.

The Lieutenant-Governor has attentively read and examined the memorandum and documents which the Premier was kind enough to bring him yesterday.

In the record are petitions from several municipal corporations and from citizens of different localities, addressed to the Lieutenant-Governor against the resolutions, and the Government Bill respecting the Quebec, Montreal, Ottawa, and Occidental Railway.

The Lieutenant-Governor was only yesterday in a position to take communication of some of these petitions, inasmuch as they had not been transmitted to him before the record.

The Lieutenant-Governor, after mature deliberation, cannot accept the advice of the Premier in reference to the sanction to be given to the Railway Bill, intituled " An " Act relating to the Quebec, Montreal, Ottawa, and Occidental Railway."

For all these reasons, therefore, the Lieutenant-Governor cannot conclude this memorandum without expressing to the Premier the regret which he feels in being no longer able to retain him in his position, contrary to the rights and prerogatives of the Crown.

(Signed) L. Letellier,
Lieutenant-Governor.

On the 2nd March about 2 o'clock p.m., Mr. De Boucherville went to Spencer Wood. When he arrived he was admitted to the presence of the Lieutenant-Governor, and told him " that according to the memorandum received from him that day, he understood " that he was dismissed from the office of Premier."

The Lieutenant-Governor told him he was to take his own interpretation from the letter. Upon this Mr. De Boucherville handed him the letter, which will be found further on, as being his answer.

The Lieutenant-Governor, without opening it before him, made some remarks on the difficulty in which the legislation had placed him.

Mr. De Boucherville replied that in his present position he thought he had no opinion to express on the subject. He then bowed himself out. When he had proceeded a short distance from the house he caused the vehicle to return, having forgotten to ask permission from the Lieutenant-Governor to give explanations to the House. After having been a second time admitted to the presence of the Lieutenant-Governor, he asked permission to give explanations and to make known the memorandum of the Lieutenant-Governor and his replies thereto.

The Lieutenant-Governor told him he had no objection, and asked him as to the person he should send for. Mr. De Boucherville replied that he looked upon himself —having been dismissed—as being in a different position from a minister who, although defeated in the House still retained the confidence of the Sovereign; that he had had a majority of twenty-five in one of the late votes; that under these circumstances he did not think he could advise him in the matter. He then left him, and while in the ante-room the Lieutenant-Governor recalled him and said, " Please delay the explanations " until Monday."

The following is a copy of the letter which Mr. De Boucherville handed to the Lieutenant-Governor, when the latter told him he was to take his own into interpretation of his memorandum.

May it please your Excellency, Quebec, March 2, 1878.

I have the honour to acknowledge the receipt of your memorandum, in which you come to the conclusion that you cannot retain me in my position as Premier.

I have therefore no other duty to perform beyond submitting to my dismissal from office, communicated by your Excellency, reiterating at the same time my profound respect for the rights and prerogatives of the Crown, and my devotion to the interests of our Province.

I have, &c.
(Signed) C. B. De Boucherville.

To his Excellency
the Lieutenant-Governor of the
Province of Quebec.

On the 28th January 1878, M. De Boucherville had sent to his Excellency the Lieutenant-Governor, who was then at Rivière Ouelle, the following telegraphic despatch—

" Can you send me authorisation resolutions respecting finances."

The Lieutenant-Governor on the following day, the 29th, telegraphed M. De Boucherville :

" Blank mailed to day. If presence necessary telegraph. Return Friday."

The resolutions respecting the North Shore Railway were submitted to the House only on the 29th January, after the telegram had been received from the Lieutenant-Governor, that a form signed in blank had been mailed to M. De Boucherville in reply to his despatch of the previous day, saying, " Can you send me authorisation resolutions " respecting finances ?"

On the 30th January the first resolution was reported from Committee of the Whole. On the 31st it was adopted by the House. On the 1st February the House again went into Committee of the Whole and reported the other resolutions on the same subject. But it was only on the 5th that the adoption of the report of the committee was carried, the House throwing out the motion of non-confidence on this point by 38 to 21.

On the 5th February a bill, based on these resolutions, was introduced ; the second reading was delayed until the 18th February ; the third reading took place on the 19th. During all this time the Lieutenant-Governor to whom the votes and proceedings were sent daily remained silent.

On the 19th February, Mr. De Boucherville met the Lieutenant-Governor and, in the conversation which took place on the subject of the measure, thought he had satisfied him as to its legality and the urgency of its being passed. The Lieutenant-Governor was so far from being explicit as to his intentions, that Mr. De Boucherville left him with the impression that he was authorised.

The Lieutenant-Governor does not contend, in his memorandum of the 1st March, 1878, that he had given orders to suspend the legislation.

Sent up to the Legislative Council, this bill had gone through its third reading before the first letter was received from the Lieutenant-Governor, dated the 25th February last, but only delivered at 4.30 p.m. on the 26th. In fact, the Lieutenant-Governor, in his letter of the 1st March, admits that he did not, in any way, in his memorandum of the 25th February, express the opinion that he considered the Premier had intended to arrogate to himself the right of getting measures passed without his approval or of slighting the prerogatives of the representative of the Crown.

Having ascertained that a misunderstanding existed as to the interpretation of the authorisation asked by telegraphic despatch on the 28th January and answered on the 29th by a message stating that a form signed in blank was sent, and in view of the impressions left by the conversation of the 19th February in Mr. De Boucherville's mind, should the Lieutenant-Governor have waited to make known, for the first time, the existence of this misunderstanding until the 26th February, at which date the whole of the legislation, of which he complains, has been discussed and voted in the affirmative by both Houses ?

The confidence shown by the Lieutenant-Governor on the 29th January in Mr. DeBoucherville by forwarding the form signed in blank, was calculated to justify him in interpreting the silence of the Lieutenant-Governor at least as not meaning dissent.

After these interviews of the 19th February, the silence observed until the 26th February was also of a nature to lead him to believe that he had a general authorisation to submit to the House all measures which the public service required.

On the 31st of January, twenty-six days previous to the first memorandum of the Lieutenant-Governor, the Honourable Treasurer made his budget speech, in which he announced the new taxes which it would be necessary to levy to meet the obligations of the Province, obligations contracted during several previous years and resulting from the policy then inaugurated on railways, and which had received the concurrence of several members belonging to the party opposing the Government.

Can this speech, published *in extenso* by the press of the whole country have escaped the notice of the Lieutenant-Governor ?

On the 19th of February, the resolutions demanding those taxes, but a lower rate than the one mentioned by the Treasurer in his speech, were presented ; and on the 20th were adopted by a vote of 39 against 22.

The Lieutenant-Governor in his memorandum of the 1st March, complains that Mr. De Boucherville did not let him know that the Government was in an impecunious condition, requiring special legislation to increase the public taxes.

The Premier would have formed an erroneous idea of the situation, if he had so qualified the temporary embarrassment caused by the ill will of the municipalities which had subscribed for the construction of the provincial railway in neglecting to faithfully fulfil their obligations. He would have formed an erroneous idea of the situation, in presence of the results obtained, so far without any burden having been imposed in order to obtain them.

On the 22nd February, notice was given of resolutions respecting railways in the Eastern Townships and on the South Shore of the St. Lawrence.

On the 23rd of the same month the resolutions were introduced and subsequently adopted by a vote of 41 to 16. These resolutions do not in any way increase the actual debt of the Province.

The Lieutenant-Governor said in the same memorandum, " That the constitution of " the railway from Quebec to Ottawa should prevail over that of other railways." The legislation of many years past on this subject establishes no priority in favour of the provincial railway to the detriment of railways in the Eastern Townships and on the South Shore. The De Boucherville Government would have contravened the law if they had adopted any other view of the matter.

In the same memorandum the Lieutenant-Governor declares, " That he cannot accept " the advice of the Premier in reference to the sanction to be given to the Railway Bill, " intituled ' An Act respecting the Quebec, Montreal, Ottawa, and Occidental Railway.' " This declaration is premature, the Premier never having been called upon to give his opinion as to the sanction to be given; and, if he had been called upon to do so, he would, under the circumstances, have recommended that it be reserved for the decision of the Governor General, being in doubt as to the Lieutenant-Governor having the right, of his own accord, *ex proprio motu*, to exercise the prerogative of veto, and thus to decide finally on the fate of a measure passed by both Houses, when the British North America Act of 1867 seems to leave such power to the Governor-General.

The memorandum of his Excellency refers to petitions of several corporations and citizens of different places, addressed to the Lieutenant-Governor, against the resolutions and the measures of the Government concerning the Quebec, Montreal, Ottawa, and Occidental Railway.

It is sufficient to consider that these petitions came from debtors, from whom the law intends to force payment, to arrive at the correct conclusion that the opinion of both Houses should prevail over that expressed in such petitions.

The Lieutenant-Governor, in the same memorandum, refers to acts of Administration which date from before the session, and to which he has given his assent. As he alludes to matters for which the Government is responsible to both houses, as advisers of the Crown, and as they are foreign to the question of prerogative raised by the Lieutenant-Governor, they cannot be adduced in this memorandum as reasons for the conclusion, arrived at by his Excellency, that he cannot continue to retain M. De Boucherville in his position against the rights and prerogatives of the Crown; therefore, to avoid being carried away by this side issue or *hors d'œuvre*, there is no reason to question them now.

The Lieutenant-Governor further expresses the opinion " that the state of our finances " forced us to make loans disproportionate to our resources."

The necessity of here repeating this phrase is to be regretted; but the credit of the Province requires that it should be contradicted. The mere reading of the budget speech will suffice to reassure alarmists.

From all the above facts, from admissions contained in the last memorandum of the Lieutenant-Governor, from the transmission of the form signed in blank and sent by him in reply to a request from M. De Boucherville, asking his authorisation to introduce " resolutions respecting finances," and from the silence of the Lieutenant-Governor up to the 26th February last, it results that no measures have been introduced into the House in opposition to the prerogatives of the representative of the Sovereign.

Nothing more remains now for me to do but to reiterate the declaration made in commencing these explanations; the De Boucherville Cabinet has not resigned; it has been dismissed from office by the Lieutenant-Governor.

The conservative party is no longer in power. But it is, in this House, the power, a qualified power, a majority in the opposition. The majority here, the majority in the Council, the majority in the country. The conservative party has been dismissed from office; but it stands uncompromised, without compromise, without division, devoted to the Constitution and to the welfare of the country.

(Signed) A. R. Angers,
Ex-Attorney-General,
Member for the Electoral District of Montmorency.

A message was received from the Legislative Council agreeing to the following Bills without amendment:—

Bill (No. 83) intituled: " An Act to amend and consolidate the Quebec License Act " and its amendments."

Bill (No. 109) intituled: "An Act to further amend the law respecting subsidies in "money made to certain Railway Companies."

Bill (No. 48) intituled: "An Act to define and regulate the limits of certain municipalities and parishes in the counties of Nicolet, Arthabaska, and Drummond, and to "include, in the county of Nicolet, the portion of these municipalities and parishes not "now included therein."

Bill (No. 112) intituled: "An Act to amend the Act 20 Vict. cap. 125, respecting "the Quebec North Shore Turnpike Roads."

Bill (No. 108) intituled: "An Act respecting the indemnity to petty jurors in "criminal cases."

Bill (No. 12) intituled: "An Act respecting the proof of Heirships or Legatee-"ships."

Mr. Dupont, seconded by Mr. Lavallée, moved—

That the sum of one hundred dollars, deposited for the Bill (No. 45), intituled: "An "Act to incorporate the Beet Sugar Company of the Province of Quebec," be refunded to the promoters of the said Bill.

Which motion was withdrawn, the mover not having obtained the consent of the House.

Mr. Loranger, seconded by Mr. Lynch, moved that the following Address, affirming the privileges and immunities of the House, be presented by Mr. Speaker to his Excellency the Lieutenant-Governor of the Province of Quebec, at the Bar of the Legislative Council, at the prorogation of this Legislature.

To his Excellency the Lieutenant-Governor of the Province of Quebec.

MAY IT PLEASE YOUR EXCELLENCY,

THE Legislative Assembly of the Province of Quebec deem it their duty to humbly represent that the Cabinet of which the Honourable Henri Gustave Joly is the chief, was defeated three different times, at the sitting of the 8th of March instant, by majorities varying from 20 to 22 votes.

And they regret to state that the Constitution has been disregarded by the advisers of his Excellency to the extent that they persist in retaining power against the will of the majority of this House and of the country.

The Legislative Assembly believes it, moreover, their duty to express their regret that they have been put to the necessity of suspending the passage of the Supply Bill, until justice has been extended to the majority of this House.

The Legislative Assembly desires respectfully to represent to your Excellency that there exists in the House a political party, possessing the confidence of the country, and having a large majority in the House; that this party is competent to administer the public business, and that the prorogation of the Legislature presently would be prejudicial to the legislation and to the interests of the country.

The Legislative Assembly desires to represent to your Excellency that the fact of the minority having a control over public affairs is the cause of the embarrassment under which the province labours, through the suspension of the Supply Bill; and that a prompt solution of the difficulty may be arrived at by acting in conformity with the Constitution.

The Legislative Assembly desires also to represent to your Excellency, that inasmuch as there exists in the House a political party strong enough to command a large majority there is no necessity for a dissolution of the Legislature, a step which will cause considerable and useless expense to the province, and seriously threaten the peace and tranquility of the people of this province.

And your petitioners will ever pray.

And objection having been taken that the said motion is contrary to the Constitution and should be considered out of order.

Mr. Speaker ruled:

"That the point of order was raised and decided yesterday."

And appeal having been made from Mr. Speaker's decision.

The question was put and carried in the affirmative on the following division:—

In favour of Mr. Speaker's decision.

MM. Alleyn, Angers, Baker, Champagne, Chapleau, Charlebois, Deschenes, Dulace Dupont, Fortin (Gaspé), Fradette, Garneau, Gauthier, Houde (Maskinongé), Houd, (Nicolet), Kennedy, Lacerte, Lalonde, Larochelle, Lavallée, Le Cavalier, Loranger,

Lynch, Martin, Mathieu, McGauvran, Picard, Sawyer, St. Cyr, Taillon, Tarte, Thornton, and Wurtele.—33.

Against Mr. Speaker's decision.

MM. De Beaujeu, Fortin (Montmagny), Laberge, Lafontaine, Laframboise, Molleur, Pâquet, Prefontaine, Rinfret dit Moulin, Shehyn, Sylvestre, and Watts.—12.

A message was received from his Excellency the Lieutenant-Governor, by Samuel Staunton Hatt, Esquire, Gentleman Usher of the Black Rod, desiring the attendance of the House in the Legislative Council Chamber.

Accordingly Mr. Speaker, with the Members present, went to the Legislative Council Chamber, when his Excellency the Lieutenant-Governor was pleased, in Her Majesty's name, to give the Royal assent to the following Bills, namely:—

An Act to enable the Minister and Trustees of St. Andrew's Church, Montreal, to borrow money and hypothecate the property of said Church.

An Act to declare valid certain sales of moveables belonging to successions.

An Act to further amend the Act respecting Agriculture and Public Works (32 Vict., cap. 15), and the Acts amending the same.

An Act to amend the Act 40 Vict. ch. 23, amending the law respecting Public Instruction as respects the City of Sherbrooke.

An Act to amend the "Act respecting the incorporation of Joint Stock Companies," (31 Vict. cap. 25).

An Act respecting the notification for and the attendance at the removal of seals and inventories.

An Act respecting the proof of Heirship.

An Act to provide for the issue of the writ of injunction in certain cases, and to regulate the procedure in relation thereto.

An Act to amend article 997 of the Code of Civil Procedure, relating to suits against certain corporations.

An Act to authorise the Board of Notaries to admit Louis Thomas Laroche, to the practice of the Notarial Profession.

An Act to annex to the municipality of the Village of Ste. Rose, certain lands situated in the municipality of the Parish of Ste. Rose, in the County of Laval, for all municipal and school purposes.

An Act to authorise the Bar of the Province of Quebec to admit Michael J. F. Quinn to the practice of the profession of advocate.

An Act to amend the Act 32 Vict. cap. 89, intituled "An Act to incorporate the "Protestant Institution for Deaf Mutes and for the Blind."

An Act to incorporate the St. Lawrence, Lower Laurentien and Saguenay Railway Company.

An Act to incorporate the Society of "Union St. Joseph, de Notre Dame de Beauport."

An Act to amend chap. 51 of 37 Victoria, Province of Quebec, intituled "An Act "to revise and consolidate the charter of the City of Montreal, and the various Acts "which amend the same, in so far as concerns certain property adjoining the Mount "Royal Park."

An Act to incorporate the society called "L'Union St. Joseph de Lachine."

An Act to incorporate the Montreal Island Railway Company.

An Act to incorporate "L'Œuvre de Saint Joseph de la Délivrance."

An Act to authorise the sale of immovable property substituted by the late Jean Baptiste Quesnel.

An Act to incorporate the "Cercle Saint Louis" of Three Rivers.

An Act to incorporate "The Quebec Young Men's Christian Association."

An Act to amend the Act respecting the Methodist Church of Canada (38 Vict. c. 60).

An Act to incorporate "Le Cercle Catholique de Quebec."

An Act to amend the Act incorporating the City Passenger Railway Company of Montreal, and to cancel the unpaid stock thereof.

An Act to change the name of the Montreal Infants' School Association to that of "The Boys' Home of Montreal," and for other purposes.

An Act to authorise the ministers of the church calling themselves "The Reformed "Episcopal Church of Canada," in the Province of Quebec, to keep registers of baptisms, marriages, and burials.

An Act to authorise the Adams Tobacco Company to borrow money.

An Act to incorporate "The Beet Sugar Company of the Province of Quebec."

An Act to incorporate "L'Union St. Jean Baptiste du Village de Buckingham," in the Parish of St. Grégoire de Nazianze.

An Act to amend the Act of incorporation of the City of Three Rivers, 38 Vict. c. 76.

An Act to define and regulate the limits of certain municipalities and parishes in the Counties of Nicolet, Arthabaska, and Drummond, and to include in the County of Nicolet, the portions of these municipalities and parishes not now included therein.

An Act to incorporate the Orford Nickle and Copper Company.

An Act to legalise certain preliminaries in the incorporation of the "Mutual Fire "Insurance Company of the Counties of Shefford and Brome," and to change the name of the said Company.

An Act to amend article 873 of the code of civil procedure.

An Act to amend certain articles of the municipal code of the Province of Quebec.

An Act to authorise the executor of the wills of the late William Petry, the elder, and William Petry, the younger, and the curator to the substitution created thereunder, to change certain investments now made.

An Act to amend the Act 31 Vict. chap. 41, incorporating the "Montreal Building Association," by changing the name and extending the powers thereof.

An Act to incorporate "The Chapter of the Cathedral of St. Hyacinthe."

An Act to incorporate "The Sherbrooke Nickle and Phosphate Mining Company."

An Act to amend "The Act incorporating the Trustees of the American Presbyterian "Society of Montreal."

An Act to incorporate the municipality of the Village de St. Louis de Mile End.

An Act to amend the Acts relating to the Mutual Assurance Associations of the Fabriques of the Dioceses of Quebec and Three Rivers, and of the Dioceses of Montreal and St. Hyacinthe.

An Act to incorporate the municipality of the Parish of Côte St. Paul.

An Act to amend the Act respecting Commissioner's Courts for the summary trial of small causes.

An Act to amend chapter 70 of the Consolidated Statutes for Lower Canada, intituled "An Act respecting Joint Stock Companies for the construction of roads and certain other works."

An Act respecting the sale of lands for the working of mines of phosphate of lime amending the Act 32 Vict. chap. 11.

An Act to amend the Act of the late Province of Canada, 12 Vict. chap. 137, incorporating "La Communauté des Sœurs de Ste. Croix," in the Parish of St. Laurent, in the District of Montreal, for Educational purposes.

An Act to amend the Act 40 Vict. chap. 26, relating to the Profession of Medicine and Surgery, in the Province of Quebec.

An Act to amend and consolidate the Quebec Licence Act and its amendments.

An Act to provide for the giving notice of sheriff's sales to hypothecary creditors.

An Act to authorise the V. Hudon Cotton Mills Company, Hochelaga, to appoint Trustees to insure its property, for the protection of the holders of the debentures of the said Company, and for other purposes.

An Act respecting the Registers of Civil Status.

An Act to further amend the laws respecting Public instruction in this Province.

An Act to amend the Act of this Province, 32 Vict. chap. 51, respecting railways.

An Act to amend chapter 69 of the Consolidated Statutes of Lower Canada, respecting building societies in the Province of Quebec.

An Act respecting the Consolidated Railway fund of this Province (40 Vict. chap. 2).

An Act to amend Sub-section 31 of Section one, of chapter 75 of the Consolidated Statutes for Lower Canada.

An Act respecting the indemnity to petty jurors in criminal cases.

An Act to further amend the law respecting subsidies in money made to certain railway companies.

An Act to amend the Act 20 Vict. chap. 125, respecting the Quebec North Shore Turnpike Roads.

After which his Excellency the Lieutenant-Governor was pleased to reserve the following Bill for the signification of his Excellency the Governor General's pleasure thereon;

An Act respecting the Quebec, Montreal, Ottawa, and Occidental Railway.

After which his Excellency the Lieutenant-Governor was pleased to close the Third Session, the Third Parliament of the Province of Quebec, with the following speech:

Honourable Gentlemen of the Legislative Council:

Gentlemen of the Legislative Assembly:

Being desirous of ascertaining, in a constitutional manner, the feelings of the people of this Province, regarding the present state of public affairs, and the ministerial changes which have just taken place, I have determined upon proroguing the Legislature of this Province, with a view to its dissolution at an early date.

I sincerely entertain the hope that the electors of this Province will, in the choice of their representatives, exhibit as much judgment as patriotism in order to assure peace, prosperity, and happiness to the people of this Province.

The Provincial Legislature was then prorogued to Thursday the eleventh day of April next.

Louis Beaubien,
Speaker.

Exhibit No. 4.

No. 40.—Votes and Proceedings of the Legislative Assembly of the Province of Quebec.—Quebec, Thursday, 7th March 1878.

The Honourable Mr. Angers, seconded by Honourable Mr. Church, moved that the House do now adjourn, and that it do stand adjourned until 3 o'clock to-morrow afternoon.

Mr. Lynch, seconded by Mr. Loranger, moved in amendment, that this House do not now adjourn, but that it be

Resolved,—That this House desires to reiterate its expression of loyalty and attachment to Her Majesty Queen Victoria, and its perfect submission to the Constitution.

That this House renews the declaration of its confidence in the De Boucherville Administration, so often and decidedly expressed during the present session.

That this House desires firmly and emphatically to declare that it has not and cannot have confidence in any administration which may be substituted for the one dismissed,—inasmuch as such dismissal occurred whilst the De Boucherville Administration enjoyed the entire confidence of the large majority of the representatives of the people, in Provincial Legislature assembled; unless such Administration to be appointed be a strong and efficient one chosen from the party represented by the majority of this House.

That the foregoing resolutions be referred to a Select Committee composed of Messrs. Wurtele, Taillon, Tarte, the mover and the seconder, to prepare and report the draft of an address to his Excellency the Lieutenant-Governor in conformity with the said resolutions.

And objection having been taken that this motion was not in order, inasmuch as allusion is made to the dismissal of the Members of the Government, and that there are no documents relating to that subject before the House;

And another objection having also been taken that the main motion was not in order, as two days' notice was not given;

Mr. Speaker ruled:

On the first objection: "That the matter is before the House; that it was brought "up in the House on the 4th March instant, by the honourable member for Mont-"morency;"

And, on the second objection, "That a motion to adjourn is always in order."

And a further objection having been taken that the motion in amendment was out of order, inasmuch as no motion in amendment can be made to a motion to adjourn the House.

Mr. Speaker ruled:

"That the motion can be made, as we may find similar precedents in the journals of "the House of Commons."

And further objection having been taken that the motion in amendment has no reference to the main motion;

Mr. Speaker ruled:

"That he had already given his decision on that objection."

And the motion in amendment having been put, it was agreed to on the following division:—

YEAS.

MM. Alleyn, Angers, Baker, Champagne, Chapleau, Charlebois, Church, Deschenes, Dulac, Dupont, Fortin (Gaspé), Fradette, Garneau, Gauthier, Houde (Maskinongé), Houde (Nicolet), Kennedy, Lacerte, Lalonde, Larochelle, Lavallée, Le Cavalier, Loranger, Lynch, Martin, Mathieu, McGauvran, Peltier, Picard, Sawyer, St. Cyr, Taillon, Tarte, Turcotte, and Wurtele.—35.

NAYS.

MM. Bachand, Cameron, Chauveau, De Beaujeu, Fortin (Montmagny), Laberge, Lafontaine, Laframboise, Marchand, Molleur, Pâquet, Prefontaine, Rinfret dit Malouin, Shehyn, Sylvestre, and Watts.—16.

The question on the main motion, as amended, was then put and carried on the same division.

And objection being taken that this Committee has been named during the sitting of the House, and not having adjourned to allow the Committee to meet, the Committee cannot report;

Mr. Speaker ruled:

"That inasmuch as Committees appointed to draft addresses in answer to Speeches from the Throne are accustomed to report at once, without suspending the proceedings of the House by adjourning, therefore, the same proceeding can be allowed in this instance."

And appeal having been made from Mr. Speaker's decision.

The question was put and the decision maintained on the following division:—

In favour of Mr. Speaker's decision.

MM. Alleyn, Angers, Baker, Champagne, Chapleau, Charlebois, Church, Deschenes, Dulac, Dupont, Fradette, Garneau, Gauthier, Houde (Maskinongé), Houde (Nicolet), Lacerte, Lalonde, Larochelle, Lavalée, Le Cavalier, Loranger, Lynch, Martin, Mathieu, McGauvran, Peltier, Picard, Sawyer, St. Cyr, Taillon, Tarte, and Wurtele.—32.

Against Mr. Speaker's decision.

MM. Bachand, Cameron, Chauveau, De Beaujeu, Fortin (Montmagny), Kennedy, Laberge, Lafontaine, Laframboise, Marchand, Molleur, Pâquet, Prefontaine, Rinfret *dit* Malouin, Shehyn, Sylvestre, Turcotte, and Watts.—18.

Mr. Lynch then reported the draft of an Address to his Excellency the Lieutenant-Governor, and the same being read a second time, on a division, was agreed to, and is as followeth:—

"To his Excellency the Honourable Luc Letellier de St. Just, Lieutenant-Governor of the Province of Quebec.

"MAY IT PLEASE YOUR EXCELLENCY:

"We, Her Majesty's dutiful and loyal subjects, the Legislative Assembly of Quebec, in Provincial Legislature assembled, 'desire to reiterate the expression of our

'loyalty and attachment to Her Majesty Queen Victoria,' and our perfect submission to the Constitution.

" We renew the declaration of our confidence in the De Boucherville administration, so often and decidedly expressed during the present session.

" We desire firmly and emphatically to declare that we have not and cannot have confidence in any administration which may be substituted for the one dismissed, inasmuch as such dismissal occurred whilst the De Boucherville administration enjoyed the entire confidence of the large majority of the representatives of the people, in Provincial Legislature assembled, unless such administration to be appointed be a strong and efficient one, chosen from the party represented by the majority in this House."

On motion of Mr. Lynch, seconded by Mr. Loranger, it was, on a division

Ordered,—That the said address be engrossed and that it be presented to his Excellency the Lieutenant-Governor by the Honourable the speaker of this House.

And the House then adjourned.

LOUIS BEAUBIEN,
Speaker.

Exhibit No. 5.

MESSAGE from his EXCELLENCY the GOVERNOR GENERAL.

DUFFERIN, Government House, Ottawa, March 22, 1878.

THE Governor General transmits to the Senate and House of Commons an address from the Legislative Council of the Province of Quebec to the Senate and House of Commons; also, an address from the Legislative Assembly of the Province of Quebec to the Senate and House of Commons—on the subject of recent ministerial changes in that Province.

Legislative Assembly, Friday, March 8, 1878.

Resolved, that the following address be presented to his Excellency the Governor General of the Dominion of Canada, to the Senate and Commons of Canada, and to his Excellency the Lieutenant-Governor of the Province of Quebec.

Attest,

E. SIMARD,
D.C.L.A.

Legislative Assembly, Friday, March 8, 1878.

Resolved, that the said address be engrossed and signed by Mr. Speaker, and that it be transmitted to his Excellency the Lieutenant-Governor of the Province of Quebec, with prayer that he transmit the same to his Excellency the Governor General of Canada, and that the said address be also transmitted to the Senate and House of Commons of Canada.

Attest,

E. SIMARD,
D.C.L.A.

To the Honourable the Members of the Senate and of the House of Commons of the Dominion of Canada, in Parliament assembled.

The humble address of the Legislative Assembly of the Province of Quebec, respectfully showeth—

That it appears from the explanations given by the Honourable M. Angers, and from the official correspondence communicated to this House, that his Excellency the Lieutenant-Governor acknowledges that the members of the De Boucherville Cabinet have acted in good faith in the discharge of their duties :

That his Excellency has allowed the measures submitted by his Government to this House, and to the Legislative Council, to be discussed and voted upon without order on his part to suspend them :

That whilst asserting their devotion to our Gracious Sovereign, and their respect towards his Excellency the Lieutenant-Governor of this Province, this House is of opinion:

That the dismissal from office of the De Boucherville Cabinet has taken place without reason, constitutes an eminent danger to the existence of responsible government of this Province, and is an abuse of power in contempt of the majority of this House, whose confidence they possessed, and still possess, and is a violation of the liberties and will of the people.

And your petitioners will ever pray.

I have, &c.
LOUIS BEAUBIEN,
Speaker of the Legislative Assembly of the Province of Quebec.

Legislative Assembly, Quebec,
March 8, 1878.

Government House, Quebec,
March 18, 1878.

SIR,

I HAVE the honour to forward you an address to the Honourable the Senate and House of Commons of Canada, voted by the Legislative Council of the Province of Quebec, on the 8th instant.

I have, &c.
L. LETELLIER.

The Hon. R. W. Scott,
Secretary of State, Ottawa.

Legislative Council,
Friday, March 8, 1878.

Resolved, That this Address be engrossed and signed by the Speaker of this House, and transmitted by him to his Excellency the Lieutenant-Governor of the Province of Quebec, with a request that he will transmit it to his Excellency the Governor-General of the Dominion of Canada, and to the Senate and House of Commons of Canada.

Attest,
BOUCHER DE BOUCHERVILLE,
Clerk, Legislative Council.

To the Honourable the Senate and House of Commons of the Dominion of Canada.

The humble Address of the Honourable the Legislative Council of the Province of Quebec respectfully showeth:—

That it appears from explanation given by the Honourable M. De Boucherville, and from official correspondence communicated to this House, that his Excellency the Lieutenant-Governor acknowledges that the Members of the De Boucherville Cabinet acted in good faith in the discharge of their duties;

That his Excellency permitted the Bills submitted to this House, and to the Legislative Assembly, to be discussed and voted upon without any order on his part to suspend them;

That, whilst expressing its loyalty and devotion to our Gracious Sovereign, and its respect for the Lieutenant-Governor of this Province, this House is of opinion:

That the dismissal from office of the De Boucherville Cabinet having taken place without sufficient cause, constitutes an imminent danger to the maintenance of responsible government in this Province, is an abuse of power exercised in contempt of the majority of both Houses whose confidence they possessed, and still possess, and a violation of the rights and will of the people.

HENRY STARNES,
Speaker, Legislative Council.

Legislative Council,
Friday, March 8, 1878.

Message from His Excellency the Governor-General.

Dufferin,

The Governor-General transmits to the Senate and House of Commons a Memorandum from his Honour the Lieutenant-Governor of the Province of Quebec, with accompanying documents, containing explanations in reference to the recent ministerial changes in that Province.

Government House, Ottawa,
March 26, 1878.

(Translation.)

To His Excellency the Right Hon. the Earl of Dufferin, K.P., K.C.B., G.C.M.G., Governor-General of Canada, Ottawa.

Government House, Quebec,
March 19, 1878.

My Lord,

The annexed explanatory case which I now address to your Excellency will, I am persuaded, have the effect of showing that I have always acted towards M. DeBoucherville and his colleagues with good will, and with every desire of affording to them co-operation during their tenure of office.

What might have tended to produce unfortunate conflicts between myself and my Cabinet was almost invariably smoothed over by my friendly desire to overlook the irregularities which I have noted in the present statement of facts.

I hope, my Lord, that the difficult position which I have been compelled to occupy will be justified, not only because it is constitutional, but also because the conduct of my Cabinet endangered not only the prerogatives of the Crown, but also the most important interests of the people of this Province.

I have, &c.
(Signed) L. Letellier,
Lieutenant-Governor.

(Translation.)

To the Right Hon. the Earl of Dufferin, K.P., K.C.B., K.C.M.G., Governor-General of Canada, Ottawa.

Government House, Quebec,
March 18, 1878.

My Lord,

I have the honour now to submit, for your Lordship's consideration, documents and details which I could not lay before the public, but from which it would have been more clearly understood that the dismissal of M. DeBoucherville's Cabinet was forced upon me by circumstances.

These details are not contained in the correspondence which I authorised M. De Boucherville to place before the Houses, and which are hereunto annexed.

From the day that I was, by your Excellency, raised to the position I occupy at present, all my private relations with the members of my Cabinet, up to the time of their dismissal from office, were, I must admit, generally of an agreeable nature; but in those of an official character with the Premier I almost invariably felt that I did not enjoy that entire confidence on his part which is the chief element of a cordial understanding between the Representative of the Crown and his advisers.

After having studied the general state of the affairs of our Province, after having become convinced that legislative and administrative changes were becoming more and more necessary, I decided upon using with moderation, and with the greatest possible discretion, the influence attached to my position, in order to obtain the realisation of that which I deemed to be of the greatest advantage to the Province.

I regret to state to your Excellency that, although M. DeBoucherville did, on most occasions, take my advice in good part, and generally approved of it, he nevertheless almost always acted as though he had never received it. Nevertheless, far from using

my authority to obstruct his action in any way, I invariably treated him with great indulgence, as will appear to your Excellency by the following facts :—

1st. During the Session of 1876 a Bill had been read three times in one of the two branches of the Legislature, and only twice in the other.

This Bill, bearing all the certificates which were necessary to induce me to believe that it had been regularly passed and adopted, was submitted to me by the Premier for my sanction.

In consequence of being left in ignorance of these facts by my advisers I sanctioned the Bill.

Not long afterwards I was informed of the irregularity, and I immediately spoke of it to the Premier. I made the observation that such an act would entail too serious consequences to allow of its being passed over.

As a favour to him, however, I passed over this instance of irregular legislation, which was then irreparable.

2nd. During the same session another Bill was submitted to me for my sanction. On examining it, I perceived a blank which had not been filled up, which I pointed out to the Premier in the following letter :—

" (Private.)

" My dear Premier, Quebec, December 27, 1876.

" A Bill (E) which originated in the Council, was passed by the Legislative " Assembly without amendment ; upon reading it, before adding my certificate of " sanction, I noticed that a blank had not been filled up in the seventh line of the sixth " section.

" You followed the usual practice in not fixing the amount of the penalty in the " Legislative Council ; but the matter passed unperceived, or the officers, through some " mistake, omitted to insert the amount fixed by the House, or it may have been an " error in the proof sheets.

" While on the subject of these mistakes, you will find another in the second section " of the same Act, wherein the word '*amender*' is in the infinitive mood. I notice this " latter inaccuracy, to which I do not attach much importance, only because I discovered " another in an Act in which I had to point out to you an omission which I consider " fatal.

" Yours very truly,

" (Signed) L. Letellier."

The Premier came to me and said that he regretted the omission ; he requested me to give my sanction to the Bill in the state in which it was. The conciliatory spirit which I showed in granting my consent seemed to please him.

3rd. In March 1877 (*vide* Appendix A), my advisers caused me to make an appointment of a municipal councillor for the south ward of the village of Montmagny, under the pretext that there had been no election, or that if such election had taken place it was illegal.

The whole of the circumstances connected with this case I deem it my duty to explain to your Excellency, on account of the important principle involved therein.

After due personal examination of the petitions and other accompanying documents relating to that election, I called on the Premier, at his own office, to beg of him not to hurry the appointment which he was asked to make of a municipal councillor for that locality, before receiving more ample information.

I pointed out to him that it appeared that a municipal election had taken place, and that in such case, as a principle, the Executive Council should not interfere.

I added that from the moment that a legal, or even an illegal election had taken place, the duty of deciding it rested with the Courts in accordance with the ordinary course of law, of which they are the interpreters.

I then intimated to M. De Boucherville that I maintained on *principle* that all matters cognisable by the Judiciary should be invariably left to the Courts, which, from their organization, are better fitted than the Executive to inquire into matters of fact and of evidence, and that I would never allow the substitution of the powers of the Executive for those of the Courts, when the latter had jurisdiction.

The Premier admitted that that opinion and the principles on which I based it were in conformity with his ideas, and necessary for the proper Administration of

justice. He asked me if I would consent to see M. Angers, the Attorney-General, on the subject.

I at once consented, and the Attorney-General was immediately sent for; the acts connected with that election difficulty, and my views regarding them were then communicated to him. He promised that before any appointment should be made by the Lieutenant-Governor, he would make inquiry.

Shortly afterwards he reported to me that he had made an inquiry into the facts of the case, and at his suggestion, I appointed Jules Bélanger to be councillor.

In the beginning of March 1877 difficulties and quarrels arose at Montmagny in consequence of that election.

After that appointment those quarrels broke forth afresh in the municipal council itself, from which the councillor whom I had thus been caused to appoint was expelled with violence. That appointment I was recommended to make, notwithstanding the fact that an election had taken place; that it had been held and presided over by the Mayor, that Eugene Fournier had been returned by acclamation, that he had been sworn in according to law, and that, at the very time when the appointment of Jules Bélanger was recommended to me, the person thus elected had in fact taken his seat, had been sworn, and had sat at the said Council, as appears by the minutes of the council.

When I afterwards learned these facts, I communicated them to the Premier, whom I requested to prepare a revocation of the appointment which I had thus been caused to make, contrary to the principles above set forth, and the justice of which he had himself admitted.

The Premier answered that the matter was of a very delicate nature, as such a proceeding would be contrary to the recommendation of M. Angers, his Attorney-General; he concluded by saying that he would get him to prepare a report on the subject.

I received that report some days later. After having read it, I again intimated to M. De Boucherville, that in the interests of peace, and in conformity with the principle that executive should not be substituted for judicial power in matters within the province of the latter, I insisted upon the revocation being make.

After waiting several days for an answer, and not having received any from the Premier, I addressed a letter to him, of which the following is a copy:—

" (Private and Confidential.

" My dear De Boucherville, Quebec, March 14, 1877.

I have not received any answer on the subject of the appointment of a Councillor at Montmagny.

Those who deceived the Government in order to induce me to perform an executive act in connexion with a question which they then knew to be within the judicial power, do not, in my opinion, deserve consideration which cannot but be injurious to the Government and myself.

The remedy is very simple—rescind the appointment—allow the parties interested to fight it out before the Courts.

Yours, &c.
(Signed) L. Letellier."

If, my Lord, I insist upon this latter point, it is to show your Excellency that the Prime Minister was then perfectly aware of my views on that point, and should not, in consequence, have introduced, during the last Session of our Legislature, any legislative measure or performed any administrative act tending to substitute executive for judicial power, without notifying me, and especially without advising me on the subject.

It was easy for the Premier to understand, from my remarks and the frequent conversation which I had with him, that I could not consent to see Her Majesty's subjects despoiled of the right guaranteed to them by Magna Charta, that their property should never be interfered with, except in virtue of a judgment rendered by the tribunals of the country.

4th. On the 19th March 1877, being on the eve of absenting myself for a few days I wrote to the Hon. M. Chapleau, and in a postscript I said: " Please oblige me by telling the Premier that if he needs my concurrence, Mr. Gauthier may bring down to me the documents requiring my signature."

M. De Boucherville should have understood from that, that if I was ready to give my concurrence, it was on condition of having all documents submitted to me before signing them.

I leave you, my Lord, to judge in what manner my views were interpreted.

5th. Under date of the 6th of November last, I addressed to the Honourable M. De Boucherville the letter of which the following is a copy :—

" Private.

" My dear De Boucherville, Quebec, November 6, 1877.

In the last " Official Gazette " were published under my signature, two proclamations which I had not signed.

One was for the summoning of Parliament, which I had reserved in order to confer with you, the other, which I did not even see, appoints a day of Thanksgiving.

These proceedings, the nature of which I shall not characterise, entail, apart from their impropriety, invalidities whieh you will easily understand.

Yours, &c.

The Hon. C. B. De Boucherville, Premier. (Signed) L. Letellier."

The following are the notes which I took of the conversation which I had with M. De Boucherville on the subject.

" M. De Boucherville came on the same day he received the letter to tell me that he regretted that the thing had occurred, and that it was no fault of his. I accepted the excuse, and I then told him that I would not tolerate my name being used, when necessary for any duty of my office, unless the documents requiring my signature had been previously submitted to me, and unless information was afforded to me ; which M. De Boucherville assured me would be the course followed in future.

(Signed) L. L."

6th. But my Lord, there is another point still more important, which I cannot any longer refrain from mentioning.

From the conversation which I have held with M. De Boucherville, there results a fact, which, if it were known, would of itself have sufficiently justified me in believing that he did not possess the confidence of the people of this Province.

On two different occasions, some time after the session of 1877, I pointed out to him that millions had been voted to aid railways in general at a time when our finances did not appear to me to be in a condition to warrant, all at once, a lavish expenditure in subsidizing these numerous undertakings, particularly as, apart from that, our credit was " so heavily pledged towards the building of the " Quebec, Montreal, Ottawa, and " Occidental Railway."

He very frankly avowed that these grants, though they were for the development of the Province, had been necessitated by political considerations ; that without them, the support of the members whose counties were traversed by those railways would cease to be secured to Government ; that there would be no means of having a majority ; that those members formed combinations—" rings "—to control the House.

M. De Boucherville is not unaware that I thereupon told him that it was better to save the Province than a Government, and that if his Administration was not strong enough to resist those influences, it would be better for him to form a combination of honest and well meaning men, from both sides of the House, rather than submit to the dictation of those " rings," and to the control of those combinations.

When he made no attempt to escape from that deleterious influence, after his own avowal that the Legislature was controlled by those " rings," when by his legislation he sought to favour them anew during the last session, without having previously advised with me, had I not the right, as the Representative of my Sovereign, to believe and to be convinced that M. DeBoucherville did not possess a constitutional majority in the Legislative Assembly.

7th. In communicating to both Houses my Memoranda of the 25th February and 1st March last, the Premier and Mr. Attorney-General Angers, in violation of their duty, overstepped the authorisation which I had given by my letter of the 4th of March last for that purpose. They added to that communication a report of pretended conversations, the correctness of which I contest, and the impropriety of which I maintain.

I shall point out, my Lord, one fact alone to prove that incorrectness and that impropriety. The Hon. Messrs. De Boucherville and Angers, in their explanations to the two Houses, lay great stress on the telegram which M. De Boucherville despatched to me at Rivière Ouelle, to ask my permission to introduce resolutions concerning the finances, and on the blank signature that I sent up in answer to it.

But these gentlemen themselves had that blank signature filled up by my private secretary, so as to give to the telegram the meaning which I attributed to it, namely, a request for permission to introduce the supplies. The following is a copy of the message produced with that blank signature :—

" Mr. Treasurer Church presented a message from his Excellency the Lieutenant-Governor as follows :—

" L. Letellier,

" The Lieutenant-Governor of the Province of Quebec transmits to the Legislative Assembly the supplementary estimates for the current year and for the fiscal year ending 30th June 1879, which, in conformity with the provisions of the 54th section of the British North America Act, 1867, he recommends to the Legislative Assembly.

" Government House,

" Quebec, 30th January, 1878."

My ministers never had, by their own admission, any other authorisation from me for the introduction of their railway and taxation resolutions than the blank signature above mentioned, in which not a word is said of them. Besides which, it will be noticed that the railway resolutions were introduced on the 29th January, whereas the message is dated the 30th.

It is for this reason, my Lord, that I bring to your knowledge all the facts and details which are connected with the relations which I have had with M. De Boucherville and his colleagues.

Were the controversy with me alone, as a private individual, I would abstain from any remonstrance against the injustice of their reflections upon the conduct of the Representative of the Crown, which they have made in violation of their duty ; but in this matter the maintenance of the Constitution is at stake.

If, without any authority from me, proclamations have been published which I never signed, is it surprising that messages were communicated in my name to the houses respecting which I had never been consulted ?

It is because, as the Representative of my Sovereign, I have been unjustly and shamefully dragged before the public that I make known to you, my Lord, that, in the performance of my duty as her Representative, my object has not only been to protect the dignity of my office but to afford to the people of this Province an opportunity of knowing that, under existing circumstances, the exercise of the Royal prerogative has not been hostile to their constitutional liberties ; but that, on the contrary it has afforded them the means of freely exercising their judgment.

There results, my Lord, from what I have now stated :—

1st. That in general the recommendations which I made to my Cabinet did not receive the consideration which is due to the Representative of the Crown.

2nd. That my name has been used by the members of the Government in the signature of documents which I had never seen.

3rd. That a proclamation summoning the Legislature was published in " Official Gazette " without my being consulted or informed of it, and before my signature had been attached thereto.

4th. That a like proclamation fixing a Day of Thanksgiving was also published under similar circumstances.

5th. That, although I had intimated to the Premier by my advice, and by my letter of the 14th of March 1877, my firm determination to protect the inhabitants of this Province against the arbitrary decisions of the Executive in matters within the jurisdiction of the courts of justice, he thought proper, without my participation and without advising me, to propose to both Houses, in legislating for the " Quebec, Montreal, Ottawa, and Occidental Railway," to substitute the power of the Executive for that of the Judiciary.

6th. That, without having advised me, and without having received authorisation of any sort whatever from me, the Government of M. De Boucherville proposed to the Legislature a measure of almost general taxation upon the ordinary contracts and transactions of life, transfers of bank stock, &c., while no message from me had been asked for this object, nor signed by me to authorise its proposition to the Houses.

7th. That, after its dismissal, the Government of M. De Boucherville again failed in its duty by assigning reasons for the adjournment of the House from day to day, different

from those agreed on between myself and the Premier, at the risk of prejudicing public opinion against the Representative of the Crown.

8th. That at the time of the communication of the causes which rendered necessary the dismissal of the Cabinet, in the explanations which were given by the Premier to the Legislative Council, and by the Attorney-General to the Legislative Assembly, both of them referred to pretended conversations which they had no authority whatever to communicate to the Legislature, since the Premier had, by his answer to the letter of the Lieutenant-Governor of the 4th March last, limited his explanations to the communication to both Houses of my Memoranda of the 25th February and 1st March, and the answers of the Premier of the 27th February and of the 2nd and 4th March, instant.

9th. That, therefore the additions and the comments made by the Premier before the Legislative Council, and by the Attorney-General before the Legislative Assembly, were contrary to the conditions agreed upon between the Lieutenant-Governor and the Premier.

10th. That the Premier and his colleagues, by making use of pretended private conversations to explain the causes of their dismissal, in contravention to their duty to the Crown and to what they had pledged themselves to observe with regard to it, have placed the Lieutenant-Governor under the necessity of bringing under the notice of your Excellency all the reasons for that dismissal.

I have, &c.

(Signed) L. Letellier,
Lieutenant-Governor.

Appendix A.

(Translation.)

Summary of Official Record.

In January 1877 an election had taken place for the south ward of the village of Montmagny. That election having been declared null and void by the Court, it ordered a fresh election, and appointed Eugène Hamond to preside thereat.

On the day fixed, Eugène Hamond refusing to preside, Naz. Bernatchez, Esq., Mayor of the municipality, the senior magistrate present, presided.

The meeting elected Eugène Fournier.

Eugène Hamond wrote to the Lieutenant-Governor that he had not presided at the meeting, without adding, however, that there had been no election. He recommended at the same time, that Jules Bélanger be appointed.

Eugène Fournier, elected at the meeting of the 19th February, took the oath of office and took his seat on the 23rd February.

On the 3rd of March the Attorney-General (M. Angers) recommended the appointment of Jules Bélanger, who was accordingly appointed on the 7th of the same month.

On the 10th of March Mr. Bernatchez, Mayor of Montmagny, addressed to the Lieutenant-Governor a memorial setting forth the facts, and praying that the appointment be cancelled.

On the 15th of March the Attorney-General made a report, recommending that the appointment of Jules Bélanger be maintained.

On the 27th of March the Lieutenant-Governor revoked that appointment, on a report of the Government.

Appendix B.

(Translation).

Quebec, March 4, 1878.

The Lieutenant-Governor desires that his two memoranda (of the 25th February and 1st March), addressed to the Hon. M. DeBoucherville, and the answers made to those memoranda by the Hon. M. De Boucherville (of the 27th February and 3rd March), be not now communicated to both Houses.

That communication, authorised by the Lieutenant-Governor at the request of the Hon. M. De Boucherville, should be made as soon as the arrangements for the formation of a new Executive Council are completed.

The Hon. M. De Boucherville may communicate to the Houses that the adjournment from day to day is rendered necessary by the last-mentioned cause.

(Signed) L. Letellier.

To the Hon. C. B. De Boucherville, Quebec.

(Translation).

Your Excellency, Quebec, March 4, 1878.

In conformity with your wish expressed in a letter of to-day's date, I shall withhold, until the formation of a new Executive Council, the explanations I was authorised by your Excellency to communicate to the Houses.

I have, &c.

(Signed) C. B. De Boucherville.

(Translation.)

Government House, Quebec,
February 25, 1878.

The Lieutenant-Governor desires the Executive Council to prepare, for his consideration, a "factum" containing a copy of the following documents, viz. :—

1. A copy of the Acts of the Federal Parliament authorising the construction of the railway now known under the name of "Quebec, Montreal, Ottawa, and Occidental," as well as a copy of the Acts of the Legislature of the Province of Quebec respecting the said railway.

2. A copy of the Acts of the Legislature of the Province of Quebec, respecting the building of the railway between Quebec and Montreal, which line is commonly designated by the name of "North Shore Railway."

3. A copy of the byelaws of each of the municipal corporations by which they undertook to help in constructing the said railways.

4. A statement of the amount of the bonus paid by each of those corporations, and a copy of the correspondence between the Government, its commissioners, or the contractors for the said railways, and the aforesaid municipalities, with regard to their bonus or subsidy.

5. A copy of the various contracts entered into for the building of those several roads.

6. A copy of the official or confidential reports of the engineers who have been ordered to locate those lines of railway in whole or in part.

7. A copy of the report of the Railway Commissioners submitted to the Houses, during the present session, with regard to the said railways.

8. A copy of the representations made to the Government by the municipal bodies so interested, or the ratepayers of those municipalities, with regard to the conditions of their bonus or subsidy.

9. A copy of the resolutions which have been proposed to the Provincial Legislature during the present session, with regard to the aforesaid subsidies, and to facilitate the payment and collection thereof.

10. A copy of the Bill based on those resolutions which has been introduced in the Legislature of Quebec during the present session.

11. A plan showing the several locatings of each of the said railways or of any part of them.

12. A statement of the reasons which led the Provincial Government not to be satisfied with the provisions of the statutory and public law, and of the Civil Code of this province for the recovery of any sums of money which may be due by those corporations, but, without previously advising in any way with the Lieutenant-Governor, to propose *ex post facto* legislation, to compel them to pay.

Another very important Bill, to make provision for levying new taxes, has also been proposed to the Legislature, without having been previously snbmitted for the consideration of the Lieutenant-Governor.

The Lieutenant-Governor quite understands that propositions of secondary importance, and on which he has been previously officially informed, may be, as matter of routine, proposed to the Houses, without a special order from himself; but he cannot in any way permit that the Executive should make communications in his name to the

Legislature, with regard to measures which are of a new and important character, without his special authorisation, and without his having been previously fully informed and advised in respect thereof.

(Signed) L. Letellier,
Lieutenant-Governor.

(Translation).

To His Excellency the Lieutenant-Governor of the Province of Quebec.

Your Excellency, Quebec, February 27, 1878.

I have the honour to acknowledge receipt of the Memorandum which your Excellency caused to be handed me yesterday afternoon by your aide-de-camp, who informed me at the same time that you were ill in bed.

I have submitted that Memorandum to the Executive Council, and will see, as your Excellency desires, that diligence is used to cause all the documents asked for to be transmitted to you as soon as possible.

Anticipating the factum which your Excellency wishes to have, and which will contain a more detailed statement of the motives which have induced the Provincial Government to propose the measures to which you draw my attention, I deem it my duty to represent to you:

That, amongst others, the reasons which led the Government to submit to the Legislature a law compelling the municipalities to pay their subscriptions towards building the provincial railway, on the decision of the Lieutenant-Governor in Council, under a sworn report of a competent engineer, and after a 15 days' notice, to give those municipalities an opportunity of being heard, are the manifestations of bad faith of certain municipalities, shown in certain cases by their neglect to respond to the calls of the Treasurer, in others by their formal refusal to pay, and in certain cases by resolutions adopted demanding new conditions in respect to the agreements they had entered into with the Government.

The Government believed that, without such legislation, the object of which is to avoid the slowness of ordinary judicial proceedings, the result of the bad faith of the municipalities would have been either to necessitate a new loan by the Province, and therefore an unjust charge upon municipalities who had entered into no agreement, and who are to derive no immediate advantage from the construction of the road, or to put a complete stop to the works begun, with the inevitable loss of the interest on the enormous capital already invested in the enterprise, and the other damages which would result. The Government, firstly obliging itself by that law to fulfil the conditions agreed upon with those municipalities, believe that in substituting for the ordinary courts, the Lieutenant-Governor with an Executive Council, responsible to the Legislature and to the people, they were offering to parties interested, a tribunal which insured them as many guarantees as the ordinary courts.

I would further bring under your Excellency's notice that provisions of a similar nature to this legislation exist already in our Statutes. I may cite to your Excellency cap. 83 of the Consolidated Statutes of Canada, and also cap. 47 of 36 Vict. of the Statutes of Ontario.

I respectfully submit to your Excellency that a law framed to better assure the execution of a contract cannot produce a retroactive effect; it enacts for the future, and has for its end the respective interests of both parties.

I would now beg your Excellency to observe that while you were at Rivière Ouelle, I had the honour to ask your authority to put the question of finance before the House, and that you kindly answered, stating you were forwarding through the mail a blank, which act I took at that time as a great mark of confidence on your part. I received, in fact, a blank, with your signature, and I gave it to the Treasurer, who had it filled up by your aide-de-camp. Later I had the honour to ask your Excellency for a general permission to submit to the House measures concerning money matters, which your Excellency gave me with your ordinary courtesy.

That permission, I may say, had always been granted me by your predecessor, the lamented Mr. Caron. I must admit that with that permission, and being convinced your Excellency had read the Treasurer's speech, in which he announced the taxation subsequently proposed, I considered myself authorised to tell my colleagues that I had your permission for all money measures.

I beg your Excellency to believe that I never had the intention of assuming the right of having measures passed without your approbation, and that in this case, having had

occasion to confer with you with regard to the law respecting the Provincial Railway and not having orders to suspend it, I did not think your Excellency would see in that measure any intention on my part of disregarding your prerogatives, which nobody is more disposed to respect and uphold than myself.

I have, &c.
(Signed) C. B. De Boucherville.

(Translation.)

To the Hon. C. B. De Boucherville, Prime Minister, Quebec.

Government House, Quebec,
March 1, 1878.

The Lieutenant-Governor, taking into consideration what the Prime Minister communicated to him verbally (February 27), and taking into consideration the letter which the Premier then handed to him, is ready to admit that there was no intention on the part of the Premier to disregard the prerogatives of the Crown, and that there has been on his part only an error committed in good faith, in interpreting as he did the words of the Lieutenant-Governor in their interview of the 19th February instant, words which did not convey the sense of authorisation which the Premier attached to them.

With such an interpretation, and the instructions which were in consequence given by the Premier to the Hon. Messrs. Angers and Church, those gentlemen have done nothing, knowingly, not in conformity with the duties of their office.

As to the blank which the Lieutenant-Governor sent him from Rivière Ouelle, the Lieutenant-Governor knew that that blank would be used to lay the estimates before the House.

That act was a mark of confidence on his part, as the Premier characterises it in his letter of the 27th; but that act was confidential.

The Lieutenant-Governor deems it right to observe that, in his Memorandum of the 25th February instant, he in no way expressed the opinion that he believed that the Premier ever had the intention of taking upon himself the right "of having measures passed without his approbation, or of disregarding the prerogatives of the Representative of the Crown."

But the Prime Minister cannot lose sight of the fact that, although there was no intention on his part, in fact the thing exists, as the Lieutenant-Governor told him.

The fact of having proposed to the Houses several new and important measures without having previously in any way advised the Lieutenant-Governor thereof, although the intention of disregarding his prerogatives did not exist, does not the less constitute one of those false positions which places the Representative of the Crown in a critical and difficult position with regard to the two Houses of the Legislature.

The Lieutenant-Governor cannot admit that the responsibility of this state of affairs should rest with him.

With regard to the Bill, intituled "An Act respecting the Quebec, Montreal, Ottawa, and Occidental Railway," the Premier cannot claim for that measure the asserted general authorisation which he mentions in his letter, for their interview was on the 19th February, and that Bill was before the Legislature several days before that date, without the Lieutenant-Governor having been in any way informed of it by his advisers.

The Lieutenant-Governor expressed at the time to the Premier how much he regretted that legislation; he represented to him that he considered it contrary to the principles of law and justice; notwithstanding that, the measure was carried through both Houses until adopted.

It is true that the Premier gives in his letter, as one of the reasons for acting as he did, "that this permission of using the name of the Representative of the Crown had, besides, always been granted him by the predecessor of the present Lieutenant-Governor, the lamented Mr. Caron."

This reason cannot be one for the Lieutenant-Governor; for in so acting he would have abdicated his position as Representative of the Crown, which act neither the Lieutenant-Governor or the Premier could reconcile with the obligations of the Lieutenant-Governor towards the Crown.

The Lieutenant-Governor regrets having to state, as he told the Premier, that he has not been informed in general, in an explicit manner, of the measures adopted by the Cabinet, although the Lieutenant-Governor had often given the Premier an opportunity to do so, especially during last year.

From time to time, since the last session of the Legislature, the Lieutenant-Governor has drawn the attention of the Premier to several subjects regarding the interests of the Province of Quebec, among others: 1st. The enormous expenditure occasioned by very large subsidies to several railways, while the Province was burdened with the construction of the great railway from Quebec to Ottawa, which should take precedence of the others; and this, when the state of our finances obliged us to undertake loans disproportioned to our revenue.

2nd. The necessity of reducing the expenses of the civil government, and of the Legislature, instead of having recourse to new taxes, in view of avoiding financial embarrassment.

The Lieutenant-Governor expressed also, but with regret, to the Premier, that the Orders passed in Council to increase the salaries of Civil Service servants, seemed to him inopportune, at a time when the Government were negotiating with the Bank of Montreal a loan of half a million, with power to increase that loan to $1,000,000, at a rate of interest of 7 per cent.; and, indeed, even to-day (1st of March) the Lieutenant-Governor is obliged to allow that an Order in Council be passed to obtain the last half million for the Government, without which the Government would be unable to meet its obligations, as I was informed by the Hon. the Provincial Treasurer to-day, by order of the Prime Minister.

The Premier did not let the Lieutenant-Governor know, then, or since, that the Government were in such a state of penury as to necessitate special legislation to increase public taxation.

Therefore the Lieutenant-Governor said and repeated these things to the Premier, and he deems it advisable to record them here, that they may serve as memoranda for himself and for the Premier.

It therefore results:—1st. That although the Lieutenant-Governor has made many recommendations, in his position as Representative of the Crown, to the Premier on these different subjects of public interest, his advisers have undertaken a course of administrative and legislative acts, contrary to these recommendations, and without having previously advised with him.

2nd. That the Lieutenant-Governor has been placed, without evil intention, but, in fact, in a false position, by being exposed to a conflict with the will of the Legislature, which he recognises as being in all cases supreme so long as that will is expressed in all constitutional ways.

The Lieutenant-Governor has read and examined carefully the Memorandum and documents which the Premier was kind enough to bring him yesterday.

There are in the record petitions from several municipal corporations and from citizens of different places, addressed to the Lieutenant-Governor, against the resolutions and the Government Bill, with regard to the "Quebec, Montreal, Ottawa, and Occidental Railway."

The Lieutenant-Governor was only yesterday able to take cognizance of some of these petitions, as they had not been communicated to him before he received them in the record.

The Lieutenant-Governor, after having maturely deliberated, cannot accept the advice of the Premier with regard to the sanctioning of the Railway Bill, intituled "An Act respecting the Quebec, Montreal, Ottawa, and Occidental Railway."

For all these causes the Lieutenant-Governot cannot conclude this Memorandum without expressing to the Premier the regret he feels at being no longer able to continue to retain him in his position, contrary to the rights and privileges of the Crown.

(Signed) L. Letellier.

(Translation.)

Your Excellency, Quebec, March 2, 1878.

I have the honour to acknowledge the receipt of your Memorandum, in which you come to the conclusion that you can no longer continue to retain me in my position as Prime Minister. There is no other duty for me to fulfill but to submit to the dismissal from office, which your Excellency has notified me of, declaring at the same time my

profound respect for the rights and privileges of the Crown, and my devotion to the interests of our Province.

I have, &c.
(Signed) C. B. De Boucherville.

To His Excellency the Lieutenant-Governor
of the Province of Quebec.

Message from His Excellency the Governor-General.

Dufferin,

The Governor-General transmits to the House of Commons a letter from the Hon. C. B. De Boucherville, having reference to recent ministerial changes in the Province of Quebec.

Government House, Ottawa,
8th April 1878

Sir, Ottawa, April 3, 1878.

I have the honour to inform, through you, his Excellency the Governor-General that I have this day transmitted to the Hon. the Secretary of State of Canada a letter or memorandum with annexed document, addressed to his Excellency with request that it may be put in his Excellency's hands, and that his Excellency the Governor-General may be pleased to lay that letter and annexed document before both Houses of Parliament.

My letter letter or memorandum being an explanation of the charges brought against me and my colleagues by the Lieutenant-Governor of Quebec, I believe that it is due to me and my colleagues that our explanations may be communicated to both Houses of Parliament, in the same way that the Lieutenant-Governor's memorandum was communicated to them.

I have, therefore, to respectfully reiterate my request,

And remain, Sir, &c.,

Hon. Col. Littleton, &c., (Signed) C. B. De Boucherville,
Ottawa. M. L. C.

(Copy.)

Sir, Ottawa, April 3, 1878.

I have the honour to transmit herewith a letter, with annexed document, addressed to his Excellency the Governor-General. I have the honour to request, through you, his Excellency to be kind enough to lay the above-mentioned letter and documents before both Houses of Parliament.

I have, &c.

The Hon. R. W. Scott, (Signed) C. B. De Boucherville,
Secretary of State, Ottawa. M. L. C.

To His Excellency the Right Honourable the Earl of Dufferin, K.P., K.C.B., G.C.M.G.,
Governor-General of Canada, Ottawa.

My Lord, Ottawa, April 2, 1878.

The "explanatory case" addressed to your Excellency by his Honour M. Letellier, and accompanying the documents and details which related to my recent dismissal from office, and by you transmitted to the Senate and House of Commons, containing as it does statements of facts, the accuracy of which I respectfully deny, imposes upon me the duty of submitting for your information and consideration the following:—

As your Excellency is doubtless aware, M. Angers laid upon the table of the Legislative Assembly on the 8th of March last, copies of the correspondence and explanations by him made at my request relating to the dismissal from office of the De Boucherville Government. This correspondence and explanations, with some com-

ments of his own, are contained in the copy of the votes and proceedings of that House of the 9th March, and I respectfully beg to be permitted to annex them as forming part hereof. I beg, however, to add to these explanations of M. Angers a few words upon two subjects, viz. :—

1. In the Memorandum which I had the honour to address to his Honour M. Letellier, under date 27th February, I said :—" Later I had the honour to ask your Excellency for a general permission to submit to the House measures concerning money matters, which your Excellency gave me with your ordinary courtesy. This permission, I may say, had always been granted me by your predecessor, the lamented M. Caron."

I do not think that the meaning of these phrases is correctly rendered in the paragraph in his Honour's letter to me, under date the 1st March, wherein he says :—

" It is true that the Premier gives in his letter as one of the reasons for acting as he did, that this permission of using the name of the Representative of the Crown had always been granted him by the predecessor of the present Lieutenant-Governor, the lamented M. Caron.

" This reason cannot be one for the Lieutenant-Governor ; for in so acting he would have abdicated his position as Representative of the Crown, which act neither the Lieutenant-Governor nor the Premier could reconcile with the obligation of the Lieutenant-Governor to the Crown."

It is manifest that I desired to say, and that, in fact, I did say, that the late M. Caron had given me that authority for money matters only.

My Lord, I respect too highly the memory of that virtuous and distinguished statesman, to allow any such misinterpretation of my meaning to pass unchallenged, by which I am made to intimate that the deceased M. Caron had abdicated to me his position as the Representative of the Crown. Every person who knew the late M. Caron and his high legal and constitutional attainments, will share with me my regretful surprise that any such imputation should be cast upon his memory.

2nd. That, not having kept any memorandum of such conversations as I had with the Lieutenant-Governor, except those which took place since the 25th February last, I have no remarks to make upon the paragraph, wherein it is stated :—

" The Premier did not let the Governor know, then or since, that the Government was in such a state of penury as to necessitate special legislation to increase public taxation," unless it be that this statement does not seem to me to accord with a preceding paragraph, wherein it is stated that the Lieutenant-Governor drew my attention " to the necessity of reducing the expenses of Government and of the Legislature, instead of having recourse to new taxes in view of avoiding financial embarrassment."

I acknowledge that I never did inform the Governor that the Province was in a state of penury, simply because I was convinced of the contrary.

" The Lieutenant-Governor expressed also, but with regret, to the Premier, that the Orders passed in Council to increase the salaries of Civil Service servants seemed to him inopportune."

Upon this matter I merely desire to remark that these Orders in Council were authorized by a law passed during the Session of 1876.

I propose now, my Lord, to deal with the specific allegations made against me by his Honour M. Letellier, in his explanatory case, and, for convenience sake, I take the liberty to quote from his Honour's memorandum :—

1st. " During the Session of 1876, a Bill had been read three times in one of the two branches of the Legislature, and only twice in the other.

" This Bill bearing all the certificates which were necessary to induce me to believe that it had been regularly passed and adopted, was submitted to me by the Premier for my sanction.

" In consequence of being left in ignorance of these facts by my advisers, I sanctioned the Bill.

" Not long afterwards I was informed of the irregularity, and I immediately spoke of it to the Premier. I made the observation that such an Act would entail too serious consequences to allow of its being passed over.

" As a favour to him, however, I passed over this instance of irregular legislation, which was then irreparable."

In relation to this the facts will furnish a sufficient answer. The Act in question was a Bill, entitled, " An Act to authorise the formation of societies for the improvement of country roads, and for the destruction of noxious weeds in the Province of Quebec." It was introduced in the Legislative Council, duly passed that House, and was sent down to the Legislative Assembly for its concurrence.

Apparently in the hurry of the last hours of the session, after it had been read twice, the Clerk, by mistake, certified it as passed without amendment, and it was thus sent back to the Legislative Council. His Honour came down on the following day to prorogue the Legislature, and his assent was given to this Bill along with others. The error was immediately discovered by the Attorney-General, who made a report for transmission to Ottawa stating the error, and suggesting that the Act should be disallowed. The Hon. Mr. Blake, then Minister of Justice, reported in reply that this was unnecessary, that the Act, not having received all its stages, was but blank paper, and as a consequence it was not printed in the Statutes. In view of this fact, it is difficult to understand the statement of his Honour the Lieutenant-Governor that, "as a favour" to me, he "passed over this instance of irregular Legislation, which was then irreparable."

2nd. "During the same session another Bill was submitted to me for my sanction. On examining it I perceived a blank which had not been filled up, which I pointed out to the Premier in the following letter:—

"(Private.)

"My dear Premier, Quebec, December 27, 1876.

"A Bill (E) which originated in the Council, was passed by the Legislative Assembly without amendment; upon reading it before adding my certificate of sanction, I noticed that a blank had not been filled up in the seventh line of the sixth section.

"You followed the usual practice in not fixing the amount of the penalty in the Legislative Council, but the matter passed unperceived, or the officers, through some mistake, omitted to insert the amount fixed by the House, or it may have been an error in the proof sheets.

"While on the subject of these mistakes, you will find another in the second section of the same Act, wherein the word 'amender' is in the infinite mood. I notice this latter inaccuracy, to which I do not attach much importance, only because I discovered another in an Act in which I had to point out to you an omission which I consider fatal.

"Yours, &c.

"(Signed) L. Letellier."

"The Premier came to me and said that he regretted the omission; he requested me to give my sanction to the Bill in the state in which it was. The conciliatory spirit which I showed in granting my consent seemed to please him."

In relation to this, I have to say that the Act in question was "An Act to provide for the safety and protection of the public in theatres, edifices and public halls." As stated, it was passed first in the Legislative Council, where the blank, being the amount of the penalty, could not be inserted. By inadvertence it passed the Legislative Assembly in the same form. After its passage, the omission was discovered, and a short Bill was introduced to remedy it. The Act in which the omission occurred is numbered 19, and the Act supplying the omission is numbered 20, of the statutes of 1876, and both were sanctioned by his Honour the Lieutenant-Governor at the same time.

3rd. "In March, 1877 (*vide* Appendix A.), my advisers caused me to make an appointment of a municipal councillor for the south ward of the village of Montmagny, under the pretext that there had been no election, or that if such election had taken place, it was illegal," &c.

As to the third complaint of his Honour, it is difficult to understand, seeing that it had no relation to the dismissal of myself and my colleagues, why it is introduced. Whether wisely or not, the municipal code of the Province of Quebec provides that, in a certain contingency, the Lieutenant-Governor of the Province shall appoint a councillor. In the opinion of the law adviser of his Honor, upon a petition sent in from the village of Montmagny, that contingency had arisen, and he made a report recommending an appointment. That report was approved, and the appointment made by his Honour. Subsequently other information was received, which induced his Honour to urge the revocation of the appointment, and out of deference to him, while seeing no reason to change its opinion, the Government yielded, and the appointment was cancelled.

4th. "On the 19th March 1877, being on the eve of absenting myself for a few days, I wrote to the Hon. M. Chapleau, and in a postscript I said, 'Please oblige me by telling the Premier that if he needs my concurrence, M. Gauthier may bring down to me the documents requiring my signature.'

" M. De Boucherville should have understood from that, that if I was ready to give him my concurrence, it was on condition of having all documents submitted to me before signing them."

" I leave you, my Lord, to judge in what manner my views were interpreted."

It would seem somewhat remarkable that a statement to which his Honour appears to attach so much importance should have appeared as a postscript to what I have reason to believe was a private letter, in no sense relating to public business. I may say, however, that a reference to dates will show that the documents referred to had relation to the Montmagny Councillorship, which was at the time a subject of discussion, and was not intended to have and had not any such significance as that attempted now to be attached to it.

5th. " Under date of the 6th of November last, I addressed to the Honourable M. De Boucherville, the letter of which the following is a copy :—

" (Private.)

" My dear De Boucherville, Quebec, November 6, 1877.

" In the last 'Official Gazette' were published over my signature two proclamations which I had not signed.

" One was for the summoning of Parliament, which I had reserved in order to confer with you ; the other, which I did not even see, appoints a Day of Thanksgiving.

" These proceedings, the nature of which I shall not characterise, are productive, apart from their impropriety, of nullities of which you will easily understand.

" Yours, &c.

" The Honourable C. B. De Boucherville, (Signed) L. Letellier."
Premier.

The following are the notes which I took of the conversation which I had with M. De Boucherville on the subject :—

" M. De Boucherville came on the same day he received the letter, to tell me that he regretted that the thing had occurred, and that it was no fault of his. I accepted the excuse, and I then told him that I would not tolerate my name being used, when necessary, for any duty of my office, unless the documents requiring my signature had been previously submitted to me, and unless information was afforded to me, which M. De Boucherville assured me would be the course followed in future.

" (Signed) L. L."

It is a sufficient answer to this complaint, to say that the proclamation for the summoning of the Legislature for the despatch of business, was not published until the 24th November, and it could not, therefore, be that proclamation to which his Honour referred in his letter of the 6th November. The proclamation to which he refers was the mere formal one by which the meeting of the Legislature is further postponed from time to time; and I am informed that the Order in Council for the particular proclamation to which his Honour referred was signed by him, and is of record, so signed, with the proper officer.

As to the proclamation fixing a Day of Thanksgiving, I have to remark that this was the result of a communication from the Premier of Canada, the Honourable Alexander Mackenzie, to the Lieutenant-Governor, and handed to me by his Honour with the request that I would carry out the suggestion. It will appear sufficiently strange under these circumstances, that I should be accused of acting without his knowledge, even if the clerical duty of obtaining his signature had been omitted. I am informed, however, that in this case also, the Order in Council, as well as the Proclamation, were signed by his Honour, and are of record, bearing his signature, in the office of the proper officer.

6th. " But, my Lord, there is another point still more important, which I cannot any longer refrain from mentioning.

" From the conversations which I have held with M. De Boucherville, there results a fact, which, if it were known, would of itself have sufficiently justified me in believing that he did not possess the confidence of the people of this Province.

" On two occasions, sometime after the session of 1876, I pointed out to him that millions had been voted to aid railways in general, at a time when our finances did not appear to me in a condition to warrant all at once a lavish expenditure in subsidising

these numerous undertakings, particularly as, apart from that, our credit was so heavily pledged towards the building of the Quebec, Montreal, Ottawa, and Occidental Railway.

" He very frankly avowed that these grants, though they were for the development of the Province, had been necessitated by political considerations; that without them, the support of the members whose counties were traversed by those railways would cease to be secured to Government; that there would be no means of having a majority; that the members formed combinations—' rings '—to control the House.

" M. De Boucherville is not unaware that I thereupon told him that it was better to save the Province than a government, and that if his administration was not strong enough to resist those influences, it would be better for him to form a combination of honest and well-meaning men, from both sides of the house, rather than submit to the dictation of those ' rings,' and to the control of those combinations.

" When he made no attempt to escape from that deleterious influence, after his own avowal that the Legislature was controlled by those ' rings '; when by his legislation he sought to favour them anew during the last session, without having previously advised with me, had I not the right, as the Representative of my Sovereign, to believe and to be convinced that M. De Boucherville did not possess a constitutional majority in the Legislative Assembly ? "

I have no desire to enter into a discussion as to the precise conversations that may have taken place between his Honour and myself, in the frequent intercourse which we had together, but, I submit as my answer to this most serious imputation, " that I confessed to being controlled by ' rings,' " in relation to the railway legislation while I was the leader of the Provincial Government, the following facts :—

I took office in 1874. In the session following a measure was introduced to increase the subsidies granted by previous legislation to a number of railways. Several amendments were moved to the resolutions, all of them looking to an increase in the grants, and for these, the opposition, under the leadership of Mr. Joly, voted. The general elections took place subsequent to that session, and, whether the legislation was good or bad, it was sustained by a very large majority of the people, and is, therefore, no longer a proper subject of discussion in the connexion in which his Honour introduced it. At the first session after the elections, the Government, at the request of the municipalities of Montreal and Quebec, assumed the task of constructing the North Shore and Northern Colonization Railways, now known as the " Quebec, Montreal, Ottawa and Occidental Railway." Great pressure was brought to bear upon the Government to increase the subsidies to the other roads at that time, but this pressure was resisted. As a matter of fact, it is not true that " millions have been voted to aid railways in general," at a time when " our credit was so heavily pledged towards the building of the Quebec, Montreal, Ottawa, and Occidental Railway." On the contrary, since our credit became so pledged, not one dollar has been added to the debt or liabilities of this Province on account of those " railways in general."

In the session of 1876 a measure was introduced authorising a portion of the subsidy on some of these railways, from the unbuilt portion, to be used on that which was under construction to enable them to be carried to particular points, which was considered important to the public interests should be reached, and a lapsed subsidy of $200,000 was divided among other roads of a similar class, the Bill passing the Legislature without division.

In relation to this Act, his Honour M. Letellier, in proroguing the Legislature, used these words :—" I trust that the result of your labours will be to give a new impetus to the great improvements which have been undertaken in this Province." During the last session this process of " doubling up " of the subsidy was again adopted, but without adding to the public liability. This Act was carried through its final stages in the Legislative Council, after the change of Government, and was assented to by his Honour the Lieutenant-Governor.

7th. " In communicating to both Houses my memoranda of the 25th February and 1st March last, the Premier and Mr. Attorney-General Angers, in violation of their duty, overstepped the authorisation which I had given by my letter of the 4th of March last for that purpose. They added to that communication a report of pretended conversations, the correctness of which I contest, and the impropriety of which I maintain, &c."

As this relates to what occurred after the dismissal of the late Government, it can hardly be held to justify that dismissal. It is sufficient to refer to the correspondence,

which shows that there was no stipulation on my part as to the precise form of explanations to be made to the House; and in view of the fact that we were a dismissed ministry, I must claim that we had a duty, not only to ourselves, but to the majority of the representatives of the people whose confidence we enjoyed, to make the explanations as full as possible. As to the introduction, without authorisation, of the Railway and Finance Bills, I conceived myself to have been fully authorised, and the explanations which I offered to his Honour on this point, and which were accepted by him, do not require to be repeated.

To sum up after the manner of his Honour:—

"1st. That in general the recommendations which I made to my Cabinet did not receive the consideration which is due to the Representative of the Crown."

As responsible ministers, we considered it to be our duty to advise his Honour not to be bound to act upon advice from him. At the same time, as is seen in the case of the Montmagny Councillorship, we were disposed, as far as possible, to pay proper deference to his views and wishes.

"2nd. That my name has been used by members of the Government in the signature of documents which I had never seen."

I have simply to say that I know of no such case, unless it refers to the proclamations mentioned in the "Explanatory case," and the answer on that point is sufficiently distinct.

"3rd. That a proclamation summoning the Legislature was published in the "Official Gazette" without my being consulted or informed of it, and before my signature had been attached thereto."

No proclamation summoning the Legislature was so published without the knowledge and signature of his Honour, and the Legislature was in fact not summoned for the despatch of business for nearly three weeks after his Honour's letter of complaint on the subject.

"4th. That a like proclamation fixing a Day of Thanksgiving was also published under similar circumstances."

The Thanksgiving Day was fixed at the request of his Honour himself, and the Order in Council fixing it was signed by him.

"5th and 6th. That, although I had intimated to the Premier by my advice, and by my letter of the 14th March 1877, my firm determination to protect the inhabitants of this Province against the arbitrary decisions of the Executive in matters within the jurisdiction of the courts of justice, he thought proper without my participation and without advising me, to propose to both Houses, in legislating for the 'Quebec, Montreal, Ottawa, and Occidental Railway,' to substitute the power of the Executive for that of the Judiciary."

"That, without having advised me, and without having received authorization of any sort whatever from me, the Government of M. De Boucherville proposed to the Legislature a measure of almost general taxation upon the ordinary contracts and transactions of life, transfers of bank stock, &c., while no message from me had been asked for this subject, nor signed by me to authorise its proposition to the Houses."

In relation to these measures I considered myself authorised by the reply of his Honour to my request for an authorization for resolutions respecting finances, and my explanations, as is seen by his letter to me, were accepted, and the Government relieved from all imputation of intentional discourtesy.

"7th. That, after its dismissal, the Government of the late M. de Boucherville again failed in its duty by assigning reasons for the adjournment of the House from day to day different from those agreed on between myself and the Premier, at the risk of prejudicing public opinion against the Representative of the Crown."

No reasons were assigned by me for the adjournment of the Legislative Council, neither the Speaker nor myself being present at any sitting of that House during the crisis, and the reasons assigned by M. Angers for the adjournment of the Legislative Assembly were in these words:—

"The Lieutenant-Governor signified his desire that the explanations respecting the dismissal from office of the members of the Executive Council be not given this day, but only after a new Cabinet shall have been formed;" that reason being substantially that given in the letter of his Honour of the 4th March.

"8th. That at the time of the communication of the causes which rendered necessary the dismissal of the Cabinet, in the explanations which were given by the Premier to the Legislative Council, and by the Attorney-General to the Legislative Assembly,

both of them referred to pretended conversations which they had no authority whatever to communicate to the Legislature, since the Premier had, by his answer to the letter of the Lieutenant-Governor of the 4th March last, limited his explanations to the communication to both Houses of my memoranda of the 25th February and 1st March, and the answers of the Premier of the 27th February and of the 2nd and 4th March instant."

My letter of the 4th March makes or accepts no such limitation, and, for the reason I have already stated, I considered myself fully justified in making the explanations that were made.

"9th. That therefore the additions and the comments made by the Premier before the Legislative Council, and by the Attorney-General before the Legislative Assembly, were contrary to the conditions agreed upon between the Lieutenant-Governor and the Premier."

As I have stated, there were no such conditions agreed upon between the Lieutenant-Governor and myself.

"10th. That the Premier and his colleagues, by making use of pretended private conversations to explain the causes of their dismissal, in contravention to their duty to the Crown and to what they had pledged themselves to observe with regard to it, have placed the Lieutenant-Governor under the necessity of bringing under the notice of your Excellency all the reasons for their dismissal."

The conversations reported by me were not "pretended" but real, of which notes were taken immediately after they occurred, and which were necessary to explain fully the circumstances preceding my dismissal. If they have compelled his Honour to state "all the reasons for that dismissal," I venture the opinion that it would have been more respectful to the Legislature, whose confidence I enjoyed, had "all the reasons" been communicated to it.

The observations I have made upon these additional reasons will, I hope, serve to convince your Excellency that they were not such as to strengthen the position of the Lieutenant-Governor.

I have, &c.

(Signed) C. B. De Boucherville,
M. L. C.

No. 42.—Extract from the Votes and Proceedings of the Legislative Assembly of the Province of Quebec.

The following letter and "copies of the correspondence and explanations relating to the dismissal from office of the De Boucherville Government" were laid upon the table:

To the Honourable the Speaker of the Legislative Assembly.

Sir, Quebec, March 8, 1878.

I have the honour to forward you, to be laid before the House, copy of the correspondence and explanations relating to the dismissal from office of the De Boucherville Government, which I read and communicated to the House.

I have, &c.

(Signed) A. R. Angers,
Ex-Attorney-General,
Member for the County of Montmorency.

Mr. Speaker,

Mr. De Boucherville had received permission from the Lieutenant-Governor to give explanations respecting his dismissal from office at the sitting on Monday, the 4th March instant; between half-past one and two o'clock of the same day, he received from His Excellency a notice not to give any explanations until the new Cabinet had been formed.

This event having been announced, the late De Boucherville Government has the right, in virtue of the permission so obtained, to give its explanations to the House and to the country.

It is my duty to announce to the House that the De Boucherville Government did not resign. A Government, possessing the confidence of the great majority of the Represen-

tative Assembly, and of almost the whole of the Legislative Council, has no right to resign, if it has really at heart the interest of the country, and a respect for its duty. The Government was dismissed from office by the Lieutenant-Governor. The facts which preceded and followed this event are entered in a journal kept from day to day and from hour to hour, under the dictation of the ex-Premier, and the following is an exact and faithful recital thereof.

On the 26th February 1878, at about half-past four o'clock p.m., the Premier received from the Lieutenant-Governor, through his Aide-de-Camp, the following letter:—

To the Hon. C. B. De Boucherville, Premier of the Province of Quebec.

Government House, Quebec, February 25, 1878.

The Lieutenant-Governor desires the Executive Council to prepare for his consideration a factum including a copy of the following documents:—

1. A copy of the Acts of the Dominion Parliament authorising the construction of the railway now known under the name of the "Quebec, Montreal, Ottawa, and Occidental Railway" as well as a copy of the Acts of the Legislature of Quebec, respecting the same railway:

2. A copy of the Acts of the Legislature of the Province of Quebec respecting the construction of the railway between Quebec and Montreal commonly known as the North Shore Railway:

3. A copy of the byelaws of each of the Municipal Corporations by which they agreed to assist in the construction of the said road:

4. A statement of the amount of the grant paid by each of those corporations, and a copy of the correspondence exchanged between the Government, the Railway Commissioners, or the contractors of the said road and the said municipal corporations, with respect to their said grant or subsidy:

5. A copy of the several contracts entered into for the construction of the said roads:

6. A copy of the official and confidential reports of the engineers to whom was entrusted the location of these lines of railway, in whole or in part:

7. A copy of the report of the Railway Commissioners, laid before both Houses during the present session, respecting the said roads:

8. Copy of the representations made to the Government by the municipal corporations interested or by the ratepayers of these municipalities, respecting the conditions of their grant or subsidy:

9. Copy of the resolutions proposed to the Provincial Legislature, during the present session, respecting the said subsidies and to facilitate the payment and recovery of the same:

10. Copy of the Bill, based upon the said resolutions, which was introduced into the House, during the present Session:

11. A plan showing the locations of each of the said railways or of any portion thereof:

12. A detailed statement of the reasons which induced the Provincial Government not to content themselves with the provisions of the Statute and Common Law and with those of the Civil Code of this Province, for the recovery of the sums of money which might become due by the said corporations, but, without having in any manner previously consulted with the Lieutenant-Governor, to propose an *ex post facto* legislation to compel them thereto.

Another very important measure, to provide for the imposition of new taxes, was also similarly proposed to the Legislature, without having been previously submitted to the Lieutenant-Governor.

The Lieutenant-Governor is perfectly aware that measures of secondary importance, which have previously been sufficiently explained to him, may be, as a matter of routine, proposed to both Houses, without an express order from himself, but he cannot allow the Executive to communicate to the Legislature, on his behalf, any important or new measures, without his special order and without his having been previously fully informed and advised thereof.

Luc Letellier,
Lieutenant-Governor.

The Premier prepared his answer during the night of the 26th-27th February. This answer was delivered by him in person to the Lieutenant-Governor, at Spencer Wood, about 10 o'clock a.m. on the 27th. It reads as follows:—

To His Excellency the Hon. L. Letellier de St. Just, Lieutenant-Governor of the Province of Quebec.

MAY IT PLEASE YOUR EXCELLENCY, Quebec, February 27, 1878.

I HAVE the honour to acknowledge the receipt of the memorandum sent me yesterday afternoon by your Excellency through your aide-de-camp, who, at the same time, informed me that you were ill in bed. I submitted this memorandum to the Executive Council, and I shall see, as your Excellency desires, that all due diligence be used, in order that all the documents required may be transmitted to you as soon as possible.

In anticipation of the factum desired by your Excellency, which will contain a more detailed statement of the motives which induced the Provincial Government to bring in the measures to which you draw my attention, I consider it my duty to represent that the reasons which, amongst others, caused the Government to submit to the Legislature a law obliging the municipalities to pay their subscriptions for the construction of the Provincial Railway, on the decision of the Lieutenant-Governor in Council, after a sworn report, made by a competent engineer, and after a notice of fifteen days, to give such municipalities an opportunity of being heard,—are the ill will of certain municipalities, shown by some in their neglect to comply with the requests of the Treasurer, by others in their formal refusal to pay, and, in certain cases, by resolutions adopted, asking new conditions respecting the agreements which they had made with the Government.

The Government was of opinion that, without such legislation, the object of which is to avoid the delays of ordinary legal proceedings, the result of the ill-will of these municipalities would have been, either to necessitate a new loan by the Province and consequently to cause a burden to be unjustly imposed upon municipalities which had entered into no engagements and which would derive no immediate benefit from the construction of the road, or the complete stoppage of the works already begun, together with the inevitable loss of interest on the enormous capital already laid out upon this enterprise, and the other damages resulting therefrom.

The Government, while undertaking in the first place, by the said law, to fulfil the conditions which it had agreed upon with the said municipalities, considered that, in substituting for the ordinary courts, the Lieutenant-Governor with an Executive Council responsible to the Legislature and to the people, it offered to the parties interested a tribunal which afforded as many guarantees as the ordinary courts. I would also take the liberty of calling your Excellency's attention to the fact that similar provisions are already in our Statutes. I would cite to your Excellency chapter 83 of the consolidated Statutes of Canada, and also chapter 47 of 36 Victoria of the Statutes of Ontario.

I humbly submit to your Excellency that a law devised for the better securing of the execution of a contract cannot have a retroactive effect. It enacts for the future, and its objects are the respective interests of the parties.

Now I beg your Excellency to note that while you were at Riviére Ouelle I had the honour of requesting your authorisation to lay the question of finances before the House, and that you were kind enough to reply that you sent me a blank form by mail, and I considered this, at the time, as a great mark of confidence on your part. I did, in effect, receive a blank form with your signature, which I handed to the treasurer, who had it filled up by your aide-de-camp.

Later on, I had the honour of requesting your Excellency's authorisation generally to lay money questions before the House, and this your Excellency granted, with your usual condescension. This permission, moreover, had invariably been accorded me by your predecessor, the late lamented Mr. Caron.

I must admit, that with this authorisation, and the conviction in my mind that your Excellency had read the Treasurer's budget speech, in which he announced the taxes which were afterwards proposed, I considered I had a right to inform my colleagues that I had your permission for all questions respecting money.

I beg your Excellency to believe that I never had any intention of arrogating to myself the right of having measures passed without your approval, and that, under

existing circumstances, having had occasion to speak to your Excellency in reference to the law respecting the provincial railway, and not having received any order to suspend it, I did not think your Excellency would discover in this measure any intention on my part to slight your prerogatives, which no one is more disposed than I am to respect and uphold.

Yours, &c.

C. B. De Boucherville.

After some conversation, the Lieutenant-Governor, having heard Mr. De Boucherville's explanations, admitted that, if there had been any misunderstanding, it was in good faith on the part of the latter, in authorising his colleagues to say that they were authorised to submit the legislation in reference to money matters. He afterwards told him, in reply to his question on the subject, that the only difficulty remaining was the question of the Quebec, Montreal, Ottawa, and Occidental Railway and that he would give an answer on the following day, the 28th February.

On the 28th February, at about half-past seven in the evening, Mr. De Boucherville went to Spencer Wood to convey to the Lieutenant-Governor the documents asked for in the letter of the 25th (which documents were prepared by the Honourable the Secretary, and were accompanied by a synopsis). He asked him if he would soon give his answer. The Lieutenant-Governor told him that he would examine the documents and probably give it to him on the following day, the 1st March.

On leaving, Mr. De Boucherville said: "If I understand you rightly, you are hesitating between giving your sanction to the Railway Bill and reserving it." He replied: "That is it."

On the 2nd of March, at five minutes to one in the afternoon, the Aide-de-Camp of the Lieutenant-Governor handed to Mr. De Boucherville the letter given hereafter.

Before the Aide-de-Camp left, he was asked how his Excellency was. The Aide-de-Camp replied that he was not so well, and then asked, "When we intended closing the session." Mr. De Boucherville replied that he could not say, as many matters were in arrear. The following is the letter in question:—

To the Honourable C. B. De Boucherville, Premier, Quebec.

Government House, Quebec, March 1, 1878.

The Lieutenant-Governor taking into consideration the communication made to him verbally (on the 27th February) by the Premier, and also taking into consideration the letter which the Premier then gave to him, is prepared to admit that there had been no intention on the part of the Premier to slight the prerogatives of the Crown, and that there was only on his part an error, committed in good faith, in the interpretation that he gave to words used by the Lieutenant-Governor in the interview which they had on the 19th February instant, words which did not imply the authorisation attributed to them by the Premier.

With this interpretation and the instructions given in consequence by the Premier to the Honourable Messrs. Angers and Church, these gentlemen did not wittingly do anything against the duties of their office.

As to the blank which the Lieutenant-Governor addressed to him from Riviére Ouelle, the Lieutenant-Governor knew that such blank was to be used for the purpose of submitting the Estimates to the House.

This act was a token of confidence on his part, as stated by the Premier in his letter of the 27th, but it was confidential.

The Lieutenant-Governor deems it his duty to observe that, in his memorandum of the 25th of February last, he in no way expressed the opinion that he thought that the Premier ever had the intention of arrogating to himself the "right" of "having measures "passed without his approval, or of slighting the prerogatives of the Representative of the "Crown."

But the Premier must not lose sight of the fact that, although he had not so intended, the fact remains as he was told by the Lieutenant-Governor.

The fact of having submitted several new and important measures to the Legislature, without having previously, in any manner, consulted the Lieutenant-Governor, although without any intention of slighting his prerogatives, gives rise to one of those false positions which places the Representative of the Crown in a difficult and critical situation, with reference to both Houses of the Legislature.

The Lieutenant-Governor cannot admit that the responsibility of this state of things rests upon him.

So far as concerns the Bill intituled: "An Act respecting the Quebec, Montreal, Ottawa, and Occidental Railway," the Premier cannot apply to the measure the pretended general authorization mentioned by him in his letter, for their interview took place on the 19th February, and the Bill had then been before the House for several days without the Lieutenant-Governor having been in any manner informed of it by his advisers.

The Lieutenant-Governor then told the Premier how much he regretted such legislation; he represented to him that he considered the principles of law and justice; notwithstanding this, the measure was pushed on until it was adopted by both Houses.

It is true that the Premier gives, in his letter, as one of his reasons for so acting, "that this permission of making use of the name of the representative of the Crown had been, moreover, always allowed to him by the predecessor of the present Lieutenant-Governor, the late lamented Mr. Caron."

This reason cannot avail with the Lieutenant-Governor, for, by so doing, he would abdicate his position as Representative of the Crown; a proceeding which neither the Lieutenant-Governor nor the Premier could reconcile with the duties of the Lieutenant-Governor towards the Crown.

The Lieutenant-Governor regrets being compelled to state, as he told the Premier, that he has generally not been explicitly informed of the measures adopted by the Cabinet; although the Lieutenant-Governor often gave occasion therefor to the Premier, especially during the course of last year.

The Lieutenant-Governor, from time to time since the last meeting of the Legislature, drew the attention of the Premier to several matters respecting the interests of the Province of Quebec, amongst others:—

1. To the enormous expenditure, occasioned by very large subsidies to several railways when the Province was burdened with the construction of the trunk line of railway from Quebec to Ottawa, which should prevail over all others; and that at a time when our finances compelled us to raise loans disproportioned to our revenues.

2. On the necessity of reducing the expenses of the Civil Government, and those of legislation, in place of having recourse to new taxes, with a view of avoiding financial embarrassment.

The Lieutenant-Governor, although with regret, expressed to the Premier the opinion that the Orders in Council for the increase of the salaries of Civil Service employees, seemed to him to be inopportune at a time when the Government had effected with the Bank of Montreal a loan at the rate of 7 per cent. for half a million, on condition of increasing this loan to one million; and in fact, to-day even (1st March), the Lieutenant-Governor was obliged to allow an Order in Council to be passed to secure the last half million for the Goverment, without which the Government would be unable to meet its obligations, as stated to him by the Honourable the Treasurer, by order of the Premier.

The Premier did not, either then or since, inform the Lieutenant-Governor that the Government were in so impecunious a position as to require special legislation to increase the public burdens.

The Lieutenant-Governor therefore stated and repeated these facts to the Premier, and now deems it his duty to record them here, in order that they may serve as a memorandum for himself and the Premier.

It results therefore,—

1. That although the Lieutenant-Governor had made several representations, in his quality of Representative of the Crown, to the Premier on those various subjects of public interest, his advisers have taken administrative and legislative steps contrary to such representations, and without having previously advised him.

2. That the Lieutenant-Governor has, without evil motives, but in fact been placed in a false position, by being exposed to a conflict with the desires of the Legislature; desires which he acknowledges to be paramount, when expressed in a constitutional manner.

The Lieutenant-Governor has attentively read and examined the memorandum and documents which the Premier was kind enough to bring him yesterday.

In the record are petitions from several Municipal Corporations and from citizens of different localities, addressed to the Lieutenant-Governor, against the resolutions and the Government Bill respecting the Quebec, Montreal, Ottawa, and Occidental Railway.

The Lieutenant-Governor was only yesterday in a position to take communication of some of these positions, inasmuch as they had not been transmitted to him before the Record.

The Lieutenant-Governor, after mature deliberation, cannot accept the advice of the Premier in reference to the sanction to be given to the Railway Bill, intituled " An Act relating to the Quebec, Montreal, Ottawa, and Occidental Railway."

For all these reasons, therefore, the Lieutenant-Governor cannot conclude this memorandum without expressing to the Premier the regret which he feels in being no longer able to retain him in his position, contrary to the rights and prerogatives of the Crown.

(Signed) L. Letellier,
Lieutenant-Governor.

On the 2nd March, about 2 o'clock p.m., Mr. De Boucherville went to Spencer Wood. When he arrived he was admitted to the presence of the Lieutenant-Governor, and told him " that according to the memorandum received from him that day, he understood that he was dismissed from the office of Premier."

The Lieutenant-Governor told him he was to take his own interpretation from the letter. Upon this Mr. De Boucherville handed him the letter, which will be found further on, as being his answer.

The Lieutenant-Governor, without opening before him, made some remarks on the difficulty on which the legislation had placed him.

Mr. De Boucherville replied that in his present position he thought he had no opinion to express on the subject. He then bowed himself out. When he had proceeded a short distance from the House he caused the vehicle to return having forgotten to ask permission from the Lieutenant-Governor to give explanations to the House. After having been a second time admitted to the presence of the Lieutenant-Governor, he asked permission to give explanations and to make known the memorandum of the Lieutenant-Governor and his replies thereto.

The Lieutenant-Governor told him he had no objection, and asked him as to the person he should send for. Mr. De Boucherville replied that he looked upon himself—having been dismissed—as being in a different position from a Minister who, although defeated in the House, still retained the confidence of the Sovereign; that he had had a majority of twenty-five in one of the late votes; that, under these circumstances, he did not think he could advise him in the matter. He then left him, and while in the ante-room the Lieutenant-Governor recalled him, and said: " Please delay the explanations until Monday."

The following is a copy of the letter which Mr. De Boucherville handed to the Lieutenant-Governor, when the latter told him he was to take his own interpretation of his memorandum.

To His Excellency the Lieutenant-Governor of the Province of Quebec.

May it please your Excellency, Quebec, March 2, 1878.

I have the honour to acknowledge the receipt of your memorandum, in which you come to the conclusion that you cannot retain me in my position as Premier.

I have therefore no other duty to perform beyond submitting to my dismissal from office, communicated by your Excellency, reiterating at the same time my profound respect for the rights and prerogatives of the Crown, and my devotion to the interests of our Province.

I have, &c.

(Signed) C. B. De Boucherville.

On the 28th January 1878, Mr. De Boucherville had sent to his Excellency the Lieutenant-Governor, who was then at Rivière Ouelle, the following telegraphic Despatch:—

" Can you send me authorisation—resolutions respecting finances."

The Lieutenant-Governor on the following day, the 20th, telegraphed Mr. De Boucherville:—

" Blank mailed to-day. If presence necessary, telegraph. Return Friday."

The resolutions respecting the North Shore Railway were submitted to the House only on the 29th January, after the telegram had been received from the Lieutenant-

Governor that a form signed in blank had been mailed to Mr. De Boucherville, in reply to his despatch of the previous day, saying: "Can you send me authorisation—resolutions respecting finances?"

On the 30th January, the first resolution was reported from Committee of the Whole. On the 31st it was adopted by the House. On the 1st February the House again went into Committee of the Whole and reported the other resolutions on the same subject. But it was only on the 5th that the adoption of the report of the Committee was carried, the House throwing out the motion of non-confidence on this point by 38 to 21.

On the 5th February a Bill based on these resolutions was introduced; the second reading was delayed until the 18th February; the third reading took place on the 19th. During all this time the Lieutenant-Governor, to whom the Votes and Proceedings were sent daily, remained silent.

On the 19th February, Mr. De Boucherville met the Lieutenant-Governor, and in the conversation which took place on the subject of the measure, thought he had satisfied him as to its legality and the urgency of its being passed. The Lieutenant-Governor was so far from being explicit as to his intentions, that Mr. De Boucherville left him with the impression that he was authorised.

The Lieutenant-Governor does not contend, in his memorandum of the 1st March 1878, that he had given orders to suspend the legislation.

Sent up to the Legislative Council, this Bill had gone through its third reading before the first letter was received from the Lieutenant-Governor, dated the 25th February last, but only delivered at 4.30 p.m., on the 26th. In fact, the Lieutenant-Governor, in his letter of the 1st March, admits that he did not, in any way, in his memorandum of the 25th February, express the opinion that he considered the Premier had intended to arrogate to himself the right of getting measures passed without his approval or of slighting the prerogatives of the Representative of the Crown.

Having ascertained that a misunderstanding existed as to the interpretation of the authorisation asked by telegraphic Despatch on the 28th January and answered on the 29th by a message stating that a form signed in blank was sent, and in view of the impressions left by the conversation of the 19th February in Mr. De Boucherville's mind, should the Lieutenant-Governor have waited to make known, for the first time, the existence of this misunderstanding until the 26th February at which date the whole of the legislation, of which he complains, had been discussed and voted in the affirmative by both Houses.

The confidence shown by the Lieutenant-Governor on the 29th January in Mr. De Boucherville, by forwarding the form signed in blank, was calculated to justify him in interpreting the silence of the Lieutenant-Governor at least as not meaning dissent.

After these interviews of the 19th February, the silence observed until the 26th February was also of a nature to lead him to believe that he had a general authorization to submit to the House all measures which the public service required.

On the 31st of January, 26 days previous to the first memorandum of the Lieutenant-Governor, the Honourable Treasurer made his budget speech, in which he announced the new taxes which it would be necessary to levy to meet the obligations of the Province—obligations contracted during several previous years, and resulting from the policy then inaugurated on railways and which have received the concurrence of several members belonging to the party opposing the Government.

Can this speech, published *in extenso* by the press of the whole country, have escaped the notice of the Lieutenant-Governor?

On the 19th of February the resolutions demanding those taxes, but at a lower rate than the one mentioned by the Treasurer in his speech, were presented; and on the 20th were adopted by a vote of 39 against 22.

The Lieutenant-Governor, in his memorandum of the 1st March, complains that Mr. De Boucherville did not let him know that the Government was in an impecunious condition requiring special legislation to increase the public taxes.

The Premier would have formed an erroneous idea of the situation, if he had so qualified the temporary embarrassment caused by the ill-will of the municipalities which had subscribed for the construction of the Provincial Railway in neglecting to faithfully fulfil their obligations. He would have formed an erroneous idea of the situation, in presence of the results obtained, so far without any burden having been imposed in order to obtain them.

On the 22nd February notice was given of resolutions respecting railways in the eastern townships and on the south shore of the St. Lawrence.

On the 23rd of the same month the resolutions were introduced and subsequently adopted by a vote of 41 to 16. These resolutions do not in any way increase the actual debt of the Province.

The Lieutenant-Governor said in the same memorandum, "That the construction "of the railway from Quebec to Ottawa should prevail over that of other railways." The legislation of many years past on this subject establishes no priority in favour of the Provincial Railway to the detriment of railways in the eastern townships and on the south shore. The DeBoucherville Government would have contravened the law if they had adopted any other view of the matter.

In the same memorandum the Lieutenant-Governor declares: "That he cannot "accept the advice of the Premier in reference to the sanction to be given to the railway "Bill, intituled 'An Act respecting the Quebec, Montreal, Ottawa, and Occidental "'Railway.'" This declaration is premature, the Premier never having been called upon to give his opinion as to the sanction to be given; and if he had been called upon to do so, he would, under the circumstances, have recommended that it be reserved for the decision of the Governor-General, being in doubt as to the Lieutenant-Governor having the right, of his own accord *ex proprio motu*, to exercise the prerogative of veto, and thus to decide finally on the fate of a measure passed by both Houses, when the British North America Act of 1867 seems to leave such power to the Governor-General.

The memorandum of his Excellency refers to petitions of several corporations and citizens of different places, addressed to the Lieutenant-Governor against the resolutions and the measures of the Government concerning the Quebec, Montreal, Ottawa, and Occidental Railway.

It is sufficient to consider that these petitions came from debtors, from whom the law intends to force payment, to arrive at the correct conclusion that the opinion of both Houses should prevail over that expressed in such petitions.

The Lieutenant-Governor, in the same memorandum, refers to acts of administration which date from before the session, and to which he has given his assent. As he alludes to matters for which the Government is responsible to both Houses, as advisers of the Crown, and as they are foreign to the question of prerogative raised by the Lieutenant-Governor, they cannot be adduced in this memorandum as reasons for the conclusion arrived at by his Excellency, that he cannot continue to retain Mr. De Boucherville in his position against the rights and prerogatives of the Crown; therefore, to avoid being carried away by this side issue or *hors d'œuvre*, there is no reason to question them now.

The Lieutenant-Governor further expresses the opinion "that the state of our finances "forced us to make loans disproportionate to our resources."

The necessity of here repeating this phrase is to be regretted; but the credit of the Province requires that it should be contradicted. The mere reading of the Budget speech will suffice to reassure alarmists.

From all the above facts, from admissions contained in the last memorandum of the Lieutenant-Governor, from the transmission of the form signed in blank and sent by him in reply to a request of Mr. De Boucherville, asking his authorisation to introduce "resolutions respecting finances," and from the silence of the Lieutenant-Governor up to the 26th February last, it results that no measures have been introduced into the House in opposition to the prerogatives of the representative of the Sovereign.

Nothing more remains now for me to do but to reiterate the declaration I made in commencing these explanations; the De Boucherville cabinet has not resigned. It has been dismissed from office by the Lieutenant-Governor.

The Conservative party is no longer in power. But it is in the House the power—a qualified power—a majority in the opposition. The majority here, the majority in the Council, the majority in the country. The Conservative party has been dismissed from office; but it stands uncompromised, without compromise, without division—devoted to the constitution and to the welfare of the country.

(Signed) A. R. Angers,
Ex-Attorney-General,
Member for the Electoral District of Montmorency.

Mr. Loranger, seconded by Mr. Lynch, moved that the following address, affirming the privileges and immunities of the House, be presented by Mr. Speaker to his Excellency the Lieutenant-Governor of the Province of Quebec, at the bar of the Legislative Council, at the prorogation of the Legislature.

To his Excellency the Lieutenant-Governor of the Province of Quebec.

May it please your Excellency,

The Legislative Assembly of the Province of Quebec deem it their duty to humbly represent that the cabinet of which the Honourable Henri Gustave Joly is the chief, was defeated three different times, at the sitting of the 8th of March instant, by majorities varying from 20 to 22 votes.

And they regret to state that the constitution has been disregarded by the advisers of his Excellency to the extent that they persist in retaining power against the will of the majority of the House and of the country.

The Legislative Assembly believes it, moreover, their duty to express their regret that they have been put to the necessity of suspending the passage of the Supply Bill until justice has been extended to the majority of this House.

The Legislative Assembly desires respectfully to represent to your Excellency that there exists in the House a political party, possessing the confidence of the country, and having a large majority in the House; that this party is competent to administer the public business, and that the prorogation of the Legislature presently would be prejudicial to the legislation and to the interests of the country.

The Legislative Assembly desires to represent to your Excellency, that the fact of the minority having a control over public affairs is the cause of the embarrassment under which the Province labours, through the suspension of the Supply Bill; and that a prompt solution of the difficulty may be arrived at by acting in conformity with the constitution.

The Legislative Assembly desires also to represent to your Excellency that inasmuch as there exists in the House a political party strong enough to command a large majority there is no necessity for a dissolution of the Legislature, a step which will cause considerable and useless expense to the Province, and seriously threaten the peace and tranquillity of the people of this Province.

And your petitioners will ever pray.

And objection having been taken that the said motion is contrary to the constitution, and should be considered out of order,

Mr. Speaker ruled "that the point of order was raised and decided yesterday."

And appeal having been made from Mr. Speaker's decision,

The question was put and carried in the affirmative on the following division :—

In favour of Mr. Speaker's decision.

MM. Alleyn, Angers, Baker, Champagne, Chapleau, Charlebois, Deschenes, Dulac, Dupont, Fortin (Gaspé), Fradette, Garneau, Gauthier, Houde (Maskinongé), Houde (Nicolet), Kennedy, Lacerte, Lalonde, Larochelle, Lavallée, Le Cavalier, Loranger, Lynch, Martin, Mathieu, McGauvran, Picard, Sawyer, St. Cyr, Taillon, Tarte, Thornton, and Wurtele.—33.

Against Mr. Speaker's decision.

MM. De Beaujeu, Fortin (Montmagny), Laberge, Lafontaine, Laframboise, Molleur, Pâquet, Préfotaine, Rinfret dit Malouin, Shehyn, Sylvestre, and Watts.—12.

Exhibit No. 7.

No. 7.—Votes and Proceedings of the Legislative Assembly of the Province of Quebec.—Quebec, Tuesday, 11th June 1878.

Mr. Bertrand, seconded by Mr. Robillard, introduced a Bill (No. 4) to amend certain articles of the Civil Code of the Province of Quebec.

Second reading to-morrow.

Mr. Desaulniers, seconded by Mr. Caron, introduced a Bill (No. 3) to amend article 775 of the Municipal Code.

Second reading to-morrow.

The order of the day for resuming the adjourned debate on the amendment moved on Thursday the 6th instant to the amendment to the motion made by Mr. Gagnon, respecting an address to his Excellency the Lieutenant-Governor, in reply to his speech in opening the present session, and which amendment was conceived in these terms :

" That, after the last words in the closing paragraph of the resolutions contained in the proposed motion, the following words be added :—

" That this House, while expressing its firm determination to insist on the strictest economy in every branch of the public service, and on the closest supervision over the expenses of administration, regrets that the present advisers of his Excellency the Lieutenant-Governor should have persisted in remaining in power without having been supported by the majority of the Legislative Assembly upon their taking office, and without yet being supported by such majority."

Which said amendment was :

That all the words after " that " in the motion in amendment be struck out and replaced by the following words: " this House entirely approves of the policy of " economy and retrenchment inaugurated by the Government, and hopes that it will " continue to put it energetically into practice."

And the question on the amendment to the said amendment having been put it was negatived on the following division.

YEAS.

MM. Bachand, Blais, Boutin, Brousseau, Cameron, Chauveau, Dupuis, Flynn, Fortin, Gagnon, Irvine, Joly, Laberge, Lafontaine (Shefford), Lafontaine (Napierville), Langelier (Portneuf), Langelier (Montmorency), Lovell, Marchand, McShane, Meikle, Molleur, Murphy, Nelson, Paquet, Poirier, Racicot, Rinfret dit Malouin, Ross, Shehyn, Watts.—31.

NAYS.

MM. Audet, Beaubien, Bergevin, Bertrand, Caron, Champagne, Chapleau, Charlebois, Church, Desaulniers, Daschênes, Duckett, Duhamel, Gauthier, Houde, Lalonde, Lavallée, LeCavalier, Loranger, Lynch, Magnan, Martel, Mathieu, Peltier, Picard, Robertson, Robillard, Sawyer, St. Cyr, Taillon, Tarte, Wurtele.—32.

And the question on the amendment to the main motion having been put it was carried on the following division :—

YEAS.

MM. Audet, Beaubien, Bergevin, Bertrand, Caron, Champagne, Chapleau, Charlebois, Church, Desaulniers, Deschênes, Duckett, Duhamel, Gauthier, Houde, Lalonde, Lavallée, LeCavalier, Loranger, Lynch, Magnan, Martel, Matnieu, Peltier, Picard, Robertson, Robillard, Sawyer, St. Cyr, Taillon, Tarte, Wurtele.—32.

NAYS.

MM. Bachand, Blais, Boutin, Brousseau, Cameron, Chauveau, Dupuis, Flynn, Fortin, Gagnon, Irvine, Joly, Laberge, Lafontaine (Shefford), Lafontaine (Napierville), Langelier, (Portneuf), Langelier (Montmorency), Lovell, Marchand, McShane, Meikle, Molleur, Murphy, Nelson, Paquet, Poirier, Racicot, Rinfret dit Malouin, Ross, Shehyn, Watts.—31.

And then the main motion as amended having been put,

Mr. Watts moves in amendment, seconded by Mr. Racicot,

That after the last word of the said resolutions as amended, the following words be added :—

" That, nevertheless, under present circumstances this House believes it to be its duty to give a general independent support to the Government, in such a manner that the measures which it proposes may be submitted to the judgment of this House.

Mr. Loranger, seconded by Hon. Mr. Chapleau, moved in amendment to the said amendment:

That all the words after "that" in the amendment be struck out, and that the following be substituted: "Moreover this House is of opinion that the principles of the "constitution of responsible government require that the cabinet entrusted with the "administration of public affairs be supported by the majority of the House."

And a debate arising,

Mr. Speaker, under the provisions of the Act 31 Vict. cap. 4, of the Statutes of the Province of Quebec, called upon Mr. Rinfret dit Malouin, member for the electoral division of Quebec Centre, to replace him in the chair during his temporary absence.

And the House having sat until after 12 o'clock, midnight.

Wednesday, June 12, 1878.

After some time the Speaker resumed the chair.

And the debate continued.

On motion of Hon. Mr. Chapleau, seconded by Hon. Mr. Church, it was ordered that the debate be adjourned.

And then the House adjourned.

ARTHUR TURCOTTE,
Speaker.

Exhibit No. 8.

Friday, 14th June 1878.

The Honourable Legislative Councillors convened were:

The Honourable HENRY STARNES, Speaker.

The Honourable Messieurs

Archambeault,	Ferrier,	LeMaire,	Ross,
Beaudry,	Gaudet,	Léry, de	Roy,
Boucherville, de	Gingras,	Panet,	Savage,
Bryson,	Hearn,	Proulx,	Webb,
Dionne,	LaBruère, de	Prudhomme,	Wood.
Dostaler,	Laviolette,	Rémillard,	

On motion of the Honourable Mr. DeBoucherville it was

Ordered, that the minutes of proceedings of the thirteenth instant, containing an error be corrected by adding to the seventh line of page 2, after the word "amendment" the following words:—

"That the seventh paragraph be struck out and replaced by the following:

"That although convinced of the serious danger to the rights and liberty of the Province of Quebec by any modification to the British North America Act, we will, however, give all our attention to the Bill which will be submitted to us to that effect."

The order of the day being read for the continuation of the debate on the amendment moved by the Hon. Mr. DeBoucherville, to the seventh paragraph of the resolution relative to the address in answer to the speech of his Excellency the Lieutenant-Governor from the Throne, at the opening of the Session, the said debate was continued, and the question of concurrence being put on the said amendment, the House divided, and the names being called for were taken down as follows:

CONTENTS:

The Honourable Messieurs

Archambeault,	Ferrier,	LeMaire,	Savage,
Beaudry,	Gaudet,	Léry, de	Webb.
Boucherville, de	Gingras,	Panet,	Wood.—21.
Bryson,	Hearn,	Prudhomme,	
Dionne,	LaBruère, de	Ross,	
Dostaler,	Laviolette,	Roy,	

NON-CONTENTS:

The Honourable Messieurs

Starnes,	Proulx,	Rémillard.—3.

So it was resolved in the affirmative.

The eighth paragraph of the said resolution being again read, and the question of concurrence being put thereon, it was

Resolved in the affirmative.

The ninth paragraph of the said resolution being again read, and the question of concurrence being put thereon,

The Hon. Mr. Beaudry, seconded by the Hon. Mr. Webb, moved

That at the end of the said ninth paragraph the following words be added:

"But that this House desires to express anew its regret that his Excellency the Lieutenant-Governor was advised to dismiss his ministers in March last, at the time they enjoyed the confidence of both branches of the Legislature and of the Province.

"That this House is of opinion that in acting on this advice, dismissing his ministers, and appointing a new cabinet from the ranks of the minority, his Excellency was advised to follow a course contrary to the recognised principles of responsible government."

After debate, the question of concurrence being put on the said amendment, the House divided, and the names being called for were taken down as follows:—

CONTENTS:

The Honourable Messieurs

Beaudry,	Gingras,	LeMaire,	Ross,
Boucherville, de	Hearn,	Léry, de	Savage,
Dostaler,	La Bruére, de	Prudhomme,	Webb,
Gaudet,	Laviolette,	Roy,	Wood.—16.

NON-CONTENTS:

The Honourable Messieurs

Archambeault,	Rémillard,
Bryson,	Starnes.—5.
Proulx,	

So it was resolved in the affirmative.

The said paragraph was adopted as amended.

The tenth paragraph being again read and the question of concurrence being put thereon, it was

Resolved in the affirmative.

On motion of the Hon. Mr. Starnes, seconded by the Hon. Mr. Rémillard, it was

Ordered that the Hon. Messrs. Proulx, Rémillard, and the mover be appointed a committee to prepare an address based on the said resolution.

The House adjourned during pleasure.

After some time the House was resumed, and the Hon. Mr. Rémillard reported an address prepared by the said committee as follows:—

To his Excellency the Hon. Luc Letellier de St. Just, Lieutenant-Governor of the Province of Quebec.

May it please your Excellency, we, Her Majesty's dutiful and loyal subjects the Legislative Council of Quebec, in Provincial Legislature assembled, humbly thank your Excellency for your Gracious Speech from the Throne at the opening of this Session, and further to assure your Excellency:

"Who sees us, with pleasure met together, for the despatch of the business of this Province, to rest assured that we will give the greatest attention to such business.

"With your Excellency, we believe our financial condition to be the most important of the subjects which we have to consider.

"With your Excellency, we are of opinion that it behoves us to complete railways already commenced, so as to reap, with the least possible delay, the benefit of the sacrifices we have made to build them.

"To carry out these undertakings with success and to meet all our engagements, it is indispensable that expenditure should be reduced as low as is consistent with the efficient administration of the public service.

"We will carefully consider the Bill which will be submitted to us, to transfer to the Commissioner of Public Works all the powers now vested in the Railway Commissioners and to abolish the office.

"We will attentively consider the measure which will be submitted to provide for the abolition of District Magistrates Courts.

"We, although convinced of the serious danger to the rights and liberty of the Province of Quebec by any modification to the British North America Act, we will, however, give all our attention to the British North America Act which will be submitted to us to that effect.

"We look forward with interest to the communication of the judgment rendered, since last session, by Her Majesty in Her Privy Council, on the question of the arbitration between the Provinces of Quebec and Ontario.

"Your Excellency may rest assured that we will manifest, in the fulfilment of our important duties, that serious attention, that devotion to the interests confided to us, and that loyalty to our Sovereign Lady the Queen, which is to be expected from the Legislature of Quebec."

But that this House desires to express anew its regret that your Excellency was advised to dismiss your ministers in march last, at the time they enjoyed the confidence of both branches of the Legislature and of the Province.

That this House is of opinion that in acting on this advice dismissing your ministers, and appointing a new cabinet from the ranks of the minority, your Excellency was advised to follow a course contrary to the recognised principles of responsible government.

"10. With your Excellency, we ardently pray that Heaven may bless our labours and that they may tend to the union, peace, and prosperity of the inhabitants of our Province."

Which address being read by the clerk was unanimously adopted.

On motion of the Hon. Mr. Starnes, seconded by the Hon. Mr. Proulx, it was

Ordered, that the said address be engrossed and signed by the Hon. the Speaker of this House.

On motion of the Hon. Mr. Starnes, seconded by the Hon. Mr. Rémillard, it was

Ordered, that the said address be presented to his Excellency the Lieutenant-Governor by the Speaker of this House.

On motion of the Hon. Mr. Dionne, it was

Ordered, that when this House adjourns, it do stand adjourned to Tuesday next, at 3 o'clock in the afternoon.

Then on motion of the Hon. M. Dostaler,

The House adjourned until Tuesday next, at 3 o'clock in the afternoon.

Exhibit No. 9.

RETURN to an ADDRESS from the Legislative Assembly, dated the 22nd June last, praying his Excellency the Lieutenant-Governor that he will cause to be laid before this House :

Copies of the correspondence exchanged between himself and his Excellency the Governor-General of the Dominion, respecting the dismissal of the De Boucherville Government from office.

Copies of the correspondence exchanged between his Excellency the Lieutenant-Governor and the Honourable Secretary of State, or any of the members of the Privy Council of the Dominion, relating directly or indirectly to the said dismissal from office of the De Boucherville Ministry.

A complete copy of the record in the Bernatchez, Bélanger, and Fournier affair, respecting the appointment and election of a municipal councillor for the village of Montmagny ; also copy of the letter of his Excellency the Lieutenant-Governor, dated from Rivière Ouelle, ordering the cancelling of the said appointment ; copies of the report of the Attorney-General on this subject, and of the cancelling of the said appointment by his Excellency ; copy of the correspondence of the Honourable Provincial Secretary on the subject, and also a copy of the letter of his Excellency, dated 19th March 1877, addressed to the Honourable Provincial Secretary, mention whereof is made in the Despatch of the Lieutenant-Governor to his Excellency the Governor-General, respecting the dismissal of the De Boucherville Ministry ; copy of the proclamation convening this Legislature for the despatch of business, on the 19th December last ; copy of the proclamation inviting the people of this province to observe the 22nd November last as a Thanksgiving Day ; copy of all correspon-

dence exchanged between his Excellency and the Secretary of State, the Prime Minister, or any other member of the Privy Council of the Dominion concerning such Thanksgiving Day.

By order,
(Signed) F. G. MARCHAND,
Secretary.

Secretary's Office, Quebec,
July 5, 1878.

PROVINCE OF QUEBEC.

(No. 1416/77.)

SIR, Quebec, November 21, 1877.

I HAVE the honour to inform you that by Order in Council approved on the 20th November instant (1877), his Excellency the Lieutenant-Governor has been pleased to order that a proclamation do issue convening the Legislature of the Province of Quebec for the 19th December next, for despatch of business.

I have, &c.
(Signed) PH. J. JOLICŒUR,
Assistant Secretary.

L. H. Huot, Esq.,
Clerk of the Crown in Chancery, Quebec.

COPY of the REPORT of a COMMITTEE of the HONOURABLE the EXECUTIVE COUNCIL, dated 19th November 1877, approved by the Lieutenant-Governor on the 20th November 1877.

(No. 372.)

On the calling together of the Parliament of the Province,

The Honourable the Commissioner of Agriculture and Public Works, in a memorandum dated 19th November instant, 1877, recommends that a proclamation be prepared and published, calling together the Legislature of this Province for the despatch of business, for the 19th of December 1877.

The Committee concurs in this recommendation and submits to the approval of the Lieutenant-Governor.

Certified,
(Signed) FELIX PORTER,
Clerk Ex. Council.

To the Hon. the Provincial Secretary,
&c. &c. &c.

Canada, Province of Quebec.
[L.S.] L. LETELLIER.

VICTORIA, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith, &c., &c., &c.

To Our Beloved and Faithful the Legislative Councillors of the Province of Quebec, and the Members elected to serve in the Legislative Assembly of Our said Province, and summoned and called to a meeting of the Legislature of Our said Province, at Our City of Quebec, on the 3rd day of the month of December next, to have been commenced and held—Greeting:

A PROCLAMATION.

Whereas the meeting of the Legislature of the Province of Quebec stands prorogued to the 3rd day of the month of December next; nevertheless for certain causes and considerations, We have thought fit to further prorogue the same to Wednesday the 19th day of the month of December next, so that neither you nor any of you, on the said 3rd day of December next, at Our said city of Quebec, to appear and to be held and constrained, for We do will that you and each of you and all others in this behalf interested, that on Wednesday, the 19th day of the month of December next, at Our said city of Quebec, personally you be and appear for the despatch of business, to treat, do, act, and conclude upon those things which in Our Legislature of the Province of Quebec, by the common council of Our said province, may by the favour of God, be ordained.

In testimony whereof, we have caused these Our Letters to be made Patent, and the Great Seal of our said Province of Quebec to be hereunto affixed: Witness, Our trusty and well-beloved the Honourable Luc Letellier de Saint Just, Lieutenant-Governor of our said Province of Quebec.

At Our Government House, in Our city of Quebec, in Our said Province, this 23rd day of November, in the year of Our Lord 1877, and in the 41st year of Our Reign.

By command,

L. H. Huot,

Clerk of the Crown in Chancery.

Copy of the Report of a Committee of the Honourable the Executive Council, dated 30th October 1877, approved by the Lieutenant-Governor on the 30th October 1877.

(No. 348.)

The Honourable the Commissioner of Agriculture and Public Works, in a report dated 30th October instant, 1877, sets forth that Divine Providence having protected this Province from the calamities which affect other nations, and favoured this country with an abundant harvest,

That it is the duty of the inhabitants of this Province to recognise by public thanksgiving that all good comes from God, and that the earth would be sterile without the assistance of His divine will.

The Honourable Commissioner therefore recommends that a proclamation be issued by his Excellency the Lieutenant-Governor making the 22nd of November next a day of thanksgiving to the Almighty to thank Him for having protected our hearths from calamity, and for having blessed the labours of the people of this Province by granting to it an abundant harvest.

The Committee concurs in the above report, and submits it to the approval of the Lieutenant-Governor.

Certified,

(Signed) Felix Fortier,
Clerk Ex. Council.

To the Hon. the Provincial Secretary,
&c. &c. &c.

Canada, Province of Quebec.
[L.S.]

L. Letellier.

Victoria, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith, &c., &c., &c.

To all to whom these presents shall come or whom the same may concern; Greeting:

A Proclamation.

A. R. Angers, Atty.-Gen. } Whereas the Almighty has been pleased, in His divine goodness, to avert from our Province the calamities which afflict other nations, and to bless this country with an abundant harvest; and whereas it is the duty of the inhabitants of our said Province to return public thanks to Divine Providence for such a signal favour.

Now know ye, that by and with the advice and consent of the Executive Council of our Province of Quebec, we have fixed and appointed, and do hereby fix and appoint, Thursday, the twenty-second day of November next, as a day of public thanksgiving to return thanks to the Almighty for the favours which He has been pleased to grant to the inhabitants of our said Province.

Of all which our loving subjects and all others whom these presents may concern are hereby required to take notice and to govern themselves accordingly.

In testimony whereof, we have caused these our letters to be made patent, and the Great Seal of our said Province of Quebec to be hereunto affixed: Witness, our trusty and well beloved the Honourable Luc Letellier de Saint-Just, Lieutenant-Governor of the Province of Quebec.

At our Government House, in our city of Quebec, in our said Province of Quebec, this thirtieth day of October, in the year of our Lord one thousand eight hundred and seventy-seven, in the forty-first year of our reign.

By command,

(Signed) Ph. J. Jolicœur,
Assistant Secretary.

Canada, Province of Quebec,
District of Montmagny.

District Magistrate's Court for the County of Montmagny.

Ex Parte :—Jules Belanger, guardian and proprietor of a bridge, in the village of Montmagny, in the County and District of Montmagny - Petitioner.

Eugène Fournier, diver, of the village of Montmagny - - Respondent.

January 31, 1877.

Present: James Oliva, Esquire.

The Court after having heard the parties in this cause by their respective counsel and the declaration made in this cause by the respondent, and filed in the record and his admissions before the Court,

Considering that on the 8th of January instant, at a meeting of the electors of the South Ward of the village of Montmagny, held at the said place for the election of a Councillor for the said Ward, two candidates were nominated, namely, Eugène Fournier and Jules Belanger.

Considering that more candidates were thus nominated than there were councillors to be elected.

Considering that the presiding officer of such meeting granted a poll on the requisition of a number of electors required by law, and commenced then and there to register the votes of the electors present in favour of two candidates.

Considering that such presiding officer, after beginning to register the votes on the said 8th day of January, without waiting that an hour should have elapsed without registering a vote, closed the said election and proclaimed the said Eugène Fournier as the councillor elected.

Considering that the closing of such election and such proclamation were illegal, premature, and contrary to the express wording of the law.

The Court declares the election and proclamation of the said Eugène Fournier illegal, annuls and cancels them, and orders that on Monday, the 19th day of February next, at 10 of the clock in the forenoon, at the village of Montmangy, in the South Ward of the said village of Montmagny, after notice given as required by law, there shall be held a meeting of the municipal electors of the South Ward of the said municipality of Montmagny, for the purpose of then and there holding a new election to replace the said Eugène Fournier, whose election is thus annulled by the present. And the Court appoints for such purpose Eugène Hamond, Esquire, of the village of Montmagny, to preside over such election.

The Court considering that the said Eugène Fournier has not maintained his said election, but on the contrary has admitted and consented that it be annulled, and therefore that he is not responsible for the irregularities in connexion with such election, rejects that portion of the conclusions of the petition of the said petitioner in which he prays for costs against the said respondent, but without costs.

(Signed) A. Bender,
C.C.C.M. & C.D.M.C.M.

In the year 1877, on the 19th day of the month of February, at 9 of the clock in the forenoon.

On the requisition of Messieurs Jules Bélanger and Magloire Langlois, both electors and ratepayers of the South Ward of the Corporation of the village of Montmagny, and residing therein,

I, the undersigned, notary public for the Province of Quebec, residing in the parish of St. Thomas, in the county of Montmagny,

Went for that purpose to the residence of Captain Eugène Hamond, situate in the said village of Montmagny, and being there and speaking to him, I did on behalf of the petitioners, say and declare as follows, to wit :—

That in virtue of a judgment rendered by James Oliva, Esquire, stipendiary magistrate, in January last, and duly served on him, he had been appointed to preside over the election of a councillor in the South Ward of the said Corporation of the village of Montmagny, which is to take place this day, the 19th of February, for the purpose of electing a councillor in the place of Eugène Fournier, whose election was set aside by the said judgment.

That the said election would be useless and of no effect or avail other than to give rise to lawsuits and cause considerable expense to the ratepayers of the Corporation of

the village of Montmagny, for the following reasons, to wit, because no public notice was given within the delay required and provided by the Municipal Code, namely, seven clear days between the publication of the notice and the day of the election.

Wherefore we have protested and notified, as, by these presents, we do protest and notify, the said Eugène Hamond not to preside over the said election, and that in default of his complying herewith, the said petitioners intend to hold him personally responsible for all costs and expenses which may be incurred and for all against which we should and may protest in such cases.

And speaking as aforesaid we left a copy of these presents with him at his domicile so that he cannot plead or pretend ignorance thereof.

Thus done and notified under No. 8,210, at the domicile of the said Eugène Hamond, on the day and on the year first aforesaid, on being required so to do and after its having been read.

(Signed) F. X. Gendreau.

Sir, St. Thomas, Montmagny, February 19, 1877.

I have the honour to forward you a copy of a judgment of the Magistrate's Court for the County of Montmagny, authorising me to preside over a public meeting which was to have been held to-day, the 19th day of February, for the purpose of electing a councillor for the South Ward of the municipality of Montmagny.

In accordance with the copy of the judgment which had been served on me as provided by Article 361, I did not preside over such meeting because the legal notice, as required by Article 362 of the Municipal Code, and in virtue of the enclosed judgment, was not given.

I also enclose herewith the protest served on me this day, the 19th of February, and I therefore recommend that Jules Bélanger, ratepayer, elector, and proprietor, be appointed to fill the vacancy caused by the setting aside of the election of Mr. Eugène Fournier, as appears by the said judgment.

I have, &c.

To the Hon. Luc Letellier de St. Just, Lieutenant-Governor, Quebec.

(Signed) Eugène Hamond, President.

Montreal Telegraph Company.

Quebec, March 7, 1877.

By telegraph from St. Thomas Village.

The public notice for election of councillor in question, on 19th February last, was posted up by the Mayor on the evening of the 17th February. As secretary I was no aware of it.

(Signed) J. S. Vallée, Secretary-Treasurer.

To A. R. Angers.

Province of Quebec.

Sir, Quebec, March 9, 1877.

I have the honour to inform you that his Excellency the Lieutenant-Governor has been pleased to appoint Mr. Jules Bélanger municipal councillor for the South Ward of the village of Montmagny, in the place of Mr. Eugène Fournier, whose election is set aside.

Please notify that gentleman of his appointment.

I have, &c.

(Signed) Ph. J. Jolicœur, Assistant-Secretary.

J. S. Vailée, Esq., Secretary-Treasurer, St. Thomas Village, co. Montmagny.

Secretary's Office, Quebec, March 27, 1877.

The appointment of Jules Bélanger, as municipal councillor for the South Ward of the village of Montmagny, is hereby revoked.

By order,

(Signed) J. A. Chapleau, Secretary.

Approved, March 27, 1877.

(Signed) L. Letellier.

N 334.

PROVINCE OF QUEBEC.

SIR, Quebec, March 27, 1877.

I HAVE the honour to inform you that his Excellency the Lieutenant-Governor has thought proper, after having obtained more ample information, to revoke your appointment as municipal councillor for the South Ward of the village of Montmagny.

I have, &c.

(Signed) PH. J. JOLICŒUR,
Assistant Secretary.

Jules Bélanger, Esq., Montmagny.

CANADA, PROVINCE OF QUEBEC.

Municipality of the Village of Montmagny.

AT a meeting of the municipal electors of the South Ward of the Corporation of the village of Montmagny, held on the 19th day of February instant, at 10 o'clock in the forenoon, in accordance with a judgment rendered by the Magistrate's Court for the county of Montmagny, on the 31st day of January 1877, which said meeting was held in the house of the Pont Regent, situate within the limits of the aforesaid South Ward:

Eugène Hamond, Esq., the person appointed by the court to preside over the said meeting, having refused to preside over the said meeting, although called upon to do so by the electors present, the undersigned, Mayor of the said municipality of the village of Montmagny, acting as magistrate ex-officio, and as such the senior magistrate present at at the said meeting, presided over such meeting.

Eugène Fournier, having been proposed by Louis Dion, Hermenegilde Boulanger, and other electors of the said South Ward of the Corporation of the village of Montmagny, as councillor for the said quarter, was nominated, and as no other person was proposed by the said meeting in opposition to the appointment of the said Eugène Fournier during the space of one hour after the said motion, I proclaimed the said Eugène Fournier as councillor duly elected for the South Ward of the village of Montmagny.

In faith of which I have signed these presents at Montmagny on the 19th day of February 1877.

(Signed) N. BERNATCHEZ, Mayor,
Magistrate ex-officio presiding over the said meeting.

True copy.
(Signed) N. BERNATCHEZ, Mayor.

SIR, Montmagny, March 19, 1877.

I REGRET to learn from your letter of the 16th instant that his Excellency the Lieutenant-Governor has been advised not to revoke the appointment of Mr. Jules Bélanger, as municipal councillor for the South Ward in the village of Montmagny. Article 362 of the Municipal Code says that "The omission to give this notice prevents "a meeting of the municipal electors from being held," but there was no such omission, since notice was given on the 17th February, as you have been informed by the ex-secretary-treasurer.

Article 295 says that, in the case of every general election, "The omission to give "such public notice does not prevent the meeting of the municipal electors from being "held."

The ratepayers have the same interest in either case; it was evident that it was only by inadvertence that Article 362 was not amended, in the same manner as Article 295, by the 36 Vict. c. 21. s. 7.

Article 16 says: "No objection founded upon form, or upon the omission of any "formality, even imperative, can be allowed to prevail in any action, suit, or proceeding "respecting municipal matters."

An undisputed fact exists, and that is, that on the 19th of February 1877 a meeting of the ratepayers of the South Ward of the village of Montmagny was held for the purpose of electing a municipal councillor.

That the said meeting was held in virtue of a judgment rendered by the Magistrate's Court.

That a public notice of the said meeting was posted up at the church door, and on the house in which the poll was held for the said South Ward; and the said notice was read in a loud and intelligible voice by the undersigned at the church door after grand mass, on Sunday the 18th of February last, as appears by a certificate under oath filed amongst the archives of the Council.

That the presiding officer appointed by the said court having refused to preside over the said meeting, I was called upon to preside.

That Mr. Eugène Fournier having been nominated, and no other candidate having been proposed to oppose him, after the delay fixed by law he was declared elected by acclamation.

That Mr. Eugène Fournier has been duly sworn in as municipal councillor, and has exercised and still does exercise the functions of such municipal office, as appears by the copy of the *procès-verbal* of the votes and proceedings of the Municipal Council of the village of Montmagny of the meeting held on the 23rd February last, which I have the honour to transmit you to be laid before his Excellency with these presents.

You will observe by the copy of the said *procès-verbal* that all the members of the council were present at the said meeting, and that not one of them made any objection to Mr. Fournier taking his seat.

I am informed by distinguished lawyers that the election of Mr. Eugène Fournier, even supposing it was irregular, can only be annulled and set aside by the judgment of a competent court, that so long as it has not been annulled by a court of justice, and Mr. Eugène Fournier holds his seat of municipal councillor, his Excellency the Lieutenant-Governor has no right to appoint another councillor in his place.

That his Excellency the Lieutenant-Governor having appointed Mr. Bélanger to replace Mr. Eugène Fournier before the election of the latter had been set aside, the appointment made by his Excellency is altogether null.

Notwithstanding the profound respect which the Municipal Council of the village of Montmagny has for his Excellency the Lieutenant-Governor, and for all the orders issued in his name, being convinced that the appointment of Mr. Bélanger as councillor was made irregularly and illegally, and that to submit thereto would be to waive the rights and privileges secured to every citizen by the constitution and laws of this country, the majority of the Council opposes, and will firmly oppose, the admission of Mr. Jules Bélanger into its midst.

I have, &c.

To the Hon. J. A. Chapleau,
Provincial Secretary, Quebec.

(Signed) N. Bernatchez,
Mayor.

Department of the Law Officers of the Crown.

Quebec, March 15, 1877.

Having taken communication of the petition of N. Bernatchez, Mayor of the village of Montmagny, dated 10th of March instant, and received on the 13th of the same month, praying for the cancelling of the appointment of Jules Bélanger as municipal councillor for the South Ward of the said village of Montmagny, and representing that his Excellency the Lieutenant-Governor has been deceived and led into error, and that the said appointment was made on false representations, I have the honour to report as follows:—

The record on which I based my opinion when I recommended the said appointment to his Excellency establishes that the notice required by law for the calling together of the meeting of municipal electors for the new election ordered by the court was not given. A telegram from the secretary-treasurer of the said municipality establishes that the notice of the meeting which was to be held on the 19th of February last was only posted up on the evening of the 17th by the Mayor, N. Bernatchez.

The record also contains a protest calling upon the presiding officer appointed by the judgment not to hold the election, owing to the notice of the meeting required by law not having been given.

All these documents, with a letter from the presiding officer appointed by the judgment establishing that he had not presided over the meeting, have been submitted to his Excellency with my report recommending the appointment of Jules Bélanger.

Article 362 of the Municipal Code requires that in the case of an election ordered by a judgment of the court, a public notice be given of the holding of a meeting called together for such purpose.

By Article 238 such notice must be given at least seven clear days before the day fixed for the meeting.

Article 362 says that the omission to give this notice prevents the meeting from being held.

The petitioner Mr. Bernatchez, in support of his request for the cancelling of the said appointment, does not allege that the notice required by Article 362, without which

the meeting could not be held, was given; he does allege only, in support of his request, the fact that on a certain occasion (on which a meeting of electors could not even be held) he proceeded to make a pretended election.

A party cannot derive any advantage or create any presumption in his favour from the fact that he contravened Article 362.

The pretended election held by the petitioner Bernatchez on the day on which a meeting of electors could not take place, is not only liable to be cancelled, but it is of itself completely null.

I am of opinion that the appointment made by his Excellency of Jules Bélanger as municipal councillor for the South Ward of the village of Montmagny was legally made and should not be set aside.

(Signed) A. R. Angers,
Attorney-General.

Province of Quebec.

Sir, Secretary's Office, Quebec, March 16, 1877.

In reference to the petition forwarded by you on the 10th of this month respecting the appointment of Mr. Jules Bélanger as municipal councillor for the South Ward of the village of Montmagny, I have the honour to inform you that the appointment made by his Excellency the Lieutenant-Governor cannot be cancelled. It has been shown to his Excellency that the notice required by law for calling together the meeting of municipal electors for the purpose of holding the election ordered by the judgment of the court was not given. A telegram from the secretary-treasurer of the said municipality establishes that the notice of the meeting which was fixed for the 19th of February last, was only posted up in the evening of the 17th by yourself.

There has also been produced a protest calling upon the presiding officer appointed by the judgment not to hold the election, as the notice of the meeting had not been given as required by law.

All these documents, together with a letter from the presiding officer appointed by the judgment, establishing that he had not presided over the meeting, have been submitted to his Excellency with a report recommending the appointment of Mr. Jules Bélanger.

Article 362 of the Municipal Code requires that in the case of an election ordered by a judgment of the court, a public notice be given of the holding of such meeting called together for such purpose.

By Article 238 this notice must be given seven clear days before the day fixed for the meeting.

Article 362 says that the omission of such notice prevents the holding of the meeting.

In support of your demand for the cancelling of the appointment, you do not allege that the notice required by Article 362, without which the meeting could not be held, was given; but you only base your request upon the fact that (on a certain occasion when a meeting of electors could not even be held) you proceeded to hold a pretended election.

A party cannot derive any advantage or create any presumption in his favour from the fact that he has contravened Article 362.

The election held by you on the very day on which a meeting of electors could not be held, is not only liable to cancellation, but is of itself completely null.

Therefore, his Excellency has been advised not to cancel the appointment of Mr. Bélanger.

I have, &c.
(Signed) J. A. Chapleau,
Secretary.

N. Bernatchez, Mayor, Montmagny.

Extract from the Register of the Votes and Proceedings of the Municipal Council of the Village of Montmagny.

At which meeting of the 23rd of February 1877, were present:

Nazaire Bernatchez, mayor, Francois X. Gendreau, Joseph Michon, Godefroi Létourneau, Louis Létourneau, Albert Fiset, and Eugène Fournier, Esquires, forming a quorum, the Mayor presiding.

Mr. Gendreau moved, seconded by Mr. Létourneau, that a public notice be given on Sunday next, at the close of divine service, that tenders for placing iron on the piers of the Regent Bridge will be received from now until Monday next, according to the specification to be furnished by the secretary-treasurer.—Carried.

Mr. Louis Létourneau moved, seconded by Mr. Godefroi Létourneau, that it be resolved and ordered by this Council, that at the first sitting of this Council, Jean Stanislas Vallée, Esq., M.P., Secretary-Treasurer of the Municipal Council of the village of Montmagny, do give to this Council a legal statement of account showing the sums received by him in his quality of secretary-treasurer, of the expenses, contributions, and taxes still due, giving in detail the name of each ratepayer, the amount paid by him and the date of payment, and that this statement be supported by vouchers.—Carried.

Mr. Gendreau moved, seconded by Mr. Michon, that the Council do adjourn until Monday next the 26th February, to receive the tenders for placing iron on the facing of the Regent Bridge.—Carried.

(Signed) N. Bernatchez,
Mayor.
J. S. Vallée,
Secretary-Treasurer.

Province of Quebec.

Municipality of the Village of Montmagny.

I, Eugène Fournier, having been duly appointed councillor for the South Ward of the Corporation of the village of Montmagny, do swear that I shall well and faithfully fulfil the duties of my office, and that to the best of my judgment and ability. So help me God.

(Signed) Eugène Fournier.

Sworn to this 23rd day of the month of February 1877, at Montmagny, before me the undersigned Mayor.

(Signed) Nazaire Bernatchez,
Mayor.
J. S. Vallée,
Secretary-Treasurer.

Certified a true and faithful copy of the register of the votes and proceedings of the Council of the village of Montmagny.

(Signed) Napoléon Bélanger,
Secretary-Treasurer.

Montmagny, March 17, 1877.

May it please your Excellency, Montmagny, March 10, 1877.

I take the liberty of respectfully informing you that on the 19th day of February last, Eugène Fournier, of the village of Montmagny, was elected by acclamation municipal councillor for the South Ward of the said village of Montmagny, at a meeting of the municipal electors of the said ward, held in accordance with a judgment rendered by the Magistrate's Court for the county of Montmagny, dated the 31st January 1877, as appears by a copy of the minutes of the said meeting, which I have the honour to enclose herewith.

That the said Eugène Fournier has been duly sworn in as municipal councillor, and that he has already exercised and still exercises the duties of the said office.

The Council learns with regret that your Excellency has been deceived and led into error, and that in consequence of false representations your Excellency, being under the impression that the said seat was vacant, has appointed Jules Bélanger as the person to fill the place of municipal councillor for the said ward.

Under the circumstances we respectfully hope that, in consideration of the facts elsewhere set forth, your Excellency will be pleased to cancel the appointment of the said Jules Bélanger, so as to avoid the inevitable trouble to which this conflict of authority will give rise.

I am, &c.
(Signed) N. Bernatchez,
Mayor.

To his Excellency the Hon. Luc Letellier de St. Just,
Lieutenant-Governor of the Province of Quebec.

(Translation.)

My Lord, Government House, Quebec, March 19, 1878.

The annexed explanatory case which I now address to your Excellency will, I am persuaded, have the effect of showing that I have always acted towards M. De Boucherville and his colleagues with good will, and with every desire of affording to them co-operation during their tenure of office.

What might have tended to produce unfortunate conflicts between myself and my cabinet was almost invariably smoothed over by my friendly desire to overlook the irregularities which I have noted in the present statement of facts.

I hope, my Lord, that the difficult position which I have been compelled to occupy will be justified, not only because it is constitutional, but also because the conduct of my cabinet endangered not only the prerogatives of the Crown, but also the most important interests of the people of this Province.

I have, &c.
(Signed) L. Letellier,
Lieut.-Governor.

To his Excellency the Right Hon.
The Earl of Dufferin, K.P., K.C.B., G.C.M.G.,
Governor General of Canada, Ottawa.

(Translation.)

My Lord, Government House, Quebec, March 18, 1878.

I have the honour now to submit for your Lordship's consideration documents and details which I could not lay before the public, but from which it would have been more clearly understood that the dismissal of M. De Boucherville's cabinet was forced upon me by circumstances.

These details are not contained in the correspondence which I authorised M. De Boucherville to place before the Houses, and which are hereunto annexed.

From the day that I was, by your Excellency, raised to the position I occupy at present, all my private relations with the members of my cabinet, up to the time of their dismissal from office, were, I must admit, generally of an agreeable nature; but in those of an official character with the Premier, I almost invariably felt that I did not enjoy that entire confidence on his part which is the chief element of a cordial understanding between the representative of the Crown and his advisers.

After having studied the general state of the affairs of our Province, after having become convinced that legislative and administrative changes were becoming more and more necessary, I decided upon using with moderation, and with the greatest possible discretion, the influence attached to my position, in order to obtain the realisation of that which I deemed to be of the greatest advantage to the Province.

I regret to state to your Excellency that, although M. De Boucherville did, on most occasions, take my advice in good part and generally approved of it, he, nevertheless, almost always acted as though he had never received it. Nevertheless, far from using my authority to obstruct his action in any way, I invariably treated him with great indulgence, as will appear to your Excellency by the following facts:—

1st. During the session of 1876, a Bill had been read three times in one of the two branches of the Legislature, and only twice in the other.

This Bill, bearing all the certificates which were necessary to induce me to believe that it had been regularly passed and adopted, was submitted to me by the Premier for my sanction.

In consequence of being left in ignorance of these facts by my advisers, I sanctioned the Bill.

Not long afterwards I was informed of the irregularity, and immediately spoke of it to the Premier. I made the observation that such an act would entail too serious consequences to allow of its being passed over.

As a favour to him, however, I passed over this instance of irregular legislation, which was then irreparable.

2nd. During the same session another Bill was submitted to me for my sanction. On examining it I perceived a blank which had not been filled up, which I pointed out to the Premier in the following letter:—

"(Private.)

"My dear Premier, Quebec, December 27, 1876.

"A Bill (E.) which originated in the Council was passed by the Legislative Assembly without amendment. Upon reading it, before adding my certificate of sanction, I noticed that a blank had not been filled up in the seventh line of the sixth section.

"You followed the usual practice in not fixing the amount of the penalty in the Legislative Council; but the matter passed unperceived, or the officers, through some mistake, omitted to insert the amount fixed by the House, or it may have been an error in the proof sheets.

" While on the subject of these mistakes, you will find another in the second section of the same Act, wherein the word 'amender' is in the infinitive mood. I notice this latter accuracy, to which I do not attach much importance, only because I discovered another in an Act in which I had to point out to you, an omission which I consider fatal.

" Yours very truly,
" (Signed) L. Letellier."

The Premier came to me and said that he regretted the omission ; he requested me to give my sanction to the Bill in the state in which it was. The conciliatory spirit which I showed in granting my consent seemed to please him.

3rd. In March 1877 (vide Appendix A.) my advisers caused me to make an appointment of a municipal councillor for the South Ward of the village of Montmagny, under the pretext that there had been no election, or that if such election had taken place, it was illegal.

The whole of the circumstances connected with this case I deem it my duty to explain to your Excellency, on account of the important principle involved therein.

After due personal examination of the petitions and other accompanying documents relating to that election, I called on the Premier, at his own office, to beg of him not to hurry the appointment which he was asked to make of a municipal councillor for that locality before receiving more ample information.

I pointed out to him that it appeared that a municipal election had taken place, and that in such case, as a principle, the Executive Council should not interfere.

I added that from the moment that a legal, or even an illegal election had taken place, the duty of deciding it rested with the courts in accordance with the ordinary course of law, of which they are the interpreters.

I then intimated to Mr. De Boucherville that I maintained on principle that all matters cognisable by the judiciary should be invariably left to the courts, which from their organisation are better fitted than the Executive to inquire into matters of fact and of evidence, and that I would never allow the substitution of the powers of the Executive for those of the courts when the latter had jurisdiction.

The Premier admitted that this opinion and the principles on which I based it were in conformity with his ideas, and necessary for the proper administration of justice. He asked me if I would consent to see Mr. Angers, the Attorney-General, on the subject.

I at once consented, and the Attorney-General was immediately sent for; the facts connected with that election difficulty, and my views regarding them, were then communicated to him. He promised that before any appointment should be made by the Lieutenant-Governor, he would make inquiry.

Shortly afterwards he reported to me that he had made an inquiry into the facts of the case, and, at his suggestion, I appointed Jules Bélanger to be councillor.

In the beginning of March 1877, difficulties and quarrels arose at Montmagny in consequence of that election.

After that appointment those quarrels broke forth afresh in the Municipal Council itself, from which the councillor, whom I had thus been caused to appoint, was expelled with violence. That appointment I was recommended to make, notwithstanding the fact that an election had taken place ; that it had been held and presided over by the Mayor, that Eugène Fournier had been returned by acclamation ; that he had been sworn in according to law, and that, at the very time when the appointment of Jules Bélanger was recommended to me, the person thus elected had in fact taken his seat, had been sworn, and had sat at the said Council, as appears by the minutes of the Council.

When I afterwards learned these facts, I communicated them to the Premier, whom I requested to prepare a revocation of the appointment which I had thus been caused to make, contrary to the principle above set forth, and the justice of which he had himself admitted.

The Premier answered that the matter was of a very delicate nature, as such a proceeding would be contrary to the recommendation of Mr. Angers, his Attorney-General ; he concluded by saying that he would get him to prepare a report on the subject.

I received that report some days later. After having read it, I again intimated to M. De Boucherville, that in the interests of peace, and in conformity with the principle that the Executive should not be substituted for Judicial power in matters within the province of the latter, I insisted upon the revocation being made.

After waiting several days for an answer, and not having received any from the Premier, I addressed a letter to him, of which the following is a copy ;—

" (Private and Confidential.)

My dear DeBoucherville, Quebec, March 14, 1877.

" I have not received any answer on the subject of the appointment of a councillor at Montmagny.

" Those who deceived the Government in order to induce me to perform an Executive act in connexion with a question which they then knew to be within the Judicial power, do not, in my opinion, deserve consideration, which cannot but be injurious to the Government and myself.

" The remedy is very simple—rescind the appointment—allow the parties interested to fight it out before the courts.

" Yours very truly,

" (Signed) L. Letellier."

If, my Lord, I insist upon this latter point, it is to show your Excellency that the Prime Minister was then perfectly aware of my views on that point, and should not, in consequence, have introduced, during the last session of our Legislature, any legislative measure or performed any administrative act tending to substitute Executive for Judicial power, without notifying me, and especially without advising me on the subject.

It was easy for the Premier to understand from my remarks and the frequent conversations which I had with him, that I could not consent to see Her Majesty's subjects despoiled of the right guaranteed to them by Magna Charta, that their property should never be interfered with, except in virtue of judgment rendered by the tribunals of the country.

4th. On the 19th March 1877, being on the eve of absenting myself for a few days, I wrote to the Honourable Mr. Chapleau, and in a postscript I said, " Please oblige me " by telling the Premier that if he needs my concurrence Mr. Gauthier may bring down " to me the documents requiring my signature."

M. DeBoucherville should have understood from that, that if I was ready to give him my concurrence, it was on condition of having all documents submitted to me before signing them.

I leave you, my Lord, to judge in what manner my views were interpreted.

5th. Under date of the 6th of November last I addressed to the Honourable M. DeBoucherville the letter of which the following is a copy :—

" (Private.)

" My dear DeBoucherville, Quebec, November 6, 1877.

In the last *Official Gazette* were published under my signature two proclamations which I had not signed.

" One was for the summ ning of Parliament, which I had reserved in order to confer with you ; the other, which I did not even see, appoints a day of thanksgiving.

" These proceedings, the nature of which I shall not characterise, entail, apart from their impropriety, invalidities of which you will easily understand.

" Yours, &c.

" The Hon. C. B. DeBoucherville, (Signed) L. Letellier.

" Premier."

The following are the notes which I took of the conversation which I had with Mr. DeBoucherville on the subject.

" Mr. DeBoucherville came on the same day he received the letter, to tell me that he regretted the thing had occurred, and that it was no fault of his. I accepted the excuse, and I then told him that I would not tolerate my name being used when necessary for any duty of my office, unless the documents requiring my signature had been previously submitted to me, and unless information was afforded to me ; which M. DeBoucherville assured me would be the course followed in future.

" (Signed) L. L."

6th. But, my Lord, there is another point still more important, which I cannot any longer refrain from mentioning.

From the conversations which I have held with M. DeBoucherville, there results a

fact, which, if it were known, would of itself have sufficiently justified me in believing that he did not possess the confidence of the people of this Province.

On two different occasions, some time after the session of 1876, I pointed out to him that millions had been voted to aid railways in general, at a time when our finances did not appear to me to be in a condition to warrant, all at once, a lavish expenditure in subsidising these numerous undertakings, particularly as, apart from that, our credit was so heavily pledged towards the building of the " Quebec, Montreal, Ottawa, and " Occidental Railway."

He very frankly avowed that these grants, though they were for the development of the Province, had been necessitated by political considerations, that without them the support of the members whose counties were traversed by those railways, would cease to be secured to Government; that there would be no means of having a majority; that those members formed combinations—" rings "—to control the House.

M. DeBoucherville is not unaware that I thereupon told him that it was better to save the Province than a Government, and that if his administration was not strong enough to resist those influences, it would be better for him to form a combination of honest and well-meaning men from both sides of the House, rather than submit to the dictation of those " rings," and to the control of those combinations.

When he made no attempt to escape from that deleterious influence, after his own avowal that the Legislature was controlled by those " rings," when by his legislation he sought to favour them anew during the last session, without having previously advised with me, had I not the right, as the representative of my Sovereign, to believe and to be convinced that Mr. DeBoucherville did not possess a constitutional majority in the Legislative Assembly?

7th. In communicating to both Houses my memoranda of the 25th February and 1st March last, the Premier and Mr. Attorney-General Angers, in violation of their duty, overstepped the authorisation which I had given by my letter of the 4th of March last for that purpose. They added to that communication a report of pretended conversations, the correctness of which I contest, and the impropriety of which I maintain.

I shall point out, my Lord, one fact alone to prove that incorrectness and that impropriety. The Hon. Messrs. DeBoucherville and Angers, in their explanations to the two Houses, lay great stress on the telegram which M. DeBoucherville despatched to me at Rivière Ouelle, to ask my permission to introduce resolutions concerning the finances, and on the blank signature that I sent up in answer to it.

But these gentlemen themselves had that blank signature filled up by my private secretary, so as to give to the telegram the meaning which I attributed to it, namely, a request for permission to introduce the supplies. The following is a copy of the message produced with that blank signature:—

" Mr. Treasurer Church presented a message from his Excellency the Lieutenant-Governor as follows:—

" L. Letellier,

" The Lieutenant-Governor of the Province of Quebec transmits to the Legislative Assembly the supplementary estimates for the current year and for the fiscal year ending 30th June 1879, which, in conformity with the provisions of the 54th section of the British North America Act, 1867, he recommends to the Legislative Assembly.

" Government House, Quebec,
" 30th January 1878."

My ministers never had, by their own admission, any other authorisation from me for the introduction of their railway and taxation resolutions than the blank signature above-mentioned, in which not a word is said of them. Besides which, it will be noticed that the railway resolutions were introduced on the 20th January, whereas the message is dated the 30th.

It is for this reason, my Lord, that I bring to your knowledge all the facts and details which are connected with the relations which I have had with M. DeBoucherville and his colleagues.

Were the controversy with me alone, as a private individual, I would abstain from any remonstrance against the injustice of their reflections upon the conduct of the representative of the Crown, which they have made in violation of their duty; but in this matter the maintenance of the constitution is at stake.

If, without any authority from me, proclamations have been published which I never signed, is it surprising that messages were communicated in my name to the Houses respecting which I had never been consulted ?

It is because, as the representative of my Sovereign, I have been unjustly and shamefully dragged before the public that I make known to you, my Lord, that, in the performance of my duty as Her representative, my object has not only been to protect the dignity of my office, but to afford to the people of this Province an opportunity of knowing that, under existing circumstances, the exercise of the Royal prerogative has not been hostile to their constitutional liberties; but that, on the contrary, it has afforded them the means of freely exercising their judgment.

There results, my Lord, from what I have now stated :--

1st. That in general the recommendations which I made to my cabinet did not receive the consideration which is due to the representative of the Crown.

2nd. That my name has been used by the members of the Government in the signature of documents which I had never seen.

3rd. That a proclamation summoning the Legislature was published in the Official Gazette without my being consulted or informed of it, and before my signature had been attached thereto.

4th. That a like proclamation fixing a day of thanksgiving was also published under similiar circumstances.

5th. That although I had intimated to the Premier by my advice, and by my letter of the 14th March 1877, my firm determination to protect the inhabitants of this Province against the arbitrary decisions of the Executive in matters within the jurisdiction of the courts of justice, he thought proper, without my participation and without advising me, to propose to both Houses, in legislating for the "Quebec, Montreal, Ottawa, and Occidental Railway," to substitute the power of the Executive for that of the judiciary.

6th. That, without having advised me, and without having received authorisation of any sort whatever from me, the Government of Mr. DeBoucherville proposed to the Legislature a measure of almost general taxation upon the ordinary contracts and transactions of life, transfers of bank stock, &c., while no message from me had been asked for this object, nor signed by me to authorise its proposition to the Houses.

7th. That, after its dismissal, the Government of Mr. DeBoucherville again failed in its duty by assigning reasons for the adjournment of the House from day to day different from those agreed on between myself and the Premier, at the risk of prejudicing public opinion against the representative of the Crown.

8th. That at the time of the communication of the causes which rendered necessary the dismissal of the cabinet, in the explanations which were given by the Premier to the Legislative Council, and by the Attorney-General to the Legislative Assembly, both of them referred to pretended conversations which they had no authority whatever to communicate to the Legislature, since the Premier had, by his answer to the letter of the Lieutenant-Governor of the 4th March last, limited his explanations to the communication to both Houses of my memoranda of the 25th February and 1st March, and the answers of the Premier of the 27th February and of the 2nd and 4th March instant.

9th. That, therefore, the additions and the comments made by the Premier before the Legislative Council, and by the Attorney-General before the Legislative Assembly, were contrary to the conditions agreed upon between the Lieutenant-Governor and the Premier.

10th. That the Premier and his colleagues, by making use of pretended private conversations to explain the causes of their dismissal, in contravention to their duty to the Crown and to what they had pledged themselves to observe with regard to it, have placed the Lieutentant-Governor under the necessity of bringing under the notice of your Excellency all the reasons for that dismissal.

I have, &c.

(Signed) L. Letellier,
Lieutenant-Governor.

To the Right Hon. the Earl of Dufferin,
K.P., K.C.B., G.C.M.G.,
Governor General of Canada, Ottawa.

APPENDIX A.

(Translation.)

SUMMARY OF OFFICIAL RECORD.

In January 1877 an election had taken place for the South Ward of the village of Montmagny. That election having been declared null and void by the court, it ordered a fresh election, and appointed Eugène Hamond to preside thereat.

On the day fixed, Eugène Hamond refusing to preside, Naz Bernatchez, Esq., Mayor of the Municipality, the senior magistrate present, presided.

The meeting elected Eugène Fournier.

Eugène Hamond wrote to the Lieutenant-Governor he had not presided at the meeting, without adding, however, that there had been no election. He recommended at the same time that Jules Bélanger be appointed.

Eugène Fournier, elected at the meeting of the 19th February, took the oath of office and took his seat on the 23rd February.

On the 3rd of March the Attorney-General (Mr. Angers) recommended the appointment of Jules Bélanger, who was accordingly appointed on the 7th of the same month.

On the 10th of March Mr. Bernatchez, Mayor of Montmagny, addressed to the Lieutenant-Governor a memorial setting forth the facts, and praying that the appointment be cancelled.

On the 15th of March the Attorney-General made a report, recommending that the appointment of Jules Bélanger be maintained.

On the 27th of March the Lieutenant-Governor revoked that appointment, on a report of the Government.

APPENDIX B.

(Translation.)

Quebec, March 4, 1878.

THE Lieutenant-Governor desires that his two memoranda (of the 25th February and 1st March), addressed to the Hon M. DeBoucherville, and the answers made to those memoranda by the Hon. M. DeBoucherville (of the 27th February and 3rd March) be not now communicated to both Houses.

That communication, authorised by the Lieutenant-Governor at the request of the Hon. M. DeBoucherville, should be made as soon as the arrangements for the formation of a new Executive Council are completed.

The Hon. M. DeBoucherville may communicate to the Houses that the adjournment from day to day is rendered necessary by the last-mentioned cause.

(Signed) L. LETELLIER.

To the Hon. C. B. DeBoucherville,
Quebec.

(Translation.)

YOUR EXCELLENCY, Quebec, March 4, 1878.

IN conformity with your wish expressed in a letter of to-day's date, I shall withhold, until the formation of a new Executive Council, the explanations I was authorised by your Excellency to communicate to the Houses.

I have, &c.
(Signed) C. B. DEBOUCHERVILLE.

(Translation.)

Government House, Quebec, February 25, 1878.

THE Lieutenant-Governor desires the Executive Council to prepare, for his consideration, a "factum" containing a copy of the following documents, viz. :—

1. A copy of the Acts of the Federal Parliament authorising the construction of the railway now known under the name of "Quebec, Montreal, Ottawa, and Occidental Railway," as well as a copy of the Acts of the Legislature of the Province of Quebec respecting the said railway.

2. A copy of the Acts of the Legislature of the Province of Quebec, respecting the building of the railway between Quebec and Montreal, which line is commonly designated by the name of "North Shore Railway."

3. A copy of the byelaws of each of the municipal corporations by which they undertook to help in constructing the said railways.

4. A statement of the amount of the bonus paid by each of those corporations, and a copy of the correspondence between the Government, its Commissioners or the contractors for the said railways, and the aforesaid municipalities, with regard to their bonus or subsidy.

5. A copy of the various contracts entered into for the building of those several roads.

6. A copy of the official or confidential reports of the engineers who have been ordered to locate those lines of railway in whole or in part.

7. A copy of the report of the Railway Commissioners submitted to the Houses, during the present session, with regard to the said railways.

8. A copy of the representations made to the Government by the municipal bodies so interested, of the ratepayers of those municipalities, with regard to the conditions of their bonus or subsidy.

9. A copy of the resolutions which have been proposed to the Provincial Legislature during the present session, with regard to the aforesaid subsidies, and to facilitate the payment and collection thereof.

10. A copy of the Bill based on those resolutions which has been introduced in the Legislature of Quebec during the present session.

11. A plan showing the several locatings of each of the said railways or of any part of them.

12. A statement of the reasons which led the Provincial Government not to be satisfied with the provisions of the statutory and public law and of the civil code of this Province for the recovery of any sums of money which may be due by those corporations, but, without previously advising in any way with the Lieutenant-Governor, to propose ex post facto legislation to compel them to pay.

Another very important Bill, to make provision for levying new taxes, has also been proposed to the Legislature, without having been previously submitted for the consideration of the Lieutenant-Governor.

The Lieutenant-Governor quite understands that propositions of secondary importance, and on which he has been previously officially informed, may be, as matter of routine, proposed to the Houses, without a special order from himself; but he cannot in any way permit that the Executive should make communications in his name to the Legislature, with regard to measures which are of a new and important character, without his special authorisation, and without his having been previously fully informed and advised in respect thereof.

(Signed) L. Letellier,
Lieutenant-Governor.

(Translation.)

Your Excellency, Quebec, February 27, 1878.

I have the honour to acknowledge receipt of the memorandum which your Excellency caused to be handed me yesterday afternoon by your Aide-de-Camp, who informed me at the same time that you were ill in bed.

I have submitted that memorandum to the Executive Council, and will see, as your Excellency desires, that diligence is used to cause all the documents asked for to be transmitted to you as soon as possible.

Anticipating the factum which your Excellency wishes to have, and which will contain a more detailed statement of the motives which have induced the Provincial Government to propose the measures to which you draw my attention, I deem it my duty to represent to you :

That amongst others, the reasons which led the Government to submit to the Legislature a law compelling the municipalities to pay their subscriptions towards building the Provincial Railway, on the decision of the Lieutenant-Governor in Council, under a sworn report of a competent engineer, and after a 15 days notice, to give those municipalities an opportunity of being heard, are the manifestations of bad faith of certain municipalities, shown in certain cases by their neglect to respond to the calls of the Treasurer, in others by their formal refusal to pay, and in certain cases by resolutions adopted demanding new conditions in respect to the agreements they had entered into with the Government.

The Government believed that, without such legislation, the object of which is to avoid the slowness of ordinary judicial proceedings, the result of the bad faith of the municipalities would have been either to necessitate a new loan by the Province, and therefore an unjust charge upon municipalities who had entered into no agreement, and who are to derive no immediate advantage from the construction of the road, or to put a complete stop to the works begun, with the inevitable loss of the interest on the enormous capital already invested in the enterprise, and the other damages which would result. The Government, firstly obliging itself by that law to fulfil the conditions agreed upon with those municipalities, believed that in substituting for the ordinary courts the Lieutenant-Governor with an Executive Council, responsible to the Legislature and to the people, they were offering to parties interested a tribunal which insured them as many guarantees as the ordinary courts.

I would further bring under your Excellency's notice that provisions of a similar nature to this legislation exist already in our Statutes. I may cite to your Excellency Chap. 83 of the Consolidated Statutes of Canada, and also Chap. 47 of 36 Vict. of the Statutes of Ontario.

I respectfully submit to your Excellency that a law framed to better assure the execution of a contract cannot produce a retro-active effect; it enacts for the future, and has for its end the respective interests of both parties.

I would now beg your Excellency to observe that while you were at Rivière Ouelle, I had the honour to ask your authority to put the question of finance before the House, and that you kindly answered, stating you were forwarding through the mail a blank, which act I took at that time as a great mark of confidence on your part. I received, in fact, a blank with your signature, and I gave it to the Treasurer, who had it filled up by your aide-de-camp. Later I had the honour to ask your Excellency for a general permission to submit to the House measures concerning money matters, which your Excellency gave me with your ordinary courtesy.

That permission, I may say, has always been granted me by your predecessor, the late lamented Mr. Caron. I must admit that with that permission, and being convinced your Excellency had read the Treasurer's speech, in which he announced the taxation subsequently proposed, I considered myself authorised to tell my colleagues that I had your permission for all money measures.

I beg your Excellency to believe that I never had the intention of assuming the right of having measures passed without your approbation, and that, in this case, having had occasion to confer with you with regard to the law respecting the Provincial Railway, and not having orders to suspend it, I did not think your Excellency would see in that measure any intention on my part of disregarding your prerogatives, which nobody is more disposed to respect and uphold than myself.

I have, &c.

(Signed) C. B. DeBoucherville.

To his Excellency the Lieutenant-Governor
of the Province of Quebec.

(Translation.)

Government House, Quebec, March 1, 1878.

The Lieutenant-Governor, taking into consideration what the Prime Minister communicated to him verbally (27th Feb.), and taking into consideration the letter which the Premier then handed to him, is ready to admit that there was no intention on the part of the Premier to disregard the prerogatives of the Crown, and that there has been on his part only an error committed in good faith, in interpreting, as he did, the words of the Lieutenant-Governor in their interview of the 19th February instant, words which did not convey the sense of authorisation which the Premier attached to them.

With such an interpretation, and the instructions which were in consequence given by the Premier to the Hon. Messrs. Angers and Church, those gentlemen have done nothing knowingly not in conformity with the duties of their office.

As to the blank which the Lieutenant-Governor sent him from Rivière Ouelle, the Lieutenant-Governor knew that that blank would be used to lay the estimates before the House.

That act was a mark of confidence on his part, as the Premier characterises it in his letter of the 27th, but that act was confidential.

The Lieutenant-Governor deems it right to observe that, in his memorandum of the 25th February inst., he in no way expressed the opinion that he believed that the Premier ever had the intention of taking upon himself the right "of having measures "passed without his approbation, or of disregarding the prerogatives of the representa- "tive of the Crown."

But the Prime Minister cannot lose sight of the fact that, although there was no intention on his part, in fact the thing exists, as the Lieutenant-Governor told him.

The fact of having proposed to the Houses several new and important measures without having previously in any way advised the Lieutenant-Governor thereof, although the intention of disregarding his prerogatives did not exist, does not the less constitute one of those false positions which place the representative of the Crown in a critical and difficult position with regard to the two Houses of the Legislature.

The Lieutenant-Governor cannot admit that the responsibility of this state of affairs should rest with him.

With regard to the Bill intituled "An Act respecting the Quebec, Montreal, Ottawa, and Occidental Railway," the Premier cannot claim for that measure the asserted general authorisation which he mentions in his letter, for their interview was on the 19th February, and that Bill was before the Legislature several days before that date, without the Lieutenant-Governor having been in any way informed of it by his advisers.

The Lieutenant-Governor expressed at that time to the Premier how much he regretted that legislation; he represented to him that he considered it contrary to the principles of law and justice; notwithstanding that, the measure was carried through both Houses until adopted.

It is true that the Premier gives in his letter, as one of the reasons for acting as he did, "that this permission of using the name of the representative of the Crown had, "besides, always been granted him by the predecessor of the present Lieutenant- "Governor, the late lamented Mr. Caron."

This reason cannot be one for the Lieutenant-Governor, for in so acting he would have abdicated his position as representative of the Crown, which act neither the Lieutenant-Governor nor the Premier could reconcile with the obligations of the Lieutenant-Governor towards the Crown.

The Lieutenant-Governor regrets having to state, as he told the Premier, that he has not been informed, in general, in an explicit manner of the measures adopted by the cabinet, although the Lieutenant-Governor had often given the Premier an opportunity to do so, especially during last year.

From time to time, since the last session of the Legislature, the Lieutenant-Governor has drawn the attention of the Premier to several subjects regarding the interests of the Province of Quebec, amongst others:

1st. The enormous expenditure occasioned by very large subsidies to several railways, while the Province was burdened with the construction of the great railway from Quebec to Ottawa, which should take precedence of the others; and this, when the state of our finances obliged us to undertake loans disproportioned to our revenue.

2nd. The necessity of reducing the expenses of the Civil Government and of the Legislature, instead of having recourse to new taxes, in view of avoiding financial embarrassment.

The Lieutenant-Governor expressed also, but with regret, to the Premier, that the Orders passed in Council to increase the salaries of Civil Service servants seemed to him inopportune, at a time when the Government were negotiating with the Bank of Montreal a loan of half a million, with power to increase that loan to $1,000,000, at a rate of interest of 7 (seven) per cent.; and indeed, even to-day (1st of March), the Lieutenant-Governor is obliged to allow an Order in Council to be passed to obtain the last half million for the Government, without which the Government would be unable to meet

its obligations, as I was informed by the Hon. the Provincial Treasurer to-day by order of the Prime Minister.

The Premier did not let the Lieutenant-Governor know, then or since, that the Government were in such a state of penury as to necessitate special legislation to increase public taxation.

Therefore the Lieutenant-Governor said and repeated these things to the Premier, and he deems it advisable to record them here, that they may serve as memoranda for himself and for the Premier.

It therefore results:

1st. That although the Lieutenant-Governor has made many recommendations in his position as representative of the Crown to the Premier on these different subjects of public interest, his advisers have undertaken a course of administrative and legislative acts contrary to these recommendations, and without having previously advised him.

2nd. That the Lieutenant-Governor has been placed, without evil intention, but in fact, in a false position, by being exposed to a conflict with the will of the Legislature, which he recognises as being, in all cases, supreme, so long as that will is expressed in all constitutional ways.

The Lieutenant-Governor has read and examined carefully the memorandum and documents which the Premier was kind enough to bring him yesterday.

There are, in the record, petitions from several municipal corporations and from citizens of different places, addressed to the Lieutenant-Governor, against the resolutions and the Government Bill, with regard to the "Quebec, Montreal, Ottawa, and Occidental Railway."

The Lieutenant-Governor was only yesterday able to take cognizance of some of these petitions, as they had not been communicated to him before he received them in the record.

The Lieutenant-Governor, after having maturely deliberated, cannot accept advice of the Premier with regard to the sanctioning of the Railway Bill, intituled "An Act respecting the Quebec, Montreal, Ottawa, and Occidental Railway."

For all these causes the Lieutenant-Governor cannot conclude this memorandum without expressing to the Premier the regret he feels at being no longer able to continue to retain him in his position, contrary to the rights and privileges of the Crown.

(Signed) L. Letellier.

To the Hon. C. B. DeBoucherville, Prime Minister,
Quebec.

(Translation.)

Your Excellency, Quebec, March 2, 1878.

I have the honour to acknowledge the receipt of your memorandum, in which you come to the conclusion that you can no longer continue to retain me in my position as Prime Minister. There is no other duty for me to fulfil but to submit to the dismissal from office, which your Excelleney has notified me of, declaring at the same time my profound respect for the rights and privileges of the Crown, and my devotion to the interests of the Province.

I have, &c.
(Signed) C. B. DeBoucherville.

To his Excellency the Lieutenant-Governor
of the Province of Quebec.

No. 2.

Governor-General the MARQUIS OF LORNE, K.T., to the Right Hon. Sir MICHAEL HICKS BEACH, Bart. (Received April 1, 1879.)

Canada, Government House, Ottawa,
Sir, March 15, 1879.

With my Despatch of the 5th instant* I had the honour to transmit to you copies of a correspondence which had been submitted to the Dominion Parliament relative to certain ministerial changes which took place in the Province of Quebec in the early part of last year.

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* No. 1.

A few days after this paper had been laid on the table of the House, Mr. J. A. Mousseau, a supporter of the Government, gave the following notice:—"That this "House do resolve that the dismissal by the Lieutenant-Governor of Quebec of his "ministers on the 2nd day of March 1878 was, under the circumstances, unwise and "subversive of the position accorded to the advisers of the Crown since the concession "of the principle of responsible Government to the British North American Colonies."

The motion came up for consideration on the 12th instant, and was debated on that and the succeeding day, and on the morning of the 14th instant a division was taken with the following result:—Yeas, 136; nays, 51; a majority of 85 in favour of the motion.

Twenty-one members were absent or did not record their votes.

I enclose an extract from the newspapers, giving a full report of the debate, pending the issue of Hansard, which will be sent to you in due course.*

Mr. Mousseau's motion was identical with one on the same subject moved by Sir J. A. Macdonald in the last session of Parliament and defeated by a majority of 32.

I have, &c.

The Right Hon. Sir M. E. Hicks Beach, Bart., &c. &c. &c.

(Signed) LORNE.

No. 3.

GOVERNOR-GENERAL THE MARQUIS OF LORNE, K.T., to the RIGHT HON. SIR MICHAEL HICKS BEACH, BART. (Received April 28, 1879.)

Government House, Ottawa,
April 9, 1879.

SIR,

WITH reference to the correspondence noted in the margin concerning the action of the Lieutenant-Governor of Quebec, the ministerial changes in that Province, which resulted from that action, and the subsequent events which have occurred, I have now the honour to report that on Saturday, the 29th March, Sir J. A. Macdonald came to Government House, and after conversation on other subjects, stated that he had waited until the return of Mr. Langevin from Quebec (whither he had gone on account of a family bereavement), and for the return of Mr. Masson, to communicate to me the decision the Cabinet had arrived at with regard to Mr. Letellier, the Lieutenant-Governor of Quebec. The decision was to the effect that the usefulness of Mr. Letellier had gone, and that he must be relieved of his office. I said that Sir John must know, from what I had already said to him on this subject, that I could not agree in the policy he recommended, but requested him to give his reason in writing, and told him I should put my reasons against such a policy in writing. He intimated that he would do as I requested. I said further, that I considered that the dismissal of the Lieutenant-Governor would set a dangerous precedent.

Governor-General, No. 58, March 5, 1879.†
Governor-General, No. 71, March 15, 1879.†

On Wednesday, the 2nd of April, Sir John again came to me, and informed me that, as an alternative, he suggested that the question involved in the dismissal of the Lieutenant-Governor of Quebec should be referred to Her Majesty's Government. I assented to this, and he produced a note of the statement he proposed to make to the House on the subject; it was in these terms: "Sir John Macdonald waited on his Excellency the "Governor-General, and informed him that after the resolution of the Senate in the last "session of Parliament, and the resolution of the House of Commons during the present "session, it was the opinion of his Excellency's advisers that the usefulness of the Hon. "Mr. Letellier as Lieutenant-Governor of Quebec was gone, and they advised that in the "public interest it was expedient that he should be removed from his office. His "Excellency thereupon was pleased to state that as the Federal system introduced by the "British North America Act of 1867 was, until then, unknown in Great Britain or her "Colonies, there were no precedents to guide us; that the decision in the present case "would settle for the future the relations between the Dominion and Provincial "Governments, so far as the office of Lieutenant-Governor is concerned, and that he "therefore deemed it expedient to submit the advice tendered to him and the whole case "with all the attendant circumstances to Her Majesty's Government for their consideration "and instructions."

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* Newspaper extracts not printed.

† Nos. 1 and 2.

I informed Sir John Macdonald that I agreed to his suggestion to use the above words in making his statement to the House of Commons.

Some misconception having arisen with reference to the statement made to the House, Sir John Macdonald on Monday the 7th April rose in his place, and in answer to Mons. Desjardin said: "I am glad the honourable member has asked the question. I beg "leave to state to the House that the Postmaster General, my colleague, will sail by "the next Canadian steamer for England for the purpose of supporting, with the consent "of the Governor-General, the advice given by the Government for the removal of "Lieutenant-Governor Letellier. He may, perhaps, be accompanied by another gentle-"man; at all events he goes next Saturday. I need scarcely say that the fact of our "holding the position we do at this moment shows that the Governor-General did not "make that reference against our advice, and the fact of our remaining in office shows "we hold ourselves responsible for the action of the Governor-General."

It will be seen from the foregoing narrative that in referring the question of the dismissal of the Lieutenant-Governor of Quebec to Her Majesty's Government I have not acted against the advice of my Ministry.

I consider that it is important than an opinion be given on the subject by Her Majesty's Government, for it is expedient that an authoritative expression of their views be obtained with reference to the powers given by the British North America Act of 1867 to the Governor-General, in respect of the dismissal of the Lieutenant-Governor of Quebec. By clause 12 of this Act it is provided that, in certain cases, the Governor-General has power to act individually, and in clause 59, the words "in Council" are omitted, and the language used is "a Lieutenant-Governor shall hold office during the "pleasure of the Governor-General." Sir John A. Macdonald will refer to this point in a memorandum which will be forwarded on Monday the 14th instant.

In the case of Lieutenant-Governor Letellier, the dismissal proposed would establish a new precedent. He would be dismissed, although the responsibility of the act for which he has been censured by the present Dominion House of Commons has been assumed by his minister, M. Joly, who with his colleagues has been able to carry on the Government of the Province since the provincial elections which took place in the summer of last year.

To dismiss the Lieutenant-Governor for acts, for which M. Joly has declared himself to be responsible to the Provincial Legislature, is a new exercise of the Federal power, and as it affects the interpretation of an Imperial Act, which carefully guards Provincial interests, I consider the wish of Sir John Macdonald to refer the matter to the Imperial Government as wise, and meeting in the fullest manner the requirements of the constitution.

This Despatch has been read by Sir John Macdonald, who has pronounced the narrative of the conversations which have taken place between us to be accurate.

I enclose extracts* from the public newspapers, of all shades of politics, with regard to this important question, and for facility of reference I transmit copies of the printed papers which accompanied the Despatches above quoted, and further a copy of a report of the debates which took place in the Legislative Assembly of Quebec, after M. Joly's administration had assumed power.

I have, &c.
(Signed) LORNE.

The Right Hon. Sir M. E. Hicks Beach, Bart.,
&c. &c. &c.

No. 4.

GOVERNOR-GENERAL THE MARQUIS OF LORNE, K.T., to the RIGHT HON. SIR MICHAEL HICKS BEACH, BART. (Received April 28, 1879.)

Government House, Ottawa,
April 14, 1879.

SIR,

I HAVE the honour to transmit herewith a copy of a memorandum from Sir J. A. Macdonald, Premier of the Dominion, with reference to the case of M. Letellier, Lieutenant-Governor of the Province of Quebec, to which allusion is made in my Despatch, of the 9th instant.†

I have, &c.
(Signed) LORNE.

The Right Hon. Sir M. E. Hicks Beach, Bart.,
&c. &c. &c.

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* Inclosures not printed. † No. 3.

Enclosure in No. 4.

Memorandum by Sir John A. Macdonald.

As this important matter has been referred to Her Majesty's Government by his Excellency the Governor-General with the assent of his Advisers, it is proper that their reasons for tendering the advice that Mr. Letellier be removed should be submitted to his Excellency for transmission to the Secretary of State for the Colonies. Perhaps the most convenient way for doing so would be by a succinct narrative statement of the circumstances surrounding the case. The papers laid before Parliament enter so fully into the details that the narrative may be a short one. In 1876 Mons. Letellier, then a member of the Dominion Ministry, was appointed Lieutenant-Governor of Quebec. Although an active politician, and believed to have strong party leanings, no objection was taken by anyone to his appointment. Of course Canada which only adopted the Federal system with local Lieutenant-Governors in 1867 had no service similar to that which now exists in Great Britain. The Governorship of Colonies has with the recent exception of Canada become a branch of the Civil Service of England, and gentlemen appointed to any Colonial Government, although holding commissions during the pleasure of the Crown, have a right to expect that they will not be removed without cause until the usual term of office has expired. In Canada since the 1st July 1867, when the Dominion was formed, the Lieutenant-Governors of the different Provinces were almost of necessity selected from men of political standing, and although it might have been apprehended that the party proclivities of these gentlemen would interfere more or less with the impartial performance of their duties, it is satisfactory to be able to state that except in this case no charge or complaint has been made that any Lieutenant-Governor has allowed his conduct as such to be influenced by his party predilections. When Mr. Letellier was appointed Lieutenant-Governor he was a prominent member of Mr. Mackenzie's ministry and the leader of his Government in the Senate. It was therefore especially necessary that he should have avoided even a semblance of being actuated by party feeling in his new position. Instead of this there is too much reason to believe that he assumed his office with a distinct purpose of exerting his official influence on behalf of his political friends. Now in Quebec it is perhaps more necessary than in any other Province of the Dominion that the conduct of its Governor should be politically colourless. Its people of French origin have a traditional respect for authority, and as in old France, except in times of revolutionary or great political excitement, the influence of the Government of the day over the electorate is so great that the party having the advantage of that influence have much the greater chance of success. In fact, in the case of a general election, the two parties do not enter into the field on equal terms. When Mr. Letellier assumed his Government he found that his Ministry, of which the Hon. Mr. Bouchierville was the first Minister, possessed the confidence of both branches of the Legislature. It was known that in the Legislative Council, consisting of 24 members, he had the support of 19; in the Legislative Assembly, composed of 65, he enjoyed the confidence of at least 40 members. It might, therefore, naturally have been supposed that his task was an easy one, and that he could have safely accepted the advice of his Ministers (strongly supported as they were by both branches of the Legislature) on all subjects within the range of their constitutional powers of Government and advice. A perusal of the documents laid before Parliament will show that he did not act fairly or loyally towards them. It is not too much to say that he laid in wait for an opportunity of removing them. He allowed them to proceed with the business of the session until near its close, and then, on the grounds or pretexts disclosed in the papers, he dismissed them. The correspondence will show how frivolous and disingenuous his pretexts were. A stranger to Quebec might naturally inquire as to what object Mr. Letellier had in dismissing his Ministry. He had, it is believed, a distinct and specific object. The general elections for the Dominion Parliament were of necessity to take place in 1878, when the Ministry of which, as has been already stated, Mr. Letellier had been a prominent member, would be obliged to go to the country and give an account of their stewardship. In consequence of the traditional influence of Government, which has been alluded to, it was obviously of political importance to that administration to have such influence exerted in its favour. Hence arose the anxiety of Mr. Letellier to forget his position as Governor—to dismiss his advisers, who were known to be politically opposed to the Dominion Ministry, and to substitute for them a cabinet which would act in sympathy with them and exercise the Provincial patronage to carry

the Dominion elections. With that view Mr. Joly, who, before he became leader of his party in Quebec, had been a strong supporter in the Dominion Parliament of Mr. Mackenzie, was selected. He resorted to a dissolution, and the result was that, notwithstanding all the influence that the Quebec Government could exercise, he did not succeed in securing a majority. At that election the battle was fought, not on Mr. Letellier's conduct, with which constitutionally the local electors had nothing to do, but upon the comparative merits of the policy of the two parties, of the Joly and de Bouchierville Ministries; and the result was, as has been stated, that while Mr. de Bouchierville's former support was diminished, Mr. Joly had not a majority at his back. It was, however, necessary to Mr. Joly's existence that he should be able to secure a majority, if but of one, in the House of Assembly, and this he effected by causing to be chosen speaker Mr. Turcotte, a gentleman elected under a positive pledge to oppose him, and who after his election had declared his continued opposition. It has been asserted, and never denied, and has recently been stated in the most explicit terms in the late debate in the Dominion Parliament by a member in his place, that Mr. Turcotte was sent for and his acceptance of the speakership arranged in the presence of Mr. Letellier.

Notwithstanding the purchase of the Speaker a vote of want of confidence was passed in the Legislative Assembly, and a similar resolution was adopted in the Upper House. Mr. Joly, however, did not resign as he ought to have done, and as the Lieutenant-Governor ought to have called upon him to do. He held to office and proceeded with the business of the country. He succeeded in carrying the supplies, and the fact of his having done so is quoted as a proof of the substantial confidence of the House in him. But the refusal of supplies is an antiquated procedure, and has long since been succeeded in England by votes of want of confidence, and for the same reasons which induced the Opposition at Quebec to vote the supplies. The refusal to do so would have clogged the whole machinery of Government, would have stopped the construction of the Government railways and ruined the contractors, and at a time of great depression would have deprived very many working men of the means of subsistence. The Opposition therefore patriotically deemed it wise, while persisting in their expression of want of confidence, not to obstruct the whole business of the country. During the whole of the legislative existence of Mr. Joly he has thus been carrying on the Government by the improper partizanship of the Lieutenant-Governor, and the casting vote of a speaker purchased with his connivance. In the session of the Dominion Parliament of 1878 the conduct of Mr. Letellier was brought before the House of Commons by Sir John Macdonald, the leader of the Opposition, who moved the following resolution :—

"That the recent dismissal by the Lieutenant-Governor of the Province of Quebec of his Ministry was, under the circumstances, unwise and subversive of the position accorded to the advisers of the Crown since the concession of the principle of responsible Government to the British North American Colonies."

On reference to the debates, it will be seen that Mr. Mackenzie's Government did not defend Mr. Letellier's action, although they supported their old colleague by a vote of 112 to 70. During the same session the senate passed by a vote of 37 to 20 the following resolution :—

"That the messages of his Excellency the Governor-General of the 26th March and 8th April be now read, and that it be resolved that the course adopted by the Lieutenant-Governor of the Province of Quebec towards his late Ministry was at variance with the constitutional principles upon which Responsible Government should be conducted."

Then came on last autumn the general election for the Parliament of the Dominion, and among the many questions submitted to the people one of the most prominent was the conduct of Mr. Letellier, and the votes of the two Houses of Parliament with respect to it. In the Province of Quebec it was the question of the day, and the opinion of the electors may be known by the return of 48 gentlemen pledged to Mr. Letellier's condemnation against 17 supporters. When the present session of Parliament met, Mr. Mousseau, a representative from Quebec, brought forward a motion identical in its terms with that moved in the previous session by Sir John Macdonald, and it was carried by a vote of 136 to 51 members. The analysis of this vote sufficiently shows that the general condemnation of Mr. Letellier's conduct was not confined to his own Province.

Under these circumstances the Governor-General's advisers thought it their duty to convey to his Excellency their opinion that after the Senate's resolution of last session, and the vote of the House of Commons during the present session, Mr. Letellier's usefulness was gone, and they advised his removal; and now the whole question stands for the consideration of Her Majesty's Government on the Governor-General's reference.

It is necessary now to consider the tenure of office by Lieutenant-Governors appointed under British North America Act, 1867. When the resolutions on which that Act was based were being prepared it was thought expedient to continue in the Dominion the English practice with respect to Colonial Governors. This might have been done without legislative enactment, but to prevent the possibility of its being supposed that Lieutenant-Governors under the new regime were of necessity to be in sympathy with the Dominion Ministry of the day, and to be removable with every change of party, the provision in the 59th clause was introduced which says that no Lieutenant-Governor shall be removable within five years of his appointment except for cause assigned, which shall be communicated within one month after the order for removal is made, and shall be communicated by message to the Senate and House of Commons.

This left the tenure to be one of pleasure as before, but was intended by statutory enactment to establish the practice which obtains in England. It gives no vested right to a Lieutenant-Governor in his office for five years; it does not place him in the position of a judge who holds office during good behaviour, although removable by vote of both houses. The statute merely operates and was meant to operate as a check upon the capricious and arbitrary exercise of the power of dismissal by compelling the Ministry to submit the reasons for the exercise of the Royal pleasure for Parliament. A Lieutenant-Governor is still removable and ought to be removable whenever it is felt by the Dominion Government that it is for the public interest that he should be displaced. Due regard should of course be had to his feelings and position, and the power should not be lightly exercised; but it is not necessary that he should be tried, convicted, or even charged with gross moral or personal wrong.

If, as in the case of Imperial officers of like position, it becomes necessary or expedient for the advantage, good government, or contentment of the people governed that he should be removed, it is the duty of the Dominion Government to discard him. His usefulness may have been destroyed by accident or misfortune as well as by fault, but still the usefulness once gone the office should also go. This is, we know, the practice in England, but there Her Majesty's Government have the means from the multiplicity of offices at their gift to remove the unsuccessful or erring Governor to another sphere of action. Here the same means can scarcely be said to exist. It may perhaps be said that stronger reasons should therefore be assigned for the dismissal of a Governor; but, on the other hand, a Canadian officer so removed is not deprived of any professional status or prospects. He belongs to no service, and his office is considered more as a dignified retirement from active political life than one of profit or emolument. At the end of his five years he has no claim for another appointment or for further consideration, and he stands in a position similar to that of a minister who has lost power. In Mr. Letellier's case it is not in the opinion of his Excellency's advisers at all necessary in order to justify their advice to go behind the vote of Parliament, it is sufficient for them that Parliament has passed a censure on his official conduct.

After such a vote it must be obvious that he cannot either with profit or advantage be maintained in his position. At the same time they must express their full concurrence in the justice of the censure. They proved that by their votes in the Legislature; but had they not voted at all, or even if their opinion had been averse to that arrived at by Parliament, it seems clear that they are bound to respect that decision and to act upon it as they have done by advising the removal. It has been argued that while by the 58th clause of the Act, Lieutenant-Governors are to be appointed by the Governor-General in Council by instrument under the Great Seal, the 59th clause provides that he shall hold office during the pleasure of the Governor-General, and that therefore while the appointment must be under the advice of a Responsible Ministry, the removal may be made by his Excellency without reference to his Council, and the 12th clause of the Act is quoted in support of that view. That clause provides as to what powers, authorities, and functions are to be vested in the Governor-General with the advice of his Privy Council, and what in the Governor-General himself. The argument is not however tenable. Long before Confederation the principle of what is known as Responsible Government had been conceded to the Colonies now united in the Dominion. This principle established that in all matters of internal concern the representative of the Crown should act according to the advice of Ministers enjoying the confidence of Parliament. The concession was not withdrawn by the Confederation Act. On the contrary, it begins by a preamble stating the desire of the Provinces to be united into one Dominion with a constitution similar in principle to that of the United Kingdom; and this has been carried out in theory and practice in the Dominion of Canada from the commencement of its existence. The principle forms part of our constitution now as it did

in those of the several Provinces before the Union. It is a part of the *lex non scripta* of the constitution, and any express enactment of the principle was wisely avoided.

A comparison between the elasticity of the British constitution and its gradual development under an unwritten law with the rigidity of a written constitution as existing in the United States has shown the superiority of the former system. Whether, therefore, in any case power is given to the Governor-General to act individually or with the aid of his Council the act as one within the scope of the Canadian Constitution must be on the advice of a Responsible Minister. The distinction drawn in the Statute between an act of the Governor and an act of the Governor in Council is a technical one, and arose from the fact that in Canada for a long period before confederation certain acts of administration were required by law to be done under the sanction of an Order in Council while others did not require that formality. In both cases, however, since Responsible Government has been conceded, such acts have always been performed under the advice of a Responsible Ministry or Minister. Again the 59th clause provides that the Lieutenant-Governor is not to be removed except for cause assigned. Someone must be responsible to Parliament for the reasonableness of such cause, and must defend it there, and be liable to censure should the cause be deemed insufficient.

Now the Governor-General cannot be held constitutionally responsible or open to censure in any way by Parliament. As Her Majesty's representative he holds the same constitutional position in that respect as the Queen does in England. It seems to follow, therefore, that upon the Ministry of the day must rest the responsibility of advising the removal, of assigning the cause, and of justifying its sufficiency.

Two special grounds have been urged why Mr. Letellier should not be removed; first, that the motion of censure made in the late Parliament having been lost, the case should not be re-opened without new cause; second, that Mr. Joly assumed the whole responsibility of the Lieutenant-Governor's act, and after an appeal to the people his Ministry still exists. As to the first ground it may be answered that, as already stated, the arguments used in opposition to the motion did not attempt to justify his conduct, but were founded on the inexpediency of raising the question at that time when Mr. Joly had gone or was about to go to the country, that the question had not been before the people at the time the then House of Commons was elected, and that it had been one of the subjects submitted to the people at the last election for the Dominion. The present House of Commons coming fresh from the people and supposed to express their opinion has by an overwhelming vote reversed the decision of the expiring Parliament, and pronounced a deliberate censure on Mr. Letellier's conduct. As to the second ground, the answer is that the Lieutenant-Governor of a Province holds the same relation to the Dominion Government and Legislature as the Governor-General does to Her Majesty and the Imperial Parliament. Here we have nothing to do with the appointment or removal of the Queen's representative. We loyally accept the Governor-General selected by the Queen, and have no right to express an opinion as to his continuation in office or recall. All that the people of Canada can require is that the Governor-General for the time being should always act upon the advice of Ministers responsible to him. The right of discussion and the power of censure rest practically with the Imperial House of Commons, and have been not infrequently exercised there. So in the Province of Quebec its legislature and people are bound to receive the nominee of the Governor-General, and so long as their constitutional rights are protected have nothing to say against his recall for any cause whatever. If Mr. Letellier were removed, his successor must accept the Ministry which he finds enjoying the confidence of the Legislature, and so long as this constitutional right is preserved it matters not to them who may be their Lieutenant-Governor. It rests with the Dominion Parliament to approve or disapprove of a change in the personnel in the Lieutenant-Governorship. The distinction seems to have been fully observed in the Province of Quebec during the late Local and Dominion elections. It must be borne in mind that the constituencies and the franchise are the same for both elections, and the same body of electors which when the question constitutionally before them was the comparative merits of the De Bouchierville and Joly administrations divided in nearly equal numbers returned to the Dominion Parliament 48 as against 17 or a majority of 31 pledged to vote for the censure of Mr. Letellier's conduct in the place where it alone could be constitutionally impugned.

After full and anxious consideration his Excellency's advisers desire to express their strong conviction that it is highly expedient that the vote of Parliament should be given effect to by the dismissal of Mr. Letellier. If it is not, a Provincial Lieutenant-Governor will be the only practically irresponsible official in Canada. On the other hand, his

removal will be a warning to all future Lieutenant-Governors to exercise their powers as such with the strictest impartiality. As Mr. Letellier has been the first, in the case of his removal he will probably be the last partisan Lieutenant-Governor, and all future trouble from that source may be considered as at an end. His fate will be a warning to others for all time to come. Again, they are convinced that peace and contentment will not be restored in the Province of Quebec so long as he retains his present position; and lastly, they think that a Ministry enjoying the confidence of Her Majesty's representative and a large majority of both Houses of Parliament and administering all the affairs of Canada, whether of a legislative or executive character, and including the appointment of Lieutenant-Governors may be safely entrusted with the responsibility of advising their removal.

All which is respectfully submitted.

Council Chamber,
14th April 1879.

VOTE ON LETELLIER'S MOTION.—14th March 1879.

Province.	Yeas.	Nays.	Absent.
Ontario - - - -	58	21	8
Quebec - - - -	46	16	2
Nova Scotia - - -	14	5	2
New Brunswick - - -	4	8	3
Prince Edward Island - -	5	1	—
Manitoba - - -	3	0	1
British Columbia - - -	6	0	0
Speaker - - - -	—	—	1
Pair - - - -	1	1	—
Total -	137	52	17

No. 5.

GOVERNOR-GENERAL THE MARQUIS OF LORNE, K.T., to the RIGHT HON. SIR MICHAEL HICKS BEACH, BART. (Received May 6, 1879.)

Government House, Ottawa,
April 23, 1879.

SIR,

WITH reference to previous correspondence regarding the case of the Lieutenant-Governor of the Province of Quebec, I have the honour to transmit herewith the statement of M. Letellier St. Just, which I forward to you on the recommendation of my responsible advisers. I also enclose a copy of a telegraphic message which I caused to be sent to the Lieutenant-Governor to-day.

I have, &c.
(Signed) LORNE.

The Right Hon. Sir M. E. Hicks Beach, Bart.,
&c. &c. &c.

The UNDER SECRETARY OF STATE FOR CANADA to the GOVERNOR-GENERAL'S SECRETARY.

Ottawa, April 22, 1879.

SIR,

I AM directed to transmit to you herewith, to be handed to his Excellency the Governor-General in accordance with the request of his Honour the Lieutenant-Governor of the Province of Quebec contained in his Honour's Despatch of the 18th instant, the enclosed Memorandum to be transmitted by his Excellency for the consideration of Her Majesty's Imperial Government, as the Lieutenant-Governor requests.

I have, &c.
(Signed) EDOUARD J. LANGEVIN,
Under-Secretary of State.

The Governor General's Secretary.

Enclosure 1. in No. 5.

SIR, Government House, Quebec, April 18, 1879.

IN the return to an Address to the House of Commons from the Department of the Secretary of State, dated 27th February last, I find a petition addressed to his Excellency the Governor-General in Council, by Messieurs Chapleau, Church, and Angers, which purports to be a reply to my letter to the Secretary of State, of the 9th December, 1878.

Having in that letter requested that I might be afforded an opportunity of giving further explanations on any of the charges preferred against me by the petitioners, which might appear to require them, and not having been called upon for such explanations, I should have refrained from offering any further remarks on a question in which I am personally concerned, were it not that I have learned from the newspapers that advice had been tendered to His Excellency the Governor-General by his responsible Ministers, which, in my opinion, would, if followed, be destructive of that Local Government secured to the Province of Quebec by the "British North America Act."

I have likewise learned from the same sources of information that such advice has been referred for the consideration of Her Majesty's Imperial Government, and that a Dominion Minister of State, and a distinguished member of the Montreal bar, have proceeded to England in connexion with this case.

Having received no official communication as to the nature of the mission entrusted to these gentlemen, I feel I am working in the dark in preparing the case which the Federal Government has consented to transmit, as I do not even know what the Imperial Government is specifically called upon to decide.

Under the circumstances stated I feel it my duty to begin by placing on record a rejoinder to the reply of Messieurs Chapleau, Church, and Angers, to my answer of the 9th December last, and to respectfully request that His Excellency the Governor-General will not only give it his own consideralion, but transmit it to the Right Honourable the Secretary of State for the Colonies, if the return to the Address of the House of Commons shall have been or is to be transmitted.

The petitioners have wholly misunderstood the passage in my said answer of the 9th December last, in which I referred to the "extraordinary error" committed by them in their original petition, in reference to the 59th Section of the "British North America Act."

It was far from my intention to put forward any plea to the jurisdiction of the Governor-General in Council.

I merely intended to draw the intention of his Excellency the Governor-General to the fact that the petitioners ignored him as they had ignored me.

The first of the alleged grievances summed up by the petitioners is in these words :— "The Lieutenant-Governor, in dismissing his ministers when they enjoyed the confidence "of both Houses of the Legislature, and when they had not been guilty, as the "Lieutenant-Governor admits, of any wilful want of respect for the "prerogative of "the Crown, has violated the principles of responsible government." This would imply that it was a violation of responsible government to dismiss my ministers on the ground that a Bill introduced by them without my consent, and carried by their influence as ministers through the two Houses of the Legislature, contained provisions which I conscientiously believe were contrary to law and justice.

I willingly accept the issue here presented.

The Bill above referred to was introduced in my name but without my authority, unless it be held that the telegram addressed to me at Rivière Ouelle, "Can you send me "authorisation resolution respecting finances?"—was such a communication to me, as I had a right to expect, regarding a Railway Bill containing provisions that were, in my deliberate judgment, contrary to the principles of law and justice (copy of which Bill is annexed hereto.)

It may be as well to remark on the subject of the Railway Bill, that the municipalities which it was intended to coerce by legislative action, have, since the advent to power of the new administration, appreciated their good faith by making satisfactory arrangements with them.

I may observe on the subject of Bills introduced into the Legislature, that unless the permission of the Crown has been expressly obtained, the Ministry must necessarily take the responsibility of acting without such permission, as in all other cases in which they act without previous consultation, and in the event of the Sovereign or his representative disapproving of such action, its disallowance constitutes no just ground of complaint.

To sum up, the legitimate inference, it appears to me, to be drawn from the first grievance of the petitioners is, that in their opinion it would be a violation of responsible government to dismiss a Ministry enjoying the confidence of the Legislature unless it had been guilty of wilful want of respect for the prerogative of the Crown. Now, I maintain that whether a Ministry enjoys the confidence of the Legislature or not, the Representative of the Crown is entitled to dismiss them, should they attempt, as in my case, to pass measures contrary to his views, and without having previously obtained his sanction, provided he finds advisers willing to assume the responsibility of his acts.

The second grievance, as stated by the petitioners, is based on the pretension that I had really given my authorisation to the measures of which I complained, and that, having done so, I had, after their discussion in the Legislature, dismissed the ministers who had introduced them with my concurrence. I submit that it is sufficiently established by documentary evidence that I had never given such authorisation.

The third grievance merits serious consideration, as it is based on an assumption that the representatives of the Crown in the Provinces of the Dominion have no right to divulge the secrets of their advisers to their official superior. On precisely the same ground it would be improper for his Excellency the Governor-General to divulge to the Secretary of State for the Colonies "the secrets of his advisers."

I join issue with the petitioners: 1st. As to my right to communicate as freely with the Governor-General or the Dominion Secretary of State as the Governor-General may do with Her Majesty's Secretary of State for the Colonies.

2nd. As to the propriety of my addressing the Governor-General under the circumstances.

My reasons were explicitly stated at the conclusion of my letter to His Excellency the Governor-General, viz.: the unauthorised explanations made to both Houses of the Legislature, in the form of a memorandum signed by Mr. Angers, one of the petitioners.

I maintain that, according to British constitutional practice, the explanations rendered necessary by a change of Ministry must be such as have been expressly authorised by the Sovereign or his representive.

The explanations authorised by me were defined in my letter on the 4th March, to M. De Boucherville, to be my two memoranda (of 25th February and 1st March), and the answers to those memoranda by M. De Boucherville (of the 27th February and 3rd March), and I further requested that such explanations should not be made until the completion of the arrangements for the formation of a new Executive Council.

I had just reason to complain, not only of the premature and unauthorised announcement that the De Boucherville Ministry had been dismissed, but of the wholly unauthorised memorandum of Mr. Angers read to the House of Assembly, which I had never seen.

M. De Boucherville had, in his letter of the 4th March, acknowledging mine of the same day, expressly referred to the explanations which I had authorised, and the extent of which my said letter had clearly and precisely indicated.

It is evident, from M. De Boucherville's letter to the Governor-General, that the ex-ministers hold the opinion that they had a right to make any explanations that they themselves thought proper, without the knowledge or consent of the Lieutenant-Governor.

On this point I am at issue with them. Mr. Angers having thought proper, without my knowledge or consent, to make statements to the Legislature, I considered that it was my duty to explain more fully to the Governor-General the circumstances adverted to in my letter of the 1st March to M. De Boucherville, and which led me to remind that gentleman that from time to time my advisers had "taken administrative and "legislative steps contrary to such representations and without having previously "advised me."

My object in acquainting the Governor-General with various circumstances which indicated on the part of the Executive Council a determination to deprive me of the legitimate prerogatives attached to my office, was simply to convince his Excellency that, far from being desirous of seeking an opportunity to come to a rupture with the Executive Council, I had on several occasions reason to complain of their inattention to my remonstrances, and of their omission even to consult me. These were not assigned as reasons for my final decision, but as circumstances which led me to believe that M. De Boucherville and his colleagues had been indisposed to treat me with that confidence which I had a right to expect.

In my letter to the Secretary of State, of the 9th December last, I had adduced as evidence of the concurrence of his own party in my opinion that M. De Boucherville

was unequal to the position which he had occupied, that another leader had been chosen in his place. This fact has not been denied.

The petitioners state in reply that "it was necessary that the conservative party should choose a leader in the Legislative Assembly, M. De Boucherville being leader and a member of the Legislative Council."

This statement is calculated to convey an erroneous impression.

The leader of a party may be in either branch of the Legislature, as the petitioners are well aware, and M. DeBoucherville though in the Legislative Council, was Prime Minister.

M. Chapleau was chosen as leader of the party; and it is clearly understood that M. De Boucherville, who has since accepted a seat in the Dominion Senate, is no longer in the position of leader which he formerly occupied.

With regard to that portion of the petitioners' letter which relates to the Quebec elections, and to subsequent proceedings in the Provincial Legislature, I must be permitted to remark that they are wholly irrelevant to the real question at issue, whatever may be their bearing on Mr. Joly's administration.

I cannot for a moment admit that the Lieutenant-Governor of the Province was on trial by the people. Mr. Joly accepted the full constitutional responsibility for my acts, and has been able to carry his measures in the Legislature. As a striking evidence of the great change in the House of Assembly effected by the recent provincial elections, I shall merely direct attention to the vote which was taken on the 9th of March 1878, before these elections, on the amendment to the second reading of the Supply Bill, proposed by Mr. Angers and seconded by Mr. Church, the Bill being thrown out by 32 to 13; while, after the elections of the 1st May following, the Supply Bill introduced by the Joly Government was passed unanimously.

It may not be out of place here to re-affirm the correctness of all the statements which I have made in the memoranda, which have passed between M. De Boucherville and myself, as well as in my correspondence with the Earl of Dufferin and my answer to Messrs. Chapleau, Angers, and Church.

There are some other points raised for the first time by the latter gentlemen in their reply, which are of very secondary importance, and not worthy of any special notice.

I have only, in conclusion, to remark that no apprehension of personal consequences to myself would have induced me to engage in such a discussion as the present, but that I feel most deeply that the interests of my native Province are at stake, and inasmuch as it has been represented to me by a Minute in Council of my Executive Government (coinciding with my personal opinion) that the rights and autonomy of the Province of Quebec might be injuriously affected by the result of the decision which may be given in this case, I think it only just that I should submit for the consideration of the Imperial authorities the said order, which reads as follows:—

No. 172.

The Honourable the Commissioner of Agriculture and Public Works, in a report dated the 17th of April instant, represents that the Honourable H. L. Langevin, one of the members of the Privy Council of Canada, has taken his departure for England, to confer with Her Majesty's Government respecting the attempted removal of the Honourable the Lieutenant-Governor of the Province of Quebec, for the dismissal of the Honourable M. De Boucherville's late administration;

That the Lieutenant-Governors in their respective provinces have the same power and authority under the "British North America Act" as those which are possessed by the Governor-General, as respects the government of the Dominion;

That the power of dissolving Parliament and dismissing ministers is the undoubted prerogative of Lieutenant-Governors of Provinces;

That His Honour Lieutenant-Governor Letellier De St. Just, in the exercise of this well-recognised authority, dismissed his ministers on the 2nd day of March 1878, the reasons assigned being as follows:—

That his ministers had taken steps regarding administrative and legislative measures, not only contrary to his representations, but even without having previously advised him, and especially with reference to a Bill containing provisions which would have deprived subjects of Her Majesty of their undoubted right to have the protection of the judicial tribunals of the country in cases of dispute with the Provincial Government;

That the Honourable M. De Boucherville, the late Premier, having declined to name a person to replace him, when requested to do so by His Honour the Lieutenant-Governor, Mr. Joly, the leader of the Opposition, was called upon by His Honour to form a new administration;

That Mr. Joly accomplished this task and the new ministry were sworn in on the 8th of March 1878, and, by constitutional usage necessarily assumed the responsibility of all the acts of the Lieutenant-Governor, which had caused the retirement of the late ministers;

That Mr. Joly accepted this responsibility by his undertaking to form a new administration, and that he expressly stated in his address to the electors of the Province that he did assume this responsibility;

That within the space of fourteen (14) days from the time when the members of the new administration were sworn in, viz.: on the 22nd March, 1878, the Parliament of Quebec was dissolved, and a new election was ordered to take place on the first day of May 1878, the writs being returnable on the twenty-ninth day of May 1878;

That the Quebec Legislature was convened for the fourth day of June 1878, viz.: six days after the return of the writs;

That at this session the new administration succeeded in carrying through the Legislative Assembly the supplies and all the measures proposed by the Government, and the sanction of the people to the action of the Lieutenant-Governor was thus obtained in the proper constitutional manner;

That the significance of this public verdict will best be appreciated when it is stated that, at the elections on the first day of May last, all the ministers of the new Cabinet were elected, while three out of five ministers of the De Boucherville Government, who sought re-election, were defeated at the polls;

That on the eleventh (11th) day of April 1878, Sir John A. Macdonald, then leader of the Opposition in the House of Commons of Canada, moved the following resolution:
"That Mr. Speaker do not now leave the chair, but that it be resolved that the recent "dismissal by the Lieutenant-Governor of Quebec of his ministers was, under the "circumstances, unwise and subversive of the position accorded to the advisers of the "Crown since the concession of the principle of Responsible Government to the British "North American Colonies."

That this resolution was resisted by the Dominion Government, on the ground that the Federal Parliament ought not to interfere in the internal affairs of the Province of Quebec, and that the issue was then before the electors of that Province, as the only competent tribunal;

That the House of Commons sustained the views of the Government by a vote of one hundred and twelve (112) to seventy (70);

That during the month of September last, general elections took place for the Commons of Canada, the sole issue between the parties being a question of tariff, and the former Government were defeated and a large majority returned, pledged to protection.

That before the new House of Commons, the action of the Lieutenant-Governor was once more brought forward by a resolution, which was an exact repetition of that introduced by Sir John A. Macdonald on the 11th April 1878, and was carried by a vote of 136 to 51.

That the action of the Lieutenant-Governor of the Province of Quebec in dismissing his ministers and calling others in their stead is a purely provincial matter affecting in no way federal interests, and is not one of the causes contemplated in the 59th section of the British North America Act, as justifying the removal of the Lieutenant-Governor;

The committee concur in the foregoing report of the Honourable the Commissioner of Agriculture and Public Works, and submit the same for the Lieutenant-Governor's approval.

(Signed) H. G. Joly,
Chairman of Committee.

Approved, 17th April 1879,
(Signed) L. Letellier.

It is my duty to spare no effort to defeat the present attempt to violate in my person the established constitutional principle that the Representative of the Sovereign is irresponsible for acts performed within the legitimate sphere of the duties prescribed to him by the "British North America Act," which was clearly introduced to confer local self-government on the Provinces, and make the Representative of the Crown, in the person of the Lieutenant-Governor, practically independent during the fixed period of his incumbency.

To effect this object, I pray that it may please his Excellency the Governor-General to ascertain from the Imperial authorities, and to cause to be communicated to me, when it will best suit them, to grant an audience to one or two persons to represent the views which I have set forth in this memorandum, as well as the whole case generally.

I feel confident that no decision will be arrived at until all parties shall have had that "fair play" which is the great characteristic of the British nation.

I have, &c.

The Hon. J. C. Aikins,
Secretary of State, Ottawa.

(Signed) L. Letellier,
Lieutenant-Governor.

Enclosure 2. in No. 5.

Assembly Bill No. 86.

An Act respecting the Quebec, Montreal, Ottawa, and Occidental Railway.

Her Majesty, by and with the advice and consent of the Legislature of Quebec, enacts as follows:

1. The Quebec, Montreal, Ottawa, and Occidental Railway shall be built in a direct line from Terrebonne to Montreal; "the place at which that portion of the road heretofore "known as the North Shore Railway will connect with the road heretofore known as "the Montreal, Ottawa, and Western Railway, shall be within the eastern boundary of "the City of Montreal, and the main terminus of the said North Shore Railway shall be "in the City of Montreal," in accordance with the eighth resolution submitted by the City of Montreal, accepted by the Government, and adopted by the Council of the said City on the seventeenth day of September eighteen hundred and seventy-five.

A repair shop for the Western Section of the said Quebec, Montreal, Ottawa, and Occidental Railway shall be built within the eastern limits of the City of Montreal.

2. The stipulations and conditions submitted by the City of Montreal to the Government of this Province, by which the said City bound itself to pay over to the Government the balance of the million dollars voted in favour of the Montreal Northern Colonization Railway Company, as amended by the Government, and subsequently adopted by the Council of the said City on the 17th September 1875, are declared valid, legal, and binding.

All taxes or assessments imposed and collected, or to be imposed and collected under bylaw No. 59 of the said City, intituled, "Byelaw to authorise the Corporation of the "Mayor, Aldermen, and Citizens of the City of Montreal to take shares in the Montreal "Northern Colonization Railway Company, to the extent of one million dollars "currency, and to pay the said amount in money or in bonds or debentures, and to levy "an annual assessment to pay the interest thereon and provide a sinking fund," are also declared valid, legal, and binding.

The resolution adopted by the Council of the City of Quebec on the 20th August 1875, by which the said City bound itself to pay to the Government of the Province the balance due on its subscription to the capital stock of the North Shore Railway Company, is declared valid, legal, and binding; and the byelaw under which this subscription was originally made, as well as all taxes or assessments imposed and collected, or to be imposed and collected, for the payment of interest on the debentures issued or to be issued under the said byelaw, are also declared valid, legal, and binding.

3. The municipalities or corporations mentioned in the Schedule A. hereunto annexed are and shall be bound to execute and hand over to the Treasurer of the Province their debentures for the amount or the balance of their subscriptions appropriated to the construction of the Quebec, Montreal, Ottawa, and Occidental Railway by the Act 39 Vict. cap. 2., as follows:

The City of Montreal being required to deliver the balance of its subscription in money or debentures in four instalments, as follows: "one fourth as soon as the road "shall be opened from Montreal east to St. Thérese; one fourth when the road shall "be opened to Grenville; one fourth when the road shall be opened to Papineauville; "and the remaining fourth when the road shall be opened to Hull; this does not neces-"sarily include the completion of stations, sheds, repair shops, &c. on the line," in accordance with the third resolution proposed by the Council of the City of Montreal, amended by the Government, and adopted by the said Council on the 17th September 1875.

The City of Quebec being required to deliver the balance in debentures of its subscription, in accordance with the resolution passed by the Council of the said City, on the 25th August 1875, that is to say, as they may become due as provided by law; but in no case shall the said corporation be called on for the payment of interest on the debentures issued or to be issued in virtue of the said subscription before the road shall have been completed throughout the whole distance between the cities of Quebec and Montreal, and put into such perfect order as to be open to traffic, the whole pursuant to the conditions of the said subscription.

And the other municipalities or corporations being required to deliver the amount, in debentures of their subscriptions, at the dates of maturity mentioned in the byelaws authorising their subscriptions.

4. The Lieutenant-Governor in Council may, on the sworn report of a competent engineer, establishing the extent to which the conditions of the subscriptions of the different municipalities have been fulfilled, in regard to the advancement and quality of work performed, as also to the localisation of the road, determine the date of the maturity of a part or the whole of such subscriptions, as the case may be; a copy of the said report shall be forwarded to the municipalities interested at least fifteen days before the said report shall be taken into consideration by the Lieutenant-Governor in Council.

5. No objection, exception, reason, plea, or opposition shall avail to justify any of the municipalities or corporations mentioned in the said Schedule A., in refusing to sign, execute, and deliver to the Treasurer of the Province its debentures appropriated to the construction of the said road by the Act 39 Vict. cap. 2., or to pay over to him, if it should prefer to do so, the said amount or the said balance in money, as soon as the Lieutenant-Governor in Council shall have declared that these debentures may be exacted.

6. If any one of these municipalities or corporations refuses or neglects to pay its subscription or to sign and execute its aforesaid debentures for the amount or the balance due, anything to the contrary notwithstanding, the mayor or wardens of such municipality or corporation, as the case may be, is hereby authorised to sign and execute such debentures, without incurring any personal liability thereby, for the amount or the balance of the subscription of the municipality or corporation of which he is the chief officer or head; and these said debentures so signed and executed by the mayor or warden, shall have the same effect as if they had been signed and executed with the consent and upon the order of the municipality or corporation itself; and such mayor or warden shall be bound to deliver the said debentures to the Treasurer of the Province at his request in accordance with the dates of maturity determined by the Lieutenant-Governor in Council, and such debentures shall form part of the consolidated railway fund.

7. In default of any one of the said municipalities or corporations, or of its mayor or warden, as the case may be, so signing and executing the said debentures for the amount or balance of the said subscription, and of delivering them to the Treasurer of the Province as aforesaid, the Lieutenant-Governor in Council may authorise a syndic to sign and execute the said debentures on behalf of the said municipality or corporation; and such debentures so signed and executed by the syndic shall have the same effect as if they had been signed and executed by the authorised persons or officers belonging to the said municipality or corporation.

8. The Lieutenant-Governor in Council shall, for the execution of the provisions of the above section if need there be, appoint a syndic, who shall be known by the name of "Syndic of (*name of the city, town, county, parish, or village for which he shall sign*), "appointed in virtue of the Act 41 Vict. c. ." Whenever the said syndic shall sign or execute any debenture in virtue of this Act, he shall do so by reciting, beneath his signature, the special quality and the Act under which he signed, and in so doing he shall incur no personal responsibility.

9. The debentures signed under the authority of the present Act by a mayor, warden, or syndic, as the case may be, shall supply and take the place of the debentures which the municipality or corporation was bound to execute and deliver to the Treasurer of the Province, for the amount or the balance due on its subscription appropriated to the construction of the said road by the Act 39 Vict. c. 2.

10. The form of the debentures executed under the authority of the present Act by a mayor, warden, or syndic, as the case may be, and the amount of each of such debentures in sterling money or currency, may be determined by the Lieutenant-Govenor in Council, who may also prescribe the manner of executing the coupons which are to be attached to the said debentures.

11. If, at any time, any one of the municipalities or corporations mentioned in the said Schedule A, whose debentures shall have been signed and executed by its mayor or warden or by the syndic, in virtue of this Act, shall neglect during 30 days to pay interest thereon or on portion thereof, as it may be bound to do, the sheriff of the district in which such municipality or corporation is situated is and shall be bound, on the simple written declaration of a holder of such debentures or of his agent, supported by an affidavit establishing the fact that the said interest is due to give notice in "The Quebec Official Gazette," during 15 days that such municipality or corporation has neglected to pay the interest due on its said debentures or portions thereof, and to

require the holders of such debentures to produce in his office a sworn statement of the amount due to them for interest.

In default of payment on the expiration of such notice, the sheriff shall issue his warrant for the total amount of the claims so filed, and he shall at once proceed to impose and levy, upon the taxable property situated in such municipality or corporation in proportion to the value as shown on the valuation roll, a sum sufficient to cover the amount due with interest and costs of delivery and levying.

12. If any one of the said municipalities or corporations is bound to provide a sinking fund, for the redeeming of its debentures, signed and executed in virtue of this Act by its mayor or warden or by a syndic, as the case may be, neglects to provide annually for such sinking fund, the sheriff of the district as aforesaid, on the written declaration of a holder of such debentures or of his agent, supported by an affidavit establishing the fact, shall inform such municipality or corporation that such declaration has been made; and in default of its proving, to the sheriff within a delay of 15 days, that it has provided for such sinking fund, the sheriff shall issue his warrant for the amount required to provide for the sinking fund due, and shall at once proceed to impose and levy, on the taxable property situated within such municipality or corporation in proportion to the value shown on the valuation roll, an amount sufficient to provide for the said sinking fund, with interest and costs of levying.

13. The sheriff shall have free access to the registers, rolls, and other documents or archives of the council of every municipality or corporation where he shall levy monies, and may exact the services of the municipal officers of such council.

He shall cause to be delivered to him all documents or archives which to him may appear necessary, and in the event of opposition, neglect, or refusal, he is authorised to take possession of them himself.

In default of payment of the amount required from a ratepayer, the sheriff shall first proceed to levy this amount by seizure and sale of the moveable property of such ratepayer observing the formalities prescribed by the code of civil procedure for the seizure and sale of moveables; and if the proceeds thereof be sufficient, he shall pay over at once, to the holders of debentures who shall have filed their claims, on receiving the interest coupons or a receipt, as the case may be, the amount which is due to them; and if the sheriff has proceeded under the authority of the preceding section, the sum so levied, after deducting the costs of levying, shall be deposited in the hands of the Treasurer of this Province to be disposed of in accordance with the byelaw under which the said sinking fund is due.

If there is no moveable property or if it is insufficient, the sheriff shall proceed to the seizure and sale of the immoveables levied upon, observing the formalities required by the code of civil procedure for the seizure and sale of immoveables; he shall then make a return of the sale to the Superior Court, and the distribution of moneys will there be made as in an ordinary suit, the amount levied by the sheriff to pay the interest and provide for the sinking fund retaining the same rank as these claims would have had if they had been levied and collected by the corporation or municipality itself.

14. As soon as the construction of that portion of the Quebec, Montreal, Ottawa, and Occidental Railway extending from Quebec to Aylmer shall allow, the number of commissioners composing the commission created by the Act 39 Vict. chapter 2 shall be reduced to one commissioner only, who will be selected from among the members of the Executive Council. This change shall be made by the Lieutenant-Governor in Council, and to that effect a proclamation shall be issued and published in the "Quebec Official Gazette;" the incumbent of this office may be changed from time to time by Order in Council.

15. The commissioner so selected shall have and may exercise all the rights, powers, and attributes which were conferred by the Act 39 Vict., cap. 2, on the three commissioners composing the said commission.

16. The Act 39 Vict. cap. 2. is in consequence amended.

17. The present Act shall come into force on the day of the sanction thereof.

SCHEDULE A.

City of Montreal.
City of Quebec.
City of Three Rivers.
County of Ottowa.
Village of Ste. Thérèse de Blainville.
Parish of Ste. Thérèse.
Village of St. Jérôme.
Parish of St. Jérôme.
Village of St. Scholastique.
Village of St. Jérusalem d' Argenteuil (Lachute).
Parish of St. Sauveur de Québec.

I certify the above Bill to be a true copy of the Bill passed by the Legislative Council and Legislative Assembly of the Province of Quebec, and reserved, on the ninth day of March 1878, by his Excellency the Lieutenant-Governor of the Province of Quebec to the pleasure of his Excellency the Governor-General of the Dominion of Canada.

(Signed) Boucharde Boucherville, C.L.C.

No. 6.

H. G. JOLY, Esq., to the Right Hon. Sir M. E. HICKS BEACH, Bart.

Brunswick Hotel, Jermyn Street, London,
May 6, 1879.

Sir,

In the interview which you did me the honour to grant me this afternoon, you suggested that I should send you a draft of the points that might be submitted to the Honourable the Judicial Committee of the Privy Council, should it be decided by the Government to refer the matter to that high tribunal, as requested by his Honour the Lieutenant-Governor of the Province of Quebec.

I will begin, with your leave, by making a few brief remarks upon the events connected with this matter.

The Lieutenant-Governor dismissed the De Boucherville Ministry, who were supported by a majority of the Legislature, and called in a new ministry, who assumed the responsibility of his act.

He gave at once to the Province the occasion of pronouncing upon that act by dissolving the House.

The verdict of the Province, with a full knowledge of the causes of dismissal of the late ministry, was an approval of the Lieutenant-Governor's act, for the elections resulted favourably to the new ministry, who were supported through the following session by the House newly elected.

While those elections were pending a motion was brought in the House of Commons at Ottawa, on the 11th April 1878, to censure the Lieutenant-Governor of Quebec.

That motion was defeated on the ground that it was not judicious to interfere into a matter which was just then in the hands of the electors of the Province of Quebec, who were called to pronounce judgment upon it.

Later on, in September last, the Federal elections took place, and upon a new issue (quite foreign to this matter) the power changed hands. In the new House of Commons the motion of censure of the 11th April 1878 was brought up once more, in the very same words, after an interval of nearly one year, and was carried.

The Federal ministers, who had allowed so many months to elapse without acting, under the pressure of that strong party vote, advised his Excellency the Governor-General to dismiss the Lieutenant-Governor of Quebec; such appears to have been their first step.

Subsequently they advised his Excellency to refer the matter to the Imperial Government, or they consented to its being referred. Whatever obscurity may exist on that point, it is clear the matter has been referred.

If the grounds for dismissal were so strong, and the power to dismiss so clear, why was not the Lieutenant-Governor dismissed without referring the matter to the Imperial Government.

What is the Imperial Government called upon to decide? Is it whether the Lieutenant-Governor had the power to dismiss his ministers, or not? No one appears to entertain any doubt on that point.

Is it whether the Lieutenant-Governor has exercised his power with wisdom, or not, in taking the administration of the affairs of the Province out of the hands of one ministry to place it in the hands of another? I respectfully submit that the Province of Quebec is the only party directly interested on this point, and therefore the best judge of it.

In the absence of any direct information on the subject, I must suppose that the questions submitted to the Imperial Government relate to the following points, and those are the points which I take the liberty of proposing as fit subjects for the consideration of the Honourable the Judicial Committee of the Privy Council.

1. With whom does the power of dismissal rest? In making a distinction between the authority that appoints and the authority that can dismiss the Lieutenant-Governors, had not the framers of the British North America Act the intention of placing the Lieutenant-Governors in such a position as to enable them to discharge their duties

irrespective of the changes of party governments that might take place at Ottawa during the five years of their tenure of office?

2. Can a Lieutenant-Governor be dismissed by the Federal Government for an act in which he has not exceeded his powers and jurisdiction, such as defined by the British North America Act of 1867, an Act which his Province has ratified, and which does not interfere in any way with Federal interests?

Who can throw more light on those questions than the Honourable the Judicial Committee of the Privy Council, whose decisions are received in Canada, as in every other part of the British Empire, with profound respect and perfect confidence?

I have, &c.

The Right Hon. Sir M. E. Hicks Beach, M.P., Colonial Secretary.

(Signed) H. G. JOLY.

Government House, Quebec,
April 24, 1879.

My dear Sir,

As you have been selected by the Executive Government of the Province of Quebec to proceed to England for the protection of the autonomy of that Province, in the matter of the reference made by the Government of the Dominion of Canada to the Imperial authorities, regarding the proposed dismissal of the Lieutenant-Governor of the Province of Quebec, I hereby authorise you, in so far as I am personally interested in that reference, to represent me or to have me represented before the Imperial Government, the Honourable the Privy Council of Her most Gracious Majesty, or before the Honourable the Judicial Committee of the Privy Council.

As it would be desirable that a judicial decision should be arrived at in a matter so deeply affecting the interests of this Province, I feel that it would be more gratifying to the people of Canada were this case referred to that high tribunal.

I have, &c.

The Hon. Henri Gustave Joly, Commissioner of Agriculture and Public Works, and Premier, Quebec.

(Signed) L. Letellier.

No. 7.

H. G. JOLY, Esq., to COLONIAL OFFICE.

Brunswick Hotel, Jermyn Street, S.W.,
London, May 13, 1879.

Sir,

Since addressing you my Memorandum of the 6th instant,* by which I requested that the Letellier matter might be referred to the Honourable the Judicial Committee of Her Majesty's Privy Council, it has occurred to me that the same course might be followed as was adopted last year in the case of a dispute between the Governments of Ontario and Quebec, as to the validity of an award affecting the financial relations existing between the two Provinces. This was referred to the Honourable the Judicial Committee of the Privy Council under the 4th section of 3rd and 4th William the Fourth, cap. 41, which enacts as follows:—

"That it shall be lawful for His Majesty to refer to the said Judicial Committee for hearing and consideration any such other matters whatsoever as His Majesty shall think fit, and such Committee shall thereupon hear and consider the same, and shall advise His Majesty thereon in manner aforesaid."

I will sum up the two points to be referred in a very few words.

First. In whom does the power of dismissal of the Lieutenant-Governor rest under sections 58 and 59 of the British North America Act; and

Second. Whether the dismissal by the Lieutenant-Governor of the ministers, was, as alleged in the resolution of the Dominion Parliament, cause for removal of the said Lieutenant-Governor from office sufficient within the meaning of the above-mentioned 59th section.

I have, &c.

The Right Hon. Sir M. Hicks Beach, Colonial Secretary.

(Signed) H. G. JOLY.

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* No. 6.

No. 8.

H. G. JOLY, Esq., to COLONIAL OFFICE.

Brunswick Hotel, Jermyn Street,
London, May 15, 1879.

Sir,

In the Letellier matter, since our interview of the 6th instant I had the honour to send you a Memorandum dated the same day, stating the points for reference to the Honourable the Judicial Committee of the Privy Council, and on the 13th instant, a letter quoting a precedent for such reference, and the law under which it could be made (enclosed please find printed copies of those two documents).

I respectfully submit that since the power to refer to the Judicial Committee exists there can be but little doubt as to the opportunity of exercising that power.

In our interview of the 6th instant we did not enter into the merits of the case, and did not discuss the justice or wisdom of the Lieutenant-Governor when he exercised his undoubted right to dismiss his ministers.

You will doubtless remember telling me that you had been compelled to blame the Governor of one of the Colonies, for sanctioning a measure of his ministers which interfered with vested rights, viz., with those of members of the Civil Service.

You will not blame the Lieutenant-Governor of Quebec for refusing to sanction a measure of his ministers which interfered most violently with vested rights (as their Railway Bill did), and for dismissing those ministers who introduced it and carried it on without his consent.

Allusion has been made to our small majority in the new House, as not showing a very strong verdict of the Province in favour of the Lieutenant-Governor.

Since my arrival in England I have been informed by cable message, that two of the Opposition members, whose election was contested, but who nevertheless voted against the Lieutenant-Governor, have been unseated; in a small House like ours, consisting of only 65 members, this is an important change, and must have due weight in appreciating the verdict rendered in favour of the Lieutenant-Governor.

The arguments brought against Mr. Letellier in Canada have been answered in the documents laid before you. But if any new arguments have been brought here which you consider of sufficient importance to require an answer, I will be grateful if the occasion is offered me to answer them.

I have, &c.
(Signed) H. G. JOLY.

The Right Hon. Sir M. Hicks Beach,
Colonial Secretary.

No. 9.

COLONIAL OFFICE to H. G. JOLY, Esq.

Sir,

Downing Street, May 20, 1879.

I am directed by the Secretary of State for the Colonies to acknowledge the receipt of your letter of the 15th instant,* which, with those previously addressed to him by you on the 6th and 13th instant,† has received his attentive consideration.

2. In your letter of the 13th instant you quoted, as a precedent for referring to the Judicial Committee of the Privy Council certain questions affecting the case of Mr. Letellier, the course adopted last year in referring to that Committee the dispute between the Governments of Ontario and Quebec, in the matter of an arbitration and award under the 142nd section of the British North America Act, 1867.

3. Sir Michael Hicks Beach desires me to remind you that in this instance there was not only a mutual agreement between the two Provincial Governments that the question should be submitted for the opinion of the Judicial Committee, but a statement of the facts in the form of a special case was adopted by both Governments, and Her Majesty having been pleased to refer this special case to the Judicial Committee for hearing and consideration, the questions of law upon which a judicial decision was desired were duly argued by counsel before the Committee, and the proceedings followed the usual course of the appellate tribunal.

4. The present circumstances are very different. No special case has been agreed upon; a reference to the Judicial Committee is only desired on behalf of Mr. Letellier, and, looking to these facts, and to the nature of the questions which you have proposed, the course which was followed last year does not appear to Sir Michael Hicks Beach to justify similar action in the present case.

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* No. 8. † Nos. 6 and 7.

5. There is, however, a precedent very closely resembling in its circumstances the question now at issue. In 1872 the House of Commons of Canada resolved that if possible the opinion of the Judicial Committee of the Privy Council should be obtained as to the right of the New Brunswick Legislature to make certain changes in the school law, with the view of ascertaining whether the case came within the terms of the 4th subsection of the 93rd clause of the British North America Act, 1867, which authorise the Parliament of Canada to enact remedial laws for the due execution of the provisions respecting education in the said Act.

6. My predecessor referred this resolution to the Lord President of the Privy Council, with a request that he might be informed whether it was one on which the opinion of the Judicial Committee might properly be obtained; and it was then decided that, there being nothing in the case which gave the Queen in Council any jurisdiction over the question, Her Majesty could not with propriety be advised to refer to a Committee of the Privy Council a question which the Queen in Council had no authority to determine, and on which the opinion of the Privy Council would not be binding on the parties in the Dominion of Canada.

7. Having regard to the decision come to after careful consideration on that occasion, Sir Michael Hicks Beach is unable to adopt your suggestion that the case of Mr. Letellier should be referred to the Judicial Committee.

I am, &c.

H. G. Joly, Esq. (Signed) ROBERT G. W. HERBERT.

No. 10.

H. G. JOLY, Esq., to to the Right Hon. Sir M. E. HICKS BEACH, Bart.

Brunswick Hotel, Jermyn Street, London,
May 22, 1879.

Sir,

I have been notified by your letter of the 20th inst.,* received yesterday, that you are unable to adopt my suggestion that the case of Mr. Letellier should be referred to the Judicial Committee of the Privy Council.

In making that suggestion, I did not intend to express any doubt as to the wisdom and justice of Her Majesty's Government in dealing with the question. I feel certain that since they have decided to deal directly with it, they will render full justice to all parties concerned.

The reasons assigned by Sir John A. Macdonald in the House of Commons at Ottawa for his Excellency the Governor-General wishing to have the case referred to Her Majesty's Government are as follows:—

"That as the Federal system introduced by the British North America Act of 1867 was until then unknown in Great Britain and her Colonies, there were no precedents to guide him to a decision in the present case, and as it would settle the future relations between the Dominion and Provincial Governments, so far as the office of Lieutenant-Governor was concerned, he deemed it expedient to submit the advice offered him and the whole case and attendant circumstances to Her Majesty's Government for their consideration and instructions."

You will notice that it is expressly admitted, in Sir John Macdonald's declaration to the House, that, "the decision in the present case will settle the future relations "between the Dominion and Provincial Governments so far as the office of Lieutenant-"Governor is concerned."

So this is a question the decision of which affects both the Federal and the Provincial Governments, consequently in justice the decision of it cannot be left with the Federal Government, one of the two parties interested.

I have come over to England in a double capacity, as representing the Lieutenant-Governor of the Province of Quebec, and as representing the Province of Quebec, and I enclose the two documents under which I am so authorised to act (documents A. and B.).

I take the liberty of referring you to document B. as it will show you from what point of view the majority of the Province of Quebec considers this question.

It concerns that Province (and all the other Provinces in the Dominion) much more than it does the present Lieutenant-Governor, in fact threats have already been uttered by the press which supports the present Federal Government against Lieutenant-Governors of other Provinces.

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* No. 9.

The 71st clause of the British North America Act of 1867 enacts that :—

"There shall be a Legislature for Quebec consisting of the Lieutenant-Governor and of two Houses, styled the Legislative Council of Quebec and the Legislative Assembly of Quebec."

What is the use of granting to the Province of Quebec (or any other) self-government, and a Legislature of its own, if the Lieutenant-Governor, one of the three branches of that Legislature, is to be removed at every change that takes place in the Federal Government at Ottawa.

This would undoubtedly lead to a system of reprisals, the result of which it is not difficult to foresee, and would unsettle completely the Government of the Provinces and of the Dominion.

If we enjoy what is called responsible government in the Province of Quebec, the first principle of that form of government is that its head can do no wrong. There are always ministers responsible for his acts.

My colleagues and I, in accepting office we assumed that responsibility. Let those who complain turn their attacks against us.

They did so at first, throwing all the onus of the Lieutenant-Governor's act upon us, and calling upon the Province to condemn us. The Province has supported us.

And now that we have successfully resisted their attack, they turn away from us and attack the Lieutenant-Governor himself at Ottawa (who they declared at one time was not responsible), because there is now at Ottawa a new ministry hostile to the Lieutenant-Governor.

When they attempted to censure him in the House of Commons on the 11th April 1878 (and were defeated), the majority of the House would then have asserted by a direct vote the principle of non-intervention by the Federal Government in provincial affairs, and an amendment embodying those views would have been made to Sir John A. Macdonald's motion of censure, and carried, had he not resorted to one of those parliamentary tactics (of which he is a master), by introducing his motion as an amendment to the motion that the Speaker do now leave the chair, to go into committee of supplies, which precluded any amendment, so that the majority could only vote in the negative, instead of asserting the principle of non-intervention by a clear and precise motion.

The official report of the debates in the Canadian Hansard shows how bitterly the majority complained of the means taken to prevent a solemn expression of opinion upon that point.

The same spirit characterises the proceedings of the same party, when the last vote of censure was taken nearly twelve months afterwards. They were then in the majority (owing to the commercial depression that induced the electors to adopt their policy of protection at the general elections of September last), and they raised the previous question immediately after the motion of censure had been placed in the Speaker's hands so as to preclude once more a frank and direct expression of opinion on the question of non-intervention in provincial affairs.

But if we are not to be ruled by the principles of responsible government in the Province of Quebec, if the Lieutenant-Governor (and not his Cabinet) is to be held directly responsible for his acts, will anyone pretend that he is to be dismissed if he has committed no wrong ?

I respectfully maintain that he did nothing more than his duty in dismissing the DeBoucherville ministry. He would have deserved censure had he sanctioned measures of his ministers which interfered with vested rights, acquired by solemn contracts and protected by the laws of the country.

I now enclose an authentic copy of the Railway Bill, introduced by the De Boucherville Government without the consent of the Lieutenant-Governor, and which, with the help of their majority, they forced through the House (document C.).

You will see that this measure was intended to deprive the cities and municipalities, who had undertaken to pay considerable sums of money towards the building of the Government Railways under certain conditions, from the right of withholding payment until those conditions had been fulfilled, and of appealing to the courts of justice for protection.

That Bill enacts that the Government itself will decide when it has fulfilled the conditions under which it can claim the payment of the municipal subscriptions, and " no " objection, exception, reason, plea, or opposition shall avail to justify any of the muni- " cipalities or corporations" (see section 5) in refusing to deliver its debentures. Provisions of the most arbitrary nature are contained in the following sections of the Bill, for the purpose of enforcing the payment of the said debentures.

It was asserted by the De Boucherville ministry, as an apology for such legislation (as will appear by the official correspondence in your hands), that a similar measure had been passed in Ontario.

I deny that most emphatically, the case was quite a different one. The Ontario law was a beneficial one, facilitating in every way, and on the most advantageous terms, the reimbursement of sums advanced long ago by the Government to the municipalities for local improvements; this measure, on the contrary, had only one object in view, viz., enabling the Government to obtain by force from the municipalities moneys to which the Government had then no right, and preventing those municipalities from appealing to the courts of justice.

The explanations given by Mr. De Boucherville himself to the Lieutenant-Governor, in his letter of the 27th February 1878, (page 5 of the Blue Book entitled Return to an Address of the House of Commons at Ottawa), show under what a strange delusion he must have been labouring when he says: "I humbly submit to your Excellency that a law "devised for the better securing of the execution of a contract cannot have a retroactive "effect. It enacts for the future, and its objects are the respective interests of the parties."

It enacts for the future it is true, but only in so far as it compels the payment of moneys which could only be claimed in virtue of solemn contracts passed years ago (and by which both contracting parties were bound), under special conditions that have not been fulfilled, and it deprives one of the parties of the protection of the courts of justice, when it claims the fulfilment of those conditions. The municipalities affected by that measure strongly protested, but to no purpose.

Since the new Government has come in satisfactory arrangements have been made between the Government and the municipalities, without any recourse, on the part of the Government, to any coercive measures, merely by dealing fairly with them.

I have commented at length upon that point in order to show that the Lieutenant-Governor, in exercising the power vested in him of dismissing his ministers and appointing others in their stead, had acted with strict justice and done but his duty.

His immediate appeal to the Province of Quebec by a dissolution of the House resulted in a verdict in his favour. Within the last few weeks two of the members of the present Opposition, who voted in the last session of the Legislature to condemn the act of the Lieutenant-Governor, while the right to their seats was contested, have been unseated by the courts of justice, which, in a small House like ours, increases materially the vote in favour of the Lieutenant-Governor; one of them is declared disqualified by the court.

As, in the reference to Her Majesty's Government, it was proposed to submit the whole case and attendant circumstances, I hope I will be excused for having entered into those details.

There are several other points which deserve to be submitted to Her Majesty's Government in order that it should become possessed of the whole case. Prejudices may have been created in the minds of those who are to pronounce judgment, which they will not refuse me the occasion to try and dispel; the opponents of the Lieutenant-Governor may have hinted at the sacrifice of the Lieutenant-Governor as the easiest mode of getting out of this difficulty. Her Majesty's Government is too generous to follow such advice, if it has been given.

I respectfully trust that I shall be allowed to give full explanations, or, in my absence (as I am compelled to return to Canada next week for the meeting of our Legislature in June), that Her Majesty's Government will grant a hearing to such person as I may authorise to represent me, in virtue of the powers given me by his Honour the Lieutenant-Governor and by the Government of the Province of Quebec.

I have, &c.

The Right. Hon. Sir M. Hicks Beach, &c. &c. &c.

(Signed) H. G. JOLY.

Enclosure A.

My Dear Sir, Quebec, April 24, 1879.

As you have been selected by the Executive Government of the Province of Quebec to proceed to England for the protection of the autonomy of that Province in the matter of the reference made by the Government of the Dominion of Canada to the Imperial authorities regarding the proposed dismissal of the Lieutenant-Governor of the Province of Quebec, I hereby authorise you, in so far as I am personally interested in that reference, to represent me or to have me represented before the Imperial Government, the Honourable the Privy Council of Her most gracious Majesty, or before the Honourable the Judicial Committee of the Privy Council.

As it would be desirable that a judicial decision should be arrived at in a matter so deeply affecting the interests of this Province I feel that it would be more gratifying to the people of Canada were this case referred to that high tribunal.

I am, &c.

The Hon. Henri Gustave Joly,
Commissioner of Agriculture and Public Works,
and Premier, Quebec.

(Signed) L. Letellier.

Enclosure B.

To the Hon. Luc Letellier de St. Just, Lieutenant-Governor of the Province of Quebec, &c.

Report of a Committee of the Executive Council on Matters referred to their consideration.

Present:—The Hon. Mr. Ross, in the Chair.
The Hon. Messrs. Joly, Marchand, Starnes, Lawgelier, Chauveau, in Council.

On Matters of State.

May it please your Excellency,

The Honourable the Treasurer of the Province, in a report dated the 24th of April instant (1879), sets forth that the dismissal of his Honour the Lieutenant-Governor was demanded of his Excellency the Governor-General because of the removal from office by his Honour of the Cabinet of M. De Boucherville.

That the Cabinet of his Excellency the Governor-General recommended the said dismissal, but that his Excellency has referred the whole question of the said dismissal to Her Majesty's Government.

That in the declaration by which Sir John A. Macdonald communicated to the Commons of Canada, the said decision of his Excellency the Governor-General, he said that he and his colleagues of the cabinet of his Excellency the Governor-General had considered it their duty to advise his Excellency to dismiss his Honour the Lieutenant-Governor for the reason that after the vote of censure upon the conduct of his Honour the Lieutenant-Governor, adopted last year by the Senate, and this year by the Commons of Canada, the usefulness of his Honour as such Lieutenant-Governor was gone.

That if a Lieutenant-Governor could be dismissed by a vote or a censure of the Senate and House of Commons, the result would be that the duty of a Lieutenant-Governor would be so to govern as to obtain the approval not of the local but of the federal legislature.

That the adoption of such a principle would entirely destroy the autonomy and the independence guaranteed to the Province by the British North America Act of 1867.

That the maintenance of the said local and provincial autonomy and independence imperiously demand that questions of purely local and provincial interest should not be subjected to the control and influence of the Federal Legislature and the Federal Government.

That the removal from office of the De Boucherville Ministry is one of those questions of purely local interest, the settlement of which one way or the other can produce no effect either on Imperial or Federal interests.

That the houses of the Local Legislature alone are competent to appreciate the said removal from office of the De Boucherville Ministry.

That it is of the greatest importance for the maintenance of the institutions and autonomy of the province that the Imperial authorities should refuse to sanction such a principle as that which is submitted for their approval.

That the Executive of the Province to whom is confided its interests between the sessions of the Legislature, are bound to adopt all legitimate means for preventing such a result.

The Honorable the Treasurer therefore recommends that the Honorable Henri Gustave Joly, Premier of the Province of Quebec, should, in the name of the said Province, be delegated to the Imperial authorities to uphold the rights of the Province of Quebec in the matter of the said question of the dismissal of his Honor the Lieutenant-Governor, and that he be authorised to adopt and take all necessary measures to secure the success of his mission.

The Committee concur in the foregoing report, and submit the same for the Lieutenant-Governor's approval.

(Signed) DAVID A. ROSS,
Chairman of Committee.

Approved, 24th April, 1879.
(Signed) L. LETELLIER.

All which is respectfully submitted. (Signed)

DAVID A. ROSS,
President.

Executive Council Chamber, Quebec, 24th April 1879.

Department of the Executive Council of the Province of Quebec,
Quebec, 24th April 1879.

I, THE undersigned, Clerk of the Executive Council of the Province of Quebec, do hereby certify that the copy of the Order in Council, passed by the Lieutenant-Governor of the Province of Quebec, on the twenty-fourth day of the month of April, one thousand eight hundred and seventy-nine, bearing the number of one hundred and eighty-five, transcribed partly on this page and on the two preceding pages is a true copy of the original of the said Order in Council, deposited in the records of this Department.

F. FORTIER.

Enclosure C.

PROVINCE OF QUEBEC.

By His Excellency the Honorable LUC LETELLIER DE ST. JUST, Lieutenant-Governor of the Province of Quebec.

To all to whom these Presents shall come—GREETING :

THESE are to certify that George Boucher de Boucherville, Esquire, of Quebec, in the Province of Quebec, in the Dominion of Canada, and whose name is subscribed to the annexed Bill, is Clerk of the Legislative Council of the Province of Quebec, in and for that part of the Dominion of Canada called Province of Quebec, and that full faith and credence are due and ought to be given to such signature and act in all places.

Given under my hand and seal at arms, at the City of Quebec, this twenty-fourth day of April, in the year of Our Lord one thousand eight hundred and seventy-nine, and of Her Majesty's reign, the forty-second. By command,

PH. J. JOLICŒUR,
Assistant-Secretary.

L. LETELLIER.

No. 11.

COLONIAL OFFICE to H. G. JOLY, ESQ.

SIR, Downing Street, May 23, 1879.

I AM directed by the Sectretary of State for the Colonies to acknowledge the receipt of your letter of the 22nd instant,* stating certain circumstances connected with the case of Mr. Letellier, the Lieutenant-Governor of Quebec, and enclosing certain documents relating thereto and to your mission to this country.

Sir Michael Hicks Beach desires me to assure you that full consideration will be given to your letter now under acknowledgment, and to any other statement on the subject which you or any person whom in your absence you may authorise to represent you may desire to place before Her Majesty's Government.

I am, &c.

H. G. Joly, Esq. (Signed) ROBERT G. W. HERBERT.

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* No. 10.

No. 12.

H. G. JOLY, Esq., to the Right Hon. Sir M. E. HICKS BEACH, Bart.

Brunswick Hotel, Jermyn Street, London,
May 27, 1879.

Sir,

Before leaving England allow me to thank you for the kind and courteous reception you have given me whenever I have been called upon to communicate with you, either verbally or by letter, in the Letellier matter.

When I requested, yesterday, your leave to enter into the merits of the case, and to establish the truth of what I have always asserted, and still do assert, "that the Lieutenant "Governor was fully justified in dismissing his ministers, and committed no wrong in "doing so," you stopped me by declaring that you would not enter into the merits of the case, but would limit yourself to consider as purely abstract questions (irrespective of persons and facts) the two following points:—

1st. With whom does the power of dismissal of a Lieutenant-Governor over one of the Provinces of the Dominion of Canada rest?

2nd. Can the Lieutenant-Governor of a Province be dismissed for an official act which affects only his Province?

Your promise that no charge brought against the Lieutenant-Governor of the Province of Quebec would be allowed to weigh in the balance, and that no attention whatever would be paid by you to the merits or demerits of his act, was in strict accordance with what I had a right to expect from your sense of justice, since you would not allow me to refute those charges nor to substantiate my assertion (repeated in my letter of the 22nd inst.)* that the Lieutenant-Governor had done no wrong.

In that same letter (to which I take the liberty of referring you) I have given reasons why the case should be decided here, and not referred back to the Federal Government, who have acknowledged themselves as one of the parties interested in its decision, and I hope those reasons will carry some weight in your mind.

I now return home with full confidence in your desire to render justice, and in your due appreciation of the importance of this question, the settlement of which will so materially affect the future relations between the Dominion and Provincial Governments, and the permanency of the system of self-government which it was contemplated by the British North America Act of 1867 to secure to each of the Provinces of the Dominion of Canada.

I have, &c.

The Right Hon. Sir M. E. Hicks Beach, Bart.,
Secretary of State for the Colonies.

(Signed) H. G. JOLY.

No. 13.

H. L. LANGEVIN, Esq., C.B., to the Right Hon. Sir MICHAEL HICKS BEACH, Bart.

Batt's Hotel, London, May 31, 1879.

Sir,

I have the honour to state that I have received intimation that the Quebec Legislature will probably meet for despatch of business on the 19th of June next, and I and my colleague, Mr. Al bott, have thought it our duty to inform you of that fact, as bearing upon the importance of an immediate settlement of the question now before the Imperial Government. We venture to point out that it is now more than two months since the House of Commons of Canada, as the Senate had previously done, pronounced the conduct of the Lieutenant-Governor of Quebec to be unwise, and subversive of the position accorded to the advisers of the Crown under responsible government; and since the Canadian ministry, in consequence of that declaration, recommended his dismissal, and that the reference to the Imperial Government of the question as to what step his Excellency the Governor-General should take under the circumstances, has suspended further action in Canada. We would add that any material additional delay in deciding upon that reference will result in the renewed exercise by the Lieutenant-Governor of the highest functions of his office, after an emphatic condemnation of his conduct by both Houses of the Dominion Parliament, and after the responsible Ministry of the Dominion, supported by an unusually large majority of the House of Commons, has determined that his usefulness had ceased, and has advised his dismissal. In addition to the other reasons for an early decision which we have already had the honour to suggest, we would

therefore also submit that, having regard to the effective administration of the Government of Canada, to the respect which it should command from its people, and to the good government of one of its greatest Provinces, it is highly important that a decision should reach Canada in time to enable appropriate action to be taken upon it before the opening of the Quebec Legislature.

I have, &c.

The Right Hon. (Signed) HECTOR L. LANGEVIN.
Sir M. E. Hicks Beach, Bart., M.P.,
&c. &c. &c.

No. 14.

The Right Hon. Sir MICHAEL HICKS BEACH, Bart., to Governor-General the MARQUIS OF LORNE, K.T.

My Lord, Downing Street, July 3, 1879.

Her Majesty's Government have given their attentive consideration to your request for their instructions with reference to the recommendation made by your ministers that Mr. Letellier, the Lieutenant-Governor of Quebec, should be removed from his office.

It will not have escaped your observation, in making this request, that the constitutional question to which it relates is one affecting the internal affairs of the Dominion, and belongs to a class of subjects with which the Government and Parliament of Canada are fully competent to deal. I notice with satisfaction that, owing to the ability and patience with which the new Constitution has been made by the Canadian people to fulfil the objects with which it was framed, it has very rarely been found necessary to resort to the Imperial authority for assistance in any of those complications which might have been expected to arise during the first years of the Dominion; and I need not point out to you that such references should only be made in circumstances of a very exceptional nature.

I readily admit, however, that the principles involved in the particular case now before me are of more than ordinary importance. The true effect and intent of those sections of the British North America Act, 1867, which apply to it, have been much discussed; and as this is the first case which has occurred under those sections, there is no precedent for your guidance. For this reason, though regretting that any cause should have arisen for the reference now made to them, Her Majesty's Government approve of the course which you have taken on the responsibility and with the consent of your ministers, and I will now proceed to convey to you the views which they have formed on the question submitted for their consideration.

The several circumstances affecting the particular case of Mr. Letellier have been fully stated in Sir J. A. Macdonald's memorandum of 14th April, in Lieutenant-Governor Letellier's letter of 18th April, and in communications which I have since received from Mr. Langevin, who, accompanied by Mr. Abbott, has come to this country for the purpose of supporting the advice given by the Government of which he is a member, and from Mr. Joly, who was similarly empowered to offer any explanations that might be required on the part of Mr. Letellier. If it had been the duty of Her Majesty's Government to decide whether Mr. Letellier ought or ought not to be removed, the reasons in favour of and against his removal would, I am confident, have been very ably and thoroughly put before them by Messrs. Langevin and Abbott, and by Mr. Joly. I have not, however, had occasion to call for any arguments from either side on the merits of Mr. Letellier's case. The law does not empower Her Majesty's Government to decide it, and they do not therefore propose to express any opinion with regard to it. You are aware that the powers given by the British North America Act, 1867, with respect to the removal of a Lieutenant-Governor from office, are vested, not in Her Majesty's Government, but in the Governor-General; and I understand that it is merely in view of the important precedent which you consider may be established by your action in this instance, and the doubts which you entertain as to the meaning of the statute, that you have asked for an authoritative expression of the opinion of Her Majesty's Government on the abstract question of the responsibilities and functions of the Governor-General in relation to the Lieutenant-Governor of a province under the British North America Act, 1867.

The main principles determining the position of the Lieutenant-Governor of a province in the matter now under consideration are plain. There can be no doubt that he has an unquestionable constitutional right to dismiss his provincial ministers if, from any cause, he feels it incumbent upon him to do so. In the exercise of this right, as of any other of his functions, he should, of course, maintain the impartiality towards rival political parties which is essential to the proper performance of the duties of his office; and for any action he may take he is, under the 59th section of the Act, directly responsible to the Governor-General.

This brings me at once to the point with which alone I have now to deal, namely, whether in deciding whether the conduct of a Lieutenant-Governor merits removal from office, it would be right and sufficient for the Governor-General, as in any ordinary matter of administration, simply to follow the advice of his ministers, or whether he is placed by the special provisions of the Statute under an obligation to act upon his own individual judgment. With reference to this question it has been noticed that while under section 58 of the Act the appointment of a Lieutenant-Governor is to be made "by the Governor-General in Council by instrument under the Great Seal of Canada," section 59 provides that "a Lieutenant-Governor shall hold office during the pleasure of the Governor-General"; and much stress has been laid upon the supposed intention of the Legislature in thus varying the language of these sections. But it must be remembered that other powers vested in a similar way by the Statute in the Governor-General, were clearly intended to be, and in practice are, exercised by him by and with the advice of his ministers; and though the position of a Governor-General would entitle his views on such a subject as that now under consideration to peculiar weight, yet Her Majesty's Government do not find anything in the circumstances which would justify him in departing in this instance from the general rule, and declining to follow the decided and sustained opinion of his ministers, who are responsible for the peace, and good government of the whole Dominion to the Parliament to which, according to the 59th section of the Statute, the cause assigned for the removal of a Lieutenant-Governor must be communicated.

Her Majesty's Government therefore can only desire you to request your ministers again to consider the action to be taken in the case of Mr. Letellier. It will be proper that you should, in the first instance, invite them to inform you whether their views, as expressed in Sir J. A. Macdonald's memorandum, are in any way modified after perusal of this despatch, and after examination of the circumstances now existing, which since the date of that memorandum may have so materially changed as to make it in their opinion no longer necessary for the advantage, good government, or contentment of the province, that so serious a step should be taken as the removal of a Lieutenant-Governor from office. It will, I am confident, be clearly borne in mind that it was the spirit and intention of the "British North America Act, 1867," that the tenure of the high office of Lieutenant-Governor should, as a rule, endure for the term of years specifically mentioned, and that not only should the power of removal never be exercised except for grave cause, but that the fact that the political opinions of a Lieutenant-Governor had not been, during his former career, in accordance with those held by any Dominion Ministry who might happen to succeed to power during his term of office, would afford no reason for its exercise.

The political antecedents and present position of nearly all the Lieutenant-Governors now holding office prove that the correctness of this view has been hitherto recognized in practice; and I cannot doubt that your advisers, from the opinions they have expressed, would be equally ready with the late Government to appreciate the objections to any action which might tend to weaken its influence in the future.

I have directed your attention particularly to this point, because it appears to me to be important that, in considering a case which may be referred to hereafter as a precedent, the true constitutional position of a Lieutenant-Governor should be defined. The whole subject may, I am satisfied, now be once more reviewed with advantage, and I cannot but think that the interval which has elapsed (and which has from various causes been unavoidable) may have been useful in affording means for a thorough comprehension of a very complicated question, and in allowing time for the strong feelings, on both sides, which I regret to observe have been often too bitterly expressed, to subside.

I have, &c.

The Right Hon. the Marquis of Lorne. (Signed) M. E. HICKS BEACH.

No. 15.

GOVERNOR-GENERAL THE MARQUIS OF LORNE, K.T. to the RIGHT HON. SIR MICHAEL HICKS BEACH, BART. (Received August 11, 1879.)

SIR, Quebec, July 28, 1879.

WITH reference to my Despatch of the 9th of April 1879,* and your reply, of the 3rd of July 1879,† conveying the opinion of Her Majesty's Government on the case of Mr. Letellier, the former Lieutenant-Governor of Quebec, I have now the honour to transmit for your information :

1. A copy of the memorandum with which I referred your Despatch to my ministers.
2. Their reply, informing me that after careful and anxious consideration they adhered to their original decision that Mr. Letellier should be removed from his office of Lieutenant-Governor.
3. My assent to that decision conveyed by telegraph.
4. An approved Order in Council, based on the Resolution passed in the Dominion House of Commons on the 14th day of March 1879, recommending that Mr. Letellier be removed from his office of Lieutenant-Governor of the Province of Quebec.

I have, &c.
(Signed) LORNE,
Governor-General.

The Right Hon. the Secretary of State for the Colonies,
&c. &c. &c.

MEMORANDUM to the PRIVY COUNCIL.

Citadel, Quebec, July 14, 1879.

The Governor-General having, with the assent of the Prime Minister, referred the question involved in the proposed removal from his office of Monsieur Letellier, the Lieutenant-Governor of Quebec, to the Imperial Government, herewith forwards for the consideration of the Cabinet a copy of the Despatch in which the Secretary of State for the Colonies gives the views of the Imperial Government.

The Cabinet will observe that the 39th section of the British North America Act is not held by the Imperial Government to confer on the Governor-General the individual right to maintain a Lieutenant-Governor in office.

The Governor-General is by the Despatch informed that in the view of Her Majesty's Government he would not be justified in departing "in this instance from the general "rule, and declining to follow the decided and sustained opinion of his ministers."

He has, therefore, now to request the Cabinet to state if the opinion given by them to the effect that they advise the dismissal of the Lieutenant-Governor of Quebec be still their decided opinion, and if that opinion be sustained after full weight and due consideration has been given by the Cabinet to the support afforded in the Province of Quebec to M. Joly, the minister who is by constitutional practice responsible for the action of the Lieutenant-Governor.

In requesting the Cabinet to reconsider their advice, the Governor-General asks that special attention be directed to the fifth paragraph, and those numbered seven, eight, and nine of the Despatch of the Secretary of State.

To the Despatch from Her Majesty's Government he desires to add nothing on his own part, the Cabinet having been already confidentially placed in possession of his views.

It is to be desired that the opinion of the Cabinet as reconsidered be assented to by all its members, and that the ministers now absent in England be communicated with by telegraph for this purpose.

MEMORANDUM from Sir JOHN MACDONALD to HIS EXCELLENCY THE GOVERNOR-GENERAL.

Ottawa, July 21, 1879.

THE undersigned, on behalf of himself and colleagues, has the honour to acknowledge the receipt of the Despatch from the Secretary of State for the Colonies of the 3rd July instant, and of the memorandum addressed to the Privy Council from his Excellency with reference to it.

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* No. 3. † No. 14.

The Governor-General's advisers, having fully considered the Despatch and his Excellency's minute, desire to state that after anxious consideration they adhere to the advice previously tendered to him by the undersigned on their behalf for the removal of Lieutenant-Governor Letellier. They have not failed to give full weight and due consideration to the support afforded in the Province of Quebec to M. Joly, and have given their special attention to the fifth, seventh, eighth, and ninth paragraphs of the Despatch as desired by his Excellency. This subject was fully considered by his Excellency's advisers immediately before the departure of Sir Leonard Tilley and Sir Charles Tupper for England. These gentlemen concurred with the rest of their colleagues in the opinion that in case the subject should be referred back by Her Majesty's Government, the advice should be renewed; and this is therefore the unanimous advice of the Cabinet.

(Signed) JOHN A. MACDONALD.

TELEGRAM sent to Sir JOHN A. MACDONALD 23rd July 1879.

SHALL consent to act on advice given after reconsideration of case by Cabinet. Order in Council should be so drawn as to make clear sole responsibility of Cabinet for action taken.

(Signed) LORNE.

COPY of a REPORT of a Committee of the Honourable the Privy Council approved of by his Excellency the Governor-General on the 25th day of July 1879.

THE Committee of Council have had under consideration a memorandum, dated 23rd July 1879, from Sir John A. Macdonald, to whom was referred the Despatch of the Right Hon. the Secretary of State for the Colonies, dated 3rd of July 1879, on the subject of the reference to Her Majesty of the recommendation made by your Excellency's advisers that Mr. Letellier, the Lieutenant-Governor of Quebec, should be removed from his office, reporting that on the 14th March 1879 the House of Commons of Canada passed the following resolution: "That the dismissal by the Lieutenant-"Governor of Quebec of his ministers on the 2nd day of March 1878, was under the "circumstances unwise and subversive of the position accorded to the advisers of the "Crown since the concession of the principle of responsible government to the British "North American Colonies."

That a few days afterwards he, Sir John A. Macdonald, as first minister, waited on your Excellency and informed you that after the resolution of the Senate in the last session of Parliament, and the resolution of the House of Commons just referred to, it was the opinion of your Excellency's advisers that the usefulness of Mr. Letellier as Lieutenant-Governor of Quebec was gone, and they advised that in the public interest it was expedient that he should be removed from office. That your Excellency was thereupon pleased to state that as the federal system introduced by the British North American Act of 1867 was until then unknown in Great Britain or her Colonies, there were no precedents to guide us; that the decision on the present case would settle for the future the relations between the Dominion and Provincial Governments as far as the office of Lieutenant-Governor is concerned, and that your Excellency therefore deemed it expedient to submit the advice tendered to you, and the whole case, with all the attendant circumstances, to Her Majesty's Government for their consideration and instructions.

That this decision of your Excellency was made with the assent of the Cabinet, who then assumed and still assume the responsibility of the reference.

That he begs further to state that the Despatch from the Secretary for the Colonies has been carefully reconsidered, and that it is the decided and sustained opinion of your Excellency's ministers that it is expedient and necessary that Mr. Letellier should be removed from his office of Lieutenant-Governor of Quebec.

He further begs to report that the cause to be assigned for such removal according to the provisions of the 59th section of the British North American Act, 1867, is that after the vote of the House of Commons during last session and that of the Senate during the previous session Mr. Letellier's usefulness as a Lieutenant-Governor was gone.

That your Excellency's advisers are fully aware of the responsibility of making this recommendation, and they feel it their duty to accept it in every sense.

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

Certified,
W. A. HIMSWORTH,
Clerk Privy Council, Canada.

No. 16.

GOVERNOR-GENERAL THE MARQUIS OF LORNE, K.T., to the RIGHT HON. SIR MICHAEL HICKS BEACH, BART. (Received August 11, 1879.)

SIR, Citadel, Quebec, July 28, 1879.

I HAVE the honour to inform you that the name of the Hon. Theodore Robitaille having been submitted to me by my ministers for the office of Lieutenant-Governor of Quebec in place of the Hon. Luc Lettellier de St. Just, I concurred in the selection, and I enclose herewith an Order in Council confirming the appointment.

His honour the new Lieutenant-Governor was sworn in on Saturday the 26th instant.

I have, &c.
(Signed) LORNE.

The Right Hon. Sir. M. E. Hicks Beach, Bart.,
&c. &c. &c.

COPY of a REPORT of Committee of the Hon. the Privy Council of Canada, approved by His Excellency the Governor-General, the 26th day of July 1879.

ON the recommendation of the Hon. Sir John A. Macdonald, the Committee advise that the Hon. Theodore Robitaille, one of the members of the Queen's Privy Council for Canada, be appointed Lieutenant-Governor of the Province of Quebec in the room and stead of the Hon. Luc Letellier de St. Just, removed.

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

LONDON:
Printed by GEORGE E. EYRE and WILLIAM SPOTTISWOODE,
Printers to the Queen's most Excellent Majesty.
For Her Majesty's Stationery Office.

UNIVERSITY EDUCATION (IRELAND).

RETURN to an Address of the Honourable The House of Commons, dated 21 March 1879;—*for*,

COPY "of ADDRESS to the CROWN from the CATHOLIC BISHOPS of the Dominion of CANADA, in relation to the present position of UNIVERSITY EDUCATION in IRELAND."

Colonial Office, 7 April 1879.

M. E. HICKS BEACH.

To Her Most Gracious Majesty, VICTORIA, Queen of Great Britain and Ireland.

The Petition of the undersigned humbly showeth:

THAT we approach the foot of the Throne with sentiments of profound homage and devoted loyalty.

That your Majesty's Canadian subjects are contented and happy because they enjoy the blessings of civil and religious liberty and are devotedly loyal, not only because loyalty is a matter of conscientious obligation but also because it is a duty springing from the heart's devotion, since here the just rights of all are equally respected and protected.

That the undersigned are deeply interested in the welfare and happiness of your Majesty's Irish subjects.

That the undersigned consider a complete system of education primary intermediate and collegiate based upon religion to be a most powerful means of promoting the welfare and happiness of the Irish people.

That the undersigned regard the system of intermediate education recently granted to Ireland by your Majesty's Government as being greatly calculated to promote the reign of peace and contentment in that section of the Empire and to be blessed with the promise of the most beneficial and far-reaching results.

That the undersigned humbly submit that a Roman Catholic University duly chartered the logical development and completion of the scheme of intermediate education already granted is a crying want of their co-religionists in Ireland and that its establishment would be regarded with the heartfelt gratitude and rewarded with the unwavering loyalty of your Majesty's Roman Catholic subjects in that kingdom.

That in the age in which we live when the masses under the destructive influences of irreligion and impiety threaten the overthrow of law and order and menace the security and stability of every Throne in Continental Europe it would be wise statesmanship to place the education of the people under the blessed and saving influences of religion, which is the unfailing prop of civil order, the firm foundation of the social fabric and the unshaken support of the Throne.

That as your Majesty graciously vouchsafed to grant a charter to the Roman Catholic University of Quebec in this Dominion,

Your Petitioners humbly and earnestly pray—

That your Majesty may be graciously pleased to grant the same great and long-wished for boon to the institution known as the Catholic University of Dublin and your Petitioners as in duty bound will for ever pray.

(signed)

✠ *E. A.*, Archbishop of Quebec.
✠ *L. F.*, Bishop of Three Rivers.
✠ *Jos.*, Bishop of Germanicopolis, formerly Bishop of St. Hyacinthe. The actual Bishop of St. Hyacinthe being absent from his Diocese.
✠ *Antoine, Ev. de Sherbrooke.*
✠ *Dom. Ev. de Chicoutouni.*
✠ *Thomas*, Bishop of Ottawa.
✠ *Michael Hannan*, Archbishop of Halifax.
✠ *Peter McIntyre*, Bishop of Charlottetown.
✠ *John Sweeney*, Bishop of St. John, New Brunswick.
✠ *James Rogers*, Bishop of Chatham, N.B.
✠ *John Cameron*, Bishop of Arichat, N.S.
✠ *Thomas Joseph Power*, Bishop of St. John, Newfoundland.
✠ *John Joseph*, Archbishop of Toronto.
✠ *John Walsh*, Bishop of London.
✠ *Peter Francis Crinum*, Bishop of Hamilton.
✠ *John O'Brien*, Bishop of Kingston.
✠ *John Francis*, Vicar Apostolic, Canada.
✠ *Alex.*, Archbishop de St. Boniface.
✠ *Vitalis*, Bishop of St. Albert.
✠ *Aloyus*, Bishop of Metropolis, Vicar Apostolic of British Columbia.
✠ *F. C. Farand*, Bishop of Aulmour, Vicar Apostolic of Arthabaspa and McKenzie.
✠ *I. Clut*, Bishop of Erindel, Auxiliary, &c.
✠ *Francis*, Archbishop of Oregon.
✠ *John Charles Seghees*, Bishop of Vancouver's Island.

UNIVERSITY EDUCATION (IRELAND).

COPY of ADDRESS to the CROWN from the CATHOLIC BISHOPS of the Dominion of CANADA, in relation to the present position of UNIVERSITY EDUCATION in IRELAND.

(*The O'Conor Don*).

Ordered, by The House of Commons, *to be Printed*,
17 *April* 1879.

141.

626

NORTH AMERICA. No. 3 (1878).

CORRESPONDENCE

RESPECTING

OCCURRENCES

AT

FORTUNE BAY, NEWFOUNDLAND,

IN

JANUARY 1878.

Presented to both Houses of Parliament by Command of Her Majesty.
1878.

LONDON:
PRINTED BY HARRISON AND SONS.
[C.—2184.] *Price* 4½*d.*

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Correspondence respecting Occurrences at Fortune Bay, Newfoundland, in January 1878.

No. 1.

Mr. Malcolm to Lord Tenterden.—(*Received March* 12.)

Sir, *Downing Street, March* 12, 1878.

I AM directed by the Secretary of State for the Colonies to transmit to you, to be laid before the Earl of Derby, a copy of a despatch from the Governor of Newfoundland, reporting certain differences which had arisen between British and United States' fishermen in Fortune Bay in that island, resulting in the destruction of a seine belonging to an American subject.

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

Inclosure 1 in No. 1.

Governor Sir J. Glover to the Earl of Carnarvon.

My Lord, *Government House, February* 11, 1878.

I REGRET to have to report the destruction of an American seine by our fishermen in Fortune Bay on the 6th ultimo, the news of which only reached me through a cable telegram from London on the 4th instant.

2. On receipt of this intelligence I at once caused an inquiry to be instituted to ascertain the truth of the report, but the result of the inquiry has not yet reached me from Fortune Bay. I have the honour to inclose the only information I have as yet been able to obtain, viz., the deposition of the master of a vessel who was present at the time.

3. It would appear that the Americans were guilty of three illegal acts, viz.:—

1st. As regards the time in which a seine may be used.

(See Acts 1876, cap 6, in Amendment of Consolidated Statutes, 1872, cap. 102).

2nd. In barring (same Act).

3rd. By putting out nets or seines between 12 o'clock on Saturday night and 12 o'clock on Sunday night.

(Acts 1876, cap. 6, sec. 4.)

4. As two out of the five seines were removed by our people without injury or damage, and two by the Americans themselves, I conclude that opposition was raised on the part of the American owner to the removal of the fifth.

5. I inclose the opinion of the Attorney-General, which that gentleman has placed in my hands, and I hope to be enabled to send full information by the next mail.

I have, &c.
(Signed) JOHN H. GLOVER.

Inclosure 2 in No. 1.

Deposition of Alfred Noel.

Newfoundland, Central District, St. John's, to wit.

The examination of Alfred Noel, of St. John's aforesaid, master-mariner, taken upon oath, and who saith:—I am master of the schooner "Nautilus" of this port, and on the 19th day of December last I was at Long Harbour, in Fortune Bay, in the "Nautilus," which was anchored off Woody Island. I had a crew of seven men, and I was there engaged in the herring fishery. There were several American schooners; seven of them were lying off Woody Island, and two French vessels. This island forms the harbour within half a mile of the narrows of Long Harbour; and other American schooners and Newfoundland fishing craft were inside Woody Island, which is the inside part of Long Harbour. All the craft there, English and American, were hauling herrings in seines and nets, and the Americans were purchasing herring from the English. Everything went off quietly, and the greatest harmony prevailed until Sunday, the 6th day of January, when about half-past two o'clock in the afternoon five seines, belonging to the American schooners, were put into the water by their crews at the beach on the north-east side of Long Harbour. I know two of the captains by name, Dago and Jacobs, belonging to Gloster, United States, but do not know the names of their schooners. The whole five seines were barred full of herrings, when the English crews of the crafts belonging to Fortune Bay ordered them to take their seines up or they would take them up for them; and the Fortune Bay men, finding they would not do as they were requested, then hauled up two of the American seines, but without any damage or injury, and two were at the same time taken up by the Americans; and at the same time a seine belonging to Captain Dago was taken up by the Fortune Bay men, the herrings thrown out, and the seine was torn up and destroyed. Before this occurrence on the said Sunday, one of the American schooners had a seine barred with herrings on the beach at Long Harbour for seven days, and it was not at any time meddled with by the Fortune Bay men or any one. Some of the Fortune Bay men had nets out in the water on that Sunday, and the same had been there during the week, but none of the Newfoundland fishermen attempted to haul herrings on Sunday at any time while I was at Long Harbour. The Americans' practice had been until lately to purchase herring from the Newfoundland fishermen in Fortune Bay, but this year and last year the Americans have brought their own seines to haul herring for themselves. The American seines are 30 fathoms deep and 200 fathoms long, whilst those used by our fishermen are 12 or 13 fathoms deep and 120 fathoms long. These American seines are used for barring herring in deep water, such as the Fortune Bay Harbours, viz., Long Harbour, Bay de Nord, and Rencontre. Our fishermen never bar herrings, and herrings have never been barred in Fortune Bay, to my knowledge, until the Americans brought the large seines I have alluded to into Fortune Bay and used them there to the disadvantage of our fishermen. This mode of barring herrings in such harbours as I have mentioned is most destructive and ruinous to the herring fishery in those localities. I do not know the names of the persons who destroyed the seine; there were about eighty vessels from different harbours of Fortune Bay at Long Harbour at the time, and the seine was destroyed by a great lot of people. I left Long Harbour for St. John's on the 31st day of January and arrived here on the 4th instant.

(Signed) ALFRED NOEL.

Sworn before me at St. John's aforesaid, this 8th day of February, A.D. 1878.

(Signed) D. H. Prowse, *J.P. for Newfoundland.*

Inclosure 3 in No. 1.

Memorandum by the Attorney-General.

BY the Treaty of Washington the United States' citizens have the right to take, &c., fish on our coasts, irrespective of distance from the shore, in common with the subjects of Her Britannic Majesty (Article XVIII).

By Act, cap. 6, 1876, in amendment of the Consolidated Statutes (1872), cap. 102, "No person shall haul, catch, or take herrings in a seine or such con-

trivance between the 20th October and 25th April in any year, or at any time use a seine or such contrivance for catching herrings, except by way of shooting and forthwith hauling. Proviso: nets may be used, set as usual, and not used for barring or inclosing herrings in a cove, inlet, or other place."

By this same Act, 1876, sec. 4, "No person shall between 12 o'clock Saturday night and 12 o'clock Sunday night haul, &c., herring, &c., with nets, seines, bunts, or any such contrivance, or set or put out the same for the purpose of such hauling, &c."

This deposition discloses, and others may be had in corroboration, that the United States citizens have been guilty of illegal acts.

1st. As regards time in which a seine may be used (see above).

2nd. In barring (see above).

3rd. Hauling on a Sunday (see above).

The United States' citizens have made no complaint to any official in the Colony of having been improperly obstructed in rights under the Treaty, and the first that I heard of any disturbance was in a cable message from London a day or two since.

(Signed) F. B. T. CARTER, *Attorney-General.*

February 8, 1878.

No. 2.

The Earl of Derby to Sir E. Thornton.

Sir, *Foreign Office, March* 13, 1878.

I TRANSMIT to you herewith, for your information, a copy of a letter from the Colonial Office, respecting the differences which have arisen between British and United States' fishermen in Fortune Bay.*

I am, &c.

(Signed) DERBY.

No. 3.

Sir E. Thornton to the Earl of Derby.—(Received March 18.)

My Lord, *Washington, March* 4, 1878.

I HAVE the honour to transmit herewith copy of a note which I have received from Mr. Evarts, informing me of complaints which have been recently made to his Department of interference with American fishermen engaged in the herring fishery on the coast of Newfoundland. Mr. Evarts states that the United States' Consuls at St. John's and and other ports have been instructed to collect and forward more detailed and specific information upon the subject to the State Department, which he promises to transmit to me as as soon as he shall receive it.

In the meantime I have to-day forwarded a copy of Mr. Evarts' note to the Governor of that Colony, for his Excellency's information, and for any observations which he may think proper to make.

Your Lordship will perceive that Mr. Evarts states that the President has deemed it proper to bring the subject directly to the attention of Her Majesty's Government, through the Minister of the United States at London.

I also inclose two copies of an article upon the same subject published in the "New York Herald" of the 26th ultimo, as well as of a long extract from the same paper, purporting to be a communication from Gloucester, a fishing town on the coast of Massachusetts. The latter contains several affidavits of American fishermen, which are probably some of those alluded to by Mr. Evarts in his note.

It is not improbable that the American fishermen had committed some infraction of the fishery laws of Newfoundland, of which they are not always strict observers. If that be the case, however, it is to be regretted that the authorities should not have prevented such proceedings rather than that the native fishermen should have taken the law into their own hands. But it is doubtful whether it would not

* No. 1.

be in accordance with the custom of the United States' Government to refer the complaints to the Courts of Justice of Newfoundland for redress.

I have, &c.

(Signed) EDWD. THORNTON.

Inclosure 1 in No. 3.

Mr. Evarts to Sir E. Thornton.

Sir, *Department of State, Washington, March* 2, 1878.

I HAVE the honour to bring to your notice the fact that complaints have been recently made to this Department of interference with American fishermen engaged in the herring fishery on the coast of Newfoundland. In some instances these complaints have been forwarded to the Department through the United States' Consuls at St. John's and other ports of that Colony. The representations made by the Consuls are, however, of a general nature based upon statements made to them by the fishermen immediately interested, and consequently the officers in question have been instructed to collect and forward more detailed and specific information, and such further information I will do myself the honour to transmit to you so soon as the reports from the Consuls shall have been received.

Still more recently similar complaints have been received through the collector of the port of Gloucester, Massachusetts, supported by the sworn statements of the masters of eight fishing schooners of that port, and from the statements thus forwarded it appears that in January of the present year those vessels had reached the neighbourhood of Long Harbour, and were actively engaged in the herring fishery, and that most of the seines were full of fish and ready for landing, when, in one instance, two seines belonging to the schooners "Ontario" and "New England" respectively were cut by an enraged crowd of over 200 men, and the whole catch, estimated at not less than 5,000 barrels of herring suffered to run out to sea. Other instances are given, only less in quantity and value, the proceedings resulting in the vessels—eight in number—being obliged to abandon the fishing-grounds on that coast and return to their home port in ballast. When it is remarked at what considerable expense the preparations are made for a season's fishing in these waters, many of the men-mariners, as well as the masters, embarking their all in the enterprise, the serious character of their losses may be partially understood.

The President has deemed it proper, in view of the possible complications to which a continuance of these lawless proceedings might give rise, to bring the subject directly to the attention of Her Majesty's Government with a view to an early investigation of the facts and the adoption of such measures on its part as may be deemed advisable to prevent a recurrence of the acts complained of; and the Minister of the United States at London has been accordingly instructed to take the necessary steps in that direction. Meantime, I have deemed it right to transmit the facts, so far as they are already known, for your information.

I have, &c.

(Signed) WM. M. EVARTS.

Inclosure 2 in No. 3.

Extract from the "New York Herald" of February 26, 1878.

Inclosure 3 in No. 3.

Extract from the "New York Herald" of February 26, 1878.

Testimony on the Outrage.

The following are the depositions of masters of schooners who were present during the trouble at Long Harbour. Others will be taken as fast as they come in, and a deputation will wait on Secretary Evarts and present formal claims :—

5

Charles Dagle.

"*Gloucester, February* 19, 1878.

"I, Charles Dagle, master of the American schooner 'Lizzie and Namari,' of Rockport, do on oath depose and say:—

"That I sailed from Gloucester on the 6th December, 1877, for Fortune Bay, Newfoundland, for a load of herring. The last year (1877) I had sold a seine and boat to parties in Newfoundland, and they were to supply me with herring in payment for the seine and boat. I arrived at Fortune Bay about the 19th December. I was at Long Harbour, Newfoundland, with my vessel on the 6th January. Saw the seines of the American schooners 'New England' and 'Ontario' destroyed by the fishermen of Newfoundland. There is a decided objection to using netted or gill-net herring for freezing purposes, as these herring die in a short time after being taken in gill-nets. When they are seined they can be kept alive on the radius of the seine and taken out alive when the weather is suitable for freezing, while the netted herring, being dead, must be salted or spoil; consequently the seined herring are the best for our purposes and are what the American vessels want for our market. Knowing this fact, the Newfoundland fishermen had endeavoured to obstruct in every way the taking of herring with seines, as they use principally gill-nets; they placed their nets, which are set permanently, so as to hinder the using of seines. On the 6th January, 1878, the herring had come inshore, so that they were inside the gill-nets, thus giving our people an opportunity to seine them without interfering with the gill-nets. On the Americans attempting to put their seines in the water the Newfoundland fishermen threatened to destroy them, and when our fishermen had taken their seines full of herring, the Newfoundlanders came down to the number of 200, seized and destroyed the seines, letting out the fish, and afterwards stole and carried off the remnants of the seines. On account of this violence and the obstructions placed in the way of my men operating the seine, I was unable to procure a cargo, and have returned without a herring. If I had been allowed the privilege guaranteed by the Washington Treaty, I could have loaded my vessel and all the American vessels could have loaded. The Newfoundland people are determined that the American fishermen shall not take herring on their shores. The American seines being very large and superior in every respect to the nets of the Newfoundlanders, they cannot compete with them. These seines are the mackerel seines which are used in summer for mackerel and are setting for herring. When they are plentiful we can take from 2,000 to 5,000 barrels. The seines and boats we use cost 1,200 dollars when new, and are too expensive for the generality of Newfoundland fishermen, and they would have no use for seines only during the herring season, while we can use them both summer and winter, and thus make them pay for their great cost.

"My loss by these acts of violence, and being deprived of my rights under the Washington Treaty, is fully 5,000 dollars, which I claim as indemnity. The netted herring are strangled while caught by the head in the net, and the eyes turn red from suffocation. They will not keep so long as seined herring, which are free to swim inside the seine and are dipped out alive. The netted herring will not sell in the New York market, while the seined herring preserve their bright appearance and sell readily.

(Signed) "CHARLES DAGLE,
"*Master of Schooner 'Lizzie and Namari.'*

"Essex, ss. "*Gloucester, February* 19, 1878.

"Personally appeared Charles Dagle, master of schooner 'Lizzie and Namari,' who subscribed and made oath to the foregoing statement.

"Before me,

(Signed) "ADDISON CENTER, *Justice of the Peace.*"

William H. McDonald.

"*Gloucester, February* 19, 1878.

"I, William H. McDonald, master of the American schooner 'William E. McDonald,' of Gloucester, do on oath depose and say:—

"That I have just returned from Newfoundland, where I have been for a load of herring. I was at Long Harbour, Newfoundland, when the seines of schooners 'New England' and 'Ontario' were destroyed. I had gone on shore and was on the beach at the time. The Newfoundlanders were much excited because of our use of the large seines, which for the first time were used last winter there. The Newfoundland fishermen had sunk large rocks off the beach in order to catch the seines and tear them, and had put their 'gill-nets' where they would obstruct the use of the seines. These means failing, as the herring were close in shore, they took to personal violence and destroyed one seine completely, and made the others take them up and release the fish. I had a seine, but was not allowed to use it. The nets they placed in the way and kept there only for the purpose of obstructing our operations with seines, as they took no herring there, but let the nets remain till they rotted. I can fully endorse the statement of Captain Dagle in all particulars. My vessel is a first-class vessel, and with the time and expense, and with the loss of herring, I have sustained a loss of fully 5,000 dollars to myself and owners, and I claim that, under the Treaty of Washington, I have a right to the herring fisheries and claim indemnity for this severe loss."

(Signed) "WILLIAM H. McDONALD.

"Essex, ss.

"Personally appeared William H. McDonald and subscribed and made oath to the above statement.

"Before me,

(Signed) "AARON PARSONS, *Justice of the Peace.*"

James McDonald.

"*Gloucester, February* 19, 1878.

"I, James McDonald, master of the American schooner 'F. A. Smith,' of Gloucester, do on oath depose and say:—

"That the said schooner was chartered by George W. Plumer and others, of Gloucester, for a voyage to Newfoundland for herring. I sailed from Gloucester on the 29th November, 1877, and arrived at Long Harbour, Newfoundland, on or about the 15th December, 1877. I carried a large purse seine, such as is used to take mackerel. The seine will take 4,000 barrels of fish. I employed Newfoundland fishermen to operate the seine. I set my seine twice, but without catching anything, as my seine was torn by rocks that had been left off the beach. On the 6th January the herring made their appearance in great numbers, and the opportunity to take a large haul was improved by my men, and we took at least 1,000 barrels, enough to load my vessel and one other. The Newfoundland fishermen came off in their boats and told me to take my seine up, or they would take it up for me, and that they would cut it up. There were about 200 men engaged in this violence, and my own crew consisting of six men I could not resist, but was obliged to take up my seine. I saw the seines of the schooners 'New England' and 'Ontario' destroyed, and knew that mine also would be destroyed if I did not take it up. My seine was not attached to the shore when they came off, and the attack on me was made in boats. After destroying the other seines they all made for me, and my only safety was to gather up my seine. I lost all my fish, and the Newfoundland fishermen put all the obstructions they could in the way, to prevent the use of our seines after that. From my knowledge of the facts I do say that the Newfoundland fishermen are determined to prevent American fishermen from using the shore fisheries. I consider that the loss to the vessel and the charter party at not less than 5,000 dollars, and under the Treaty of Washington I have been deprived of my rights as an American citizen, and full indemnity should be allowed for the outrage. I have read the statement of Captain Dagle, and know it to be true in all its particulars. The effect of this treatment will be to destroy the American fishing for herring at Newfoundland. There are annually about 100 voyages by American vessels made for herring to Newfoundland. The Newfoundland fishermen were taking herring on the same day the outrages before stated occurred.

(Signed) "JAMES McDONALD.

"Essex, ss. "*Gloucester, February* 20, 1878.

"Personally appeared the above-named James McDonald, master of the schooner 'F. A. Smith,' who subscribed and made oath that the foregoing statement is true.

"Before me,

(Signed) "ADDISON CENTER, *Justice of the Peace.*"

Charles H. Nute.

"*Gloucester, February* 19, 1878.

"I, Charles H. Nute, master of the American schooner 'Edward E. Webster,' of Gloucester, do on oath depose and say:—

"That I have just returned from Newfoundland, where I have been for a load of herring. I went for the purpose of co-operating with other American vessels in the use of their seines in taking herring. I was at Long Harbour and saw the destruction of the seines of the American schooners 'New England' and 'Ontario.' I have seen the statement of Captain Dagle, of the American schooner 'Lizzie and Namari,' and substantiate all he has stated. I have returned without a herring for the same reasons. My actual loss in time of vessel and crew, with herring I should have bought had I not been prevented by the inhabitants of Newfoundland, is fully 5,000 dollars; and, owing to being deprived of my rights under the Washington Treaty, I hereby claim that amount as indemnity for the wrong done me and the owners of the vessel.

(Signed) "CHARLES H. NUTE,

"*Master schooner 'Edward B. Webster.'*

"Essex, ss. "*Gloucester, February* 20, 1878.

"Personally appeared Charles H. Nute, master of schooner 'Edward E. Webster,' who subscribed and made oath that the foregoing statement is true.

"Before me,

(Signed) "ADDISON CENTER, *Justice of the Peace.*"

David Malanson.

"*Gloucester, February* 20, 1878.

"I, David Malanson, Master of the American schooner 'Crest of the Wave,' of Gloucester, Massachusetts, do on oath depose and say:—

"That I sailed from Gloucester on the 8th December, 1877, on a voyage to Newfoundland for herring. I arrived at Long Harbour, Newfoundland, on the 23rd December, 1877. I was interested in a seine carried by the schooner 'New England and Ontario.' I was at Long Harbour on the 6th January, 1878, and was on the beach when the Newfoundland fishermen destroyed the seine belonging to these vessels. The herring did not strike inshore until that day, and as it is very uncertain how long they will remain, it is imperative, for successful prosecution of the business, to take them when they are inshore. By means of our large purse seines we can inclose the herring and keep them alive a month, if necessary, as we need to have freezing weather when we take them out, to freeze them, to keep them fresh until we get them to market. On this occasion the herring were entirely inshore of the Newfoundland gill-nets, and, as the sequel proved, if we did not take them then and there we should lose the season catch. The seines were set in no way interfering or injuring the gill-net fishing, and inclosed and held certainly 2,000 barrels of herring, enough to load four vessels. Over 200 men came down to the beach, seized the seine, let out the fish, pulled the seine on shore, tearing and cutting it to pieces with knives. The crews operating the seines were powerless against so many; and after they had destroyed this seine they went for the other American seines, shouting and gesticulating, saying: 'Tear up the damned American seines.' All of the vessels would have been loaded with herring if the Americans could have used their seines.

"My loss by this outrage is not less than 5,000 dollars, which has been taken from me despite the provisions of the Washington Treaty, and which I claim as indemnity.

"The Newfoundland fishermen have for years been in the habit of selling all the

herring to American vessels. I have been there eight years, and I have always bought my herring, or engaged the Newfoundlanders to take them for me, paying them in cash. This has been the universal practice of American vessels. This year we carried the large mackerel seines, which we use in summer for taking mackerel. These seines will take from 2,000 to 5,000 barrels at a haul, and the herring are better taken in this way. As most of the Newfoundlanders fish with gill-nets, our manner of seining would take away from them the monopoly of the herring trade, and hence the feeling which produced the outrage on our vessels. It is apparent that they will obstruct any American fishery on their shores, and are not men who would know much about rights or privileges under a Treaty. I should say that there are at least 100 cargoes of herring taken from Newfoundland yearly by American vessels, and as things are now it would be useless for American vessels to go there for herring unless they bought the herring from the inhabitants at whatever price they may see fit to ask. This American trade has been a great benefit to Newfoundland, and the change in the manner of taking herring will greatly reduce the amount of money paid them for herring. Only three vessels of eighteen that were there got any herring whatever. Captain Jacobs, of the 'Moses Adams,' held his seine with revolvers, and being a native of Newfoundland was allowed to take in the herring he had taken. The feeling was very intense and bitter against the Americans. The Newfoundland fishermen were catching and taking herring with their nets and boats on the same day.

(Signed) "DAVID MALANSON,

"*Master schooner 'Crest of the Wave.'*

"Essex, ss.

"Personally appeared before me David Malanson, and subscribed and made oath to the above statement.

(Signed) "AARON PARSONS, *Justice of the Peace.*"

Edward Stapleton.

"*Gloucester, February* 21, 1878.

"I, Edward Stapleton, master of the American schooner 'Hereward,' of Gloucester, do, on oath, depose and say:—

"That I have just arrived from Newfoundland, where I have been for a load of herring. I was at Long Harbour, Newfoundland, when the Newfoundland Fishermen destroyed the seines of the American schooners 'New England' and 'Ontario,' and saw the whole transaction. I carried a seine with me, and employed Newfoundland fishermen to operate it for me. The first time they set it for me they put it out in a strong tide-way, and utterly destroyed it, and after that I had to depend on the other American seines. This was the understanding among the American Captains, that we were to work together and load all our vessels. The setting of the seines on the 6th January did not interfere in any way with their nets or fishing. I think there is a local regulation that does not allow the Newfoundland fishermen to fish on Sundays; but the first seine (a small one) set on that day was one owned and operated by the natives, and they were picking their nets and boating their herring ashore all day. On the arrival of the American fleet the Newfoundlanders put their nets where they would obstruct our seining, but on this day the herring were away inside of their nets, giving us the first chance and only opportunity we had to seine or get herring. Enough were taken, and could have been taken, that day to have loaded the fleet. After that day there was no opportunity to take any. Newfoundland nets were placed where they never took a fish, and placed only for the purpose of preventing our seining. My loss to vessel and owners is not less than 5,000 dollars, and I claim indemnity to that amount. This loss is owing entirely to the hostile acts of the Newfoundland fishermen.

(Signed) "E. STAPLETON."

No. 4.

Mr. Welsh to the Earl of Derby.—(*Received March* 21.)

My Lord, *Legation of the United States, London, March* 19, 1878.

I HAVE the honour to acquaint your Lordship that complaints have reached the Department of State at Washington of serious interference with American fishermen, engaged during the present season in the herring fishery on the coast of Newfoundland, especially in the neighbourhood of Long Harbour. The complaints come through various sources—first from the United States' Consuls in that Province—the Consuls confining themselves, however, to general statements based on representations made to them by fishermen immediately affected at the time of the occurrences, which form the grounds of complaints. Still more recently, however these complaints have been preferred in a more specific manner, supported by affidavits of the masters of several fishing vessels, owned and fitted out at Gloucester, Massachusetts. From these statements it appears that about the 6th January last no less than eight schooners from the above-named port, while engaged in the herring fishery, at and in the neighbourhood of Long Harbour, were attacked by the inhabitants, to the number, in one instance, of sixty men, and in another 200 or more, and their seines, which were set, and in most cases full of fish, cut and destroyed, and the fish in one case, to the amount of 5,000 barrels, and in others, only less in quantity and value, run out to sea—resulting, beside the great loss of property, in the vessels being obliged to return to their home port in ballast, and also to abandon their fishing enterprise for the season. When it is remembered at what considerable expense the preparations are made for a season's fishing in these northern latitudes, and that very many of the men, both masters and mariners, embark their all in the enterprise, the serious character of these losses may be partially understood.

Instructions have been sent to the Consuls to transmit fuller information on the subject, and I am advised that this will be furnished to me so soon as it shall have been received by the Department of State.

In the meantime I am instructed to bring the matter to the attention of Her Majesty's Government, and to request that it will cause an investigation to be made into the alleged facts of the case, and adopt such measures as may be found necessary, not only to put an end to the evil, but also to prevent a recurrence of acts which, in addition to the injuries and losses to individuals, may have a tendency to complicate the good relations which so happily subsist between the Government of the United States and that of Her Britannic Majesty.

I have, &c.

(Signed) JOHN WELSH.

No. 5.

Sir J. Pauncefote to Mr. Herbert.

Sir, *Foreign Office, March* 23, 1878.

WITH reference to your letter of the 12th instant, I am directed by the Earl of Derby to transmit to you, to be laid before Sir Michael Hicks Beach, the accompanying copy of a despatch from Her Majesty's Minister at Washington, together with its inclosures, relative to the differences which have arisen between British and United States' fishermen on the coast of Newfoundland.* A copy of your above-mentioned letter has been communicated to Sir E. Thornton.

I am, &c.

(Signed) JULIAN PAUNCEFOTE.

No. 6.

The Earl of Derby to Mr. Welsh.

Sir, *Foreign Office, March* 25, 1878.

I HAVE the honour to acknowledge the receipt of your letter of the 19th instant, stating that you have been instructed by your Government to make a

* No. 3.

representation to Her Majesty's Government relative to the differences which have arisen between British and United States' fishermen on the coast of Newfoundland, and I have to inform you in reply that the matter shall receive due consideration.

I am, &c.
(Signed) DERBY.

No. 7.

Sir J. Pauncefote to Mr. Herbert.

Sir, *Foreign Office, March 25,* 1878.

WITH reference to my letter of the 23rd instant, I am directed by the Earl of Derby to transmit to you, to be laid before Sir Michael Hicks Beach, the accompanying copy of a letter from the United States' Minister at this Court,* stating that he has been instructed by his Government to make a representation to Her Majesty's Government relative to the differences which have arisen between British and United States' fishermen on the coast of Newfoundland, and I am to request that in laying this letter before Sir M. Hicks Beach you will move him to inform Lord Derby what answer should be returned to Mr. Welsh's communication.

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

No. 8.

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

Sir, *Downing Street, March* 28, 1878.

WITH reference to the letter from this Department of the 12th instant, inclosing a despatch from the Governor of Newfoundland, relating to the destruction in Fortune Bay of a seine belonging to an American subject, I am directed by the Secretary of State for the Colonies to transmit to you, to be laid before the Earl of Derby, a copy of a further despatch from Sir John Glover on the same subject.

I am to state that the Lords Commissioners of the Admiralty have been requested to give instructions to the Senior Naval Officer who may be sent to the Newfoundland coast for the protection of the fisheries during the coming season, to make inquiries into the exact circumstances of the case, and to furnish a report upon the subject for the information of Her Majesty's Government,

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

Inclosure 1 in No. 8.

Sir J. Glover to Sir M. Hicks Beach.

Sir *Government House, February* 25, 1878.

I HAVE the honour to inform you that, since writing my despatch of the 11th instant, I have obtained the inclosed sworn statement of the master of a Newfoundland schooner, who was in the harbour when the destruction of the American nets, at Long Harbour, in Fortune Bay, took place. It would appear that he witnessed the destruction of the net, and may have assisted thereat, but does not commit himself, for he states, "I was informed" of what took place, and "I saw the seine next day, Monday."

2. I also inclose copy of a deposition on oath, copied from the "Toronto Globe" of the 14th February, made by "Naus," master of the schooner "Moro Castle," who, it would appear, was one of those who took up his seine, but states he witnessed the destruction of two American seines, and not that of one seine, as stated in the accompanying deposition.

3. This, in some measure, confirms the opinion contained in paragraph four of my previous despatch, viz., that two seines were taken up by their American

* No. 4.

owners, two without opposition from the American owners by the Newfoundland fishermen, and that the lifting of the fifth being refused or opposed by the American owner, it was taken up and destroyed. There is some discrepancy between the English and American depositions as to whether the destruction of the net or nets took place on Sunday, the 6th January, or Sunday, the 13th January.

4. I consider it very doubtful that I shall be enabled to obtain any further corroborative evidence as to the destruction of one or more seines, until the arrival of the ships-of-war in the spring, when I would suggest that orders should be issued by the Admiral for full particulars to be obtained for the information of Her Majesty's Government.

5. I shall not fail to impress upon my Government the necessity of obtaining, without loss of time, the fullest possible information on the subject.

I have, &c.

(Signed) JOHN H. GLOVER.

Inclosure 2 in No. 8.

Deposition of John Rumsey.

Central District, St. John's, to wit.

THE examination of John Rumsey, of St. John's, master mariner, taken upon oath, who saith:—

"On or about the 14th November last I sailed from St. John's to Fortune Bay for a cargo of herring. I arrived in Long Harbour, Fortune Bay, about Christmas last. I found about 200 schooners there looking for herring; twelve of the schooners were Americans; my schooner was called the 'Briton,' six hands all told. I got most of my herring between Christmas and the 8th January. Most all the schooners in Long Harbour lay inside of Woody Island. Woody Island is about three miles from the entrance of Long Harbour. On the northern side, rather above the island, there is a fine beach about a mile long. This is the best hauling place in Long Harbour, and most all the herrings were taken there. It is only this year and last year that the American schooners have brought down very large seines for catching herring. I have been informed that some of these seines were 250 fathoms long and 35 fathoms deep. The seines which our Newfoundland fishermen use are about 120 fathoms long and from 8 to 13 fathoms deep. In the first week in January there were four or five American schooners who had the beach above mentioned barred for herring. The mode of inbarring for herring is as follows: when a place is selected, generally a smooth beach with deep water outside free from rocks, a party is sent ashore with a long line from one end of the seine; the seine-boat then goes off with the seine, makes a long sweep, and the other end of the seine is then brought into the beach also; then the crew begin to haul together on both ends of the seine with long seine lines running fore and aft up and down the beach, four or five seines thus barring herring would cover all the hauling ground on this long beach I have spoken of, and would occupy all the best ground for hauling herring in Long Harbour. On the first Sunday in January the beach was barred by four or five large American seines. On that day, after dinner, a large number of people belonging to the crews of the Fortune Bay schooners then in Long Harbour went over to the beach, and I was informed there were 600 or 700 Newfoundland fishermen there. The Americans had barred the herring, and were hauling on their seines on the Sunday morning. The Newfoundland fishermen told the American captain to take up their seines or they would take them up for them. All the American seines were then taken up which were set on a Sunday except one; this one the American captain, who owned it, refused to take up. The Newfoundland fishermen then hauled it ashore, took the herrings out of the seine, and according as they hauled the seine out of the water they tore it up. I saw the seine the next day, Monday, on the beach, and it was completely destroyed; it was an old second-hand seine and very rotten. I have been for thirteen or fourteen years carrying on the herring fishery in Fortune Bay, and during that time I have never known our Newfoundland fishermen to haul herrings on Sunday. If the American fishermen were permitted to bar herrings in the way that they were doing at Long Harbour Beach, all the rest of the craft would be deprived of the best place in the harbour to haul herrings; and such a mode of fishing for herrings is most injurious to the fishery, and must in time ruin the

herring fishery there. The Americans in hauling their long seines often removed the Newfoundland fishermen's nets when they came in their way. I have known the Americans last year to have herrings barred in for a fortnight. Barring kills a great many herring, and makes those who are barred in very poor. I have seen the bottom covered with dead herring after the seine had been barred for a week. The American schooners heave out their ballast in the Channel between Woody Island and the shore, and if not prevented, will soon destroy the anchorage there.

(Signed) " JOHN RUMSEY, his ✕ mark.

" Sworn before me, at St. John's, this 9th day of February, A.D. 1878, having first been read over and explained,

(Signed) " D. H. PROWSE, *J.P. for Newfoundland.*"

Inclosure 3 in No. 8.

Extract from the "Toronto Daily Globe" of February 14, 1878.

THE NEWFOUNDLAND HERRING CASE.

Affidavit of the Gloucester Captain.

THE Gloucester, Massachusetts, fisherman who alleges that he was recently attacked by Newfoundland fishermen and compelled to abandon the herring fishery, has transmitted the affidavit printed below to the United States' Government at Washington.

A telegram printed in yesterday's "Globe" from Fortune Bay, at the head of which is situated Long Harbour, where the outrage is said to have been committed, denies that the trouble occurred. Pending the arrival of details from Newfoundland, it would be well to withhold judgment. The Gloucester skipper says :—

" I, Loring B. Naus, on oath, depose and say, that I am master of the schooner 'Moro Castle,' of Gloucester, and was with my vessel at Long Harbour, Newfoundland, the whole of last month, January 1878, having gone there for a cargo of herring ; I saw the destruction of the seines of the schooners 'Ontario' and 'New England' at that place by the inhabitants of Newfoundland. This occurred on the 13th ultimo. The facts are as follows :—I went, in company with Captain Jacobs, of the schooner 'Moses Adams,' Captain Poole, of the schooner 'Maud and Effie,' Captain German, of the schooner 'Fred. P. Faye,' Captain Dago of the schooner 'New England, and others, together with our several crews in our seine-boats for the purpose of setting our seines to haul herring. Some 150 and upwards of the inhabitants had collected on the beach, but did not molest us in any way until they found our seine were full of herring, when I heard some of the crowd on shore exclaim, 'Let's tear up the Yankee seines,' and immediately set to work destroying our seines, which they did most effectually by cutting and tearing them up. There were at the same time two other American seines set which we estimated had in them at least 1,500 barrels of herring. In each case the owners were obliged to let the herring out and take the seines up, as the crowd threatened their destruction if they were not immediately taken up. The setting of our seines did not interfere in any way with their fishing, and they (the inhabitants) were engaged in tending and picking the stationary nets on this day, and landing the herring in the boats. The antipathy of the inhabitants towards us seemed to be occasioned by the fact of our having larger seines and being more successful than themselves. In years past we have always bought our herrings of the inhabitants paying from 1 dollar to 1 dol. 50 c. per barrel for them, and the catching of herring is the principal business of the inhabitants, and they depend upon the American vessels for their trade. If we take our herring with our own crews and our own seines, the cost to us is merely nominal, and they are deprived of one of the principal means of support. Under the Treaty of Washington I regard that I have a right to take herring in the manner which we did, and the interference of the inhabitants was a gross violation of the Treaty stipulations and privileges of that Treaty on the coast of Newfoundland. The inhabitants effectually prevented me from securing my cargo of herring, after I had actually caught them, and I was obliged to return in ballast, at a loss of at least 5,000 dollars to the owners and crew of my vessel.

I therefore claim the protection of the Government of the United States, and indemnity for the loss I have sustained.

(Signed) "LORING B. NAUS,
"*Captain of schooner 'Moro Castle.'*"

No. 9.

The Earl of Derby to Sir E. Thornton.

Sir, *Foreign Office, March* 30, 1878.

I TRANSMIT to you herewith, for your information, a copy of a letter from the Colonial Office, respecting the alleged destruction, in Fortune Bay, of a seine belonging to an American subject.*

I am, &c.
(Signed) DERBY.

No. 10.

Mr. Malcolm to Lord Tenterden.—(Received April 26.)

Sir, *Downing Street, April* 26, 1878.

I AM directed by the Secretary of State for the Colonies to acknowledge the receipt of your letters of the 23rd and 25th March, inclosing among other papers representations addressed respectively to Her Majesty's Minister at Washington by Mr. Evarts, and to the Secretary of State for Foreign Affairs by the United States' Minister at this Court, together with depositions of American fishermen relating to the alleged destruction of seines belonging to United States' subjects in Fortune Bay, on the coast of Newfoundland.

Sir Michael Hicks Beach has forwarded copies of these papers to the Admiralty, with a suggestion that they should be communicated to the naval officer who may be instructed to inquire into this matter, in pursuance of the request made to the Lords Commissioners of the Admiralty, of which you were apprised by my letter of the 28th March.

Sir Michael Hicks Beach regrets extremely that, under any circumstances, recourse should have been had to violence, or to any measures which could impair the good relations existing between Her Majesty's Government and that of the United States of America; but, pending the result of the inquiries which are being made in the Colony, and which are also to be made by the Senior Naval Officer of the station, it is not possible to return a definite answer to the representations of the United States' Government.

The Marquis of Salisbury will, no doubt, direct Sir E. Thornton to apprize Mr. Evarts of the inquiries which are being made, and will inform the United States' Minister to the same effect.

I am desired to take this opportunity to transmit to you copy of a despatch addressed by Her Majesty's Minister at Washington to the Governor of Newfoundland on the 4th March, together with the reply returned to Sir E. Thornton by Sir John Glover.

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

Inclosure 1 in No. 10.

Sir E. Thornton to Governor Sir J. Glover.

Sir, *Washington, March* 4, 1878.

I HAVE the honour to transmit herewith, for your Excellency's information, and for any observations which you may deem it expedient to make on the subject, copy of a note which I have received from Mr. Evarts, Secretary of State of the

* No. 8.

United States, relative to an alleged interference with American fishermen engaged in the herring fishery on the coast of Newfoundland.*

Your Excellency will perceive that Mr. Evarts has directed the United States' Consuls at St. John's and other ports to furnish him with further information upon the subject, which he promises to forward to me, and which I shall have the honour to transmit to your Excellency.

Mr. Evarts also states that the President has considered it advisable to bring the subject directly to the attention of Her Majesty's Government through the United States' Minister in London.

As it may be useful that your Excellency should know what sort of evidence has probably been submitted to Mr. Evarts, I inclose a copy of the "New York Herald" of the 26th ultimo, containing affidavits purporting to have been signed and sworn to by American fishermen, as well as a leading article upon the subject.†

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

Inclosure 2 in No. 10.

Governor Sir J. Glover to Sir E. Thornton.

Sir, *Government House, Newfoundland, March* 23, 1878.

I HAVE the honour to acknowledge the receipt of your despatch of the 4th instant, with inclosures, relative to the alleged interference with the American fishermen engaged in the herring fishery in Fortune Bay, Newfoundland, in January last.

2. Before receiving your Excellency's despatch I had caused inquiry to be made into the circumstances of the case, and had forwarded a Report, accompanied by copies of the depositions taken, to Her Majesty's Colonial Minister.

3. The American Consul at St. John's having applied to the Government for information, I have permitted him to be furnished with copies of the evidence above alluded to.

I have, &c.
(Signed) JOHN H. GLOVER.

No. 11.

The Marquis of Salisbury to Sir E. Thornton.

Sir, *Foreign Office, May* 3, 1878.

I REFERRED to Her Majesty's Secretary of State for the Colonies your despatch of the 4th March, together with its inclosures, as well as a letter from the United States' Minister at this Court,‡ upon the subject of the disputes which had taken place between British and United States' fishermen on the coast of Newfoundland; and I have to state to you that I am informed that inquiries are being instituted into the matter, both by the authorities of Newfoundland and by the Senior Naval Officer on the station.

I have addressed a communication to the United States' Chargé d'Affaires at this Court in the above sense, and I have to request you to take an opportunity of doing the same to the United States' Secretary of State, pending the receipt of fuller information upon the subject.

I am, &c.
(Signed) SALISBURY.

No. 12.

The Marquis of Salisbury to Mr. Hoppin.

Sir, *Foreign Office, May* 3, 1878.

I REFERRED to Her Majesty's Secretary of State for the Colonies Mr. Welsh's letter of the 19th March, upon the subject of the disputes which had

* Inclosure 1 in No. 3. † Inclosures 2 and 3 in No. 3.

‡ No. 4.

taken place between British and United States' fishermen on the coast of Newfoundland, and I have the honour to acquaint you that I am informed that inquiries are being instituted into the matter, both by the authorities of Newfoundland and by the Senior Naval Officer on the station, on learning the result of which I shall have the honour of addressing a further communication to you.

I am, &c.
(Signed) SALISBURY.

No. 13.

The Secretary to the Admiralty to Lord Tenterden.—(Received July 13.)

My Lord, *Admiralty, July* 11, 1878.

I AM commanded by my Lords Commissioners of the Admiralty to transmit, for the information of the Secretary of State for Foreign Affairs, copies of two letters from Captain Sulivan, of Her Majesty's ship "Sirius," reporting the results of his inquiries into the circumstances connected with the quarrel between the English and American fishermen in Fortune Bay, in January last.

I am, &c.
(Signed) THOS. WOLLEY.

Inclosure 1 in No. 13.

Captain Sulivan to Vice-Admiral Sir E. Inglefield.

Sir, "*Sirius*," *St. John's, Newfoundland, June* 19, 1878.

I HAVE the honour to inform you that, in obedience to your orders, I left Halifax on Saturday the 8th instant, and proceeded to Fortune Bay, for the purpose of inquiring into the circumstances connected with the quarrel between the English and American fishermen in Long Harbour in January last, arriving off Brunet Island on the evening of Monday the 10th. I anchored there for the night, the weather being thick with fogs gathering; and on the evening of the 11th weighed and proceeded to Long Harbour, at the entrance of which the same afternoon I learnt that the "Pert" was at the head of the harbour (about 9 miles off). I therefore proceeded through the narrows and anchored in 6 fathoms about 7 miles from the entrance, and observed the "Pert" anchored about 3 miles further in, when I recalled her, and on the following day anchored in company with her 4 miles further down off Tickle Beach, where we found the disturbance of January last had taken place.

2. On this beach are two huts occupied by fishermen who witnessed the affair, and having taken their evidence, which, with other evidence subsequently taken, will be forwarded with my Report hereafter, we proceeded to Metter's Cove, where a fisherman named Tharnell and another were examined on the same subject.

3. From information given by them I proceeded to St. Jacques the same afternoon where, from Mr. Snellgrove, Sub-Collector of Customs, who was present at Tickle Beach shortly after the disturbance, and others who had witnessed the whole transaction, I obtained further important evidence, which, with my Report, will be forwarded at the earliest opportunity when complete.

4. There have been at these places several complaints made to me on various subjects by some of the witnesses, disputes relative to land property and reports of barring herring, one being that a seine had been laid for this illegal purpose, and had been so for some days, in consequence of which I directed Captain Aitchison to proceed to the spot said to be barred and ascertain the truth of the information.

5. The "Pert" rejoined at St. Jacques, and reported having found the seine as described, and taken possession of it. In other cases of complaint I was only able to take the evidence of those witnesses present at the time; but in the absence of others away fishing, I had to postpone the cases until my return from St. John's.

6. On Monday the 17th I directed the "Pert" to proceed to St. John's to coal, prior to her leaving for the East Coast, and the same afternoon I left St. Jacques in this ship for St. John's, where I arrived yesterday at 7 P.M., the mail from England for Halifax arriving a few hours afterwards, and leaving early this morning.

7. I am unable to forward more than this letter, as the Report on the subject of the American outrage is not complete; but the evidence is most complete, the witnesses

corroborating each other, and goes completely to prove the Americans were entirely in the wrong, and brought the quarrel on themselves, first by illegally fishing and then by threatening them with a revolver.

8. I found on arrival the "Contest" at anchor, and the "Pert" arrived this morning to await further orders.

I have, &c.
(Signed) GEO. L. SULIVAN.

Inclosure 2 in No. 13.

Captain Sulivan to Rear-Admiral Sir E. Inglefield.

Sir, "*Sirius*," *St. John's, June* 21, 1878.

IN obedience to your orders dated the 8th instant, in which I am directed to inquire into the differences which arose between British and United States' fishermen in Fortune Bay in January last, I have the honour herewith to inclose the evidence obtained from several witnesses, together with my Report on the subject; and in further remarking thereon desire to call your attention to those points in the evidence which have led me to the conclusions contained in that Report.

It will be seen therein that there are four Statutes which bear on the subject, and which have been infringed by the American fishermen, viz., Act cap. 6, 1876, in Amendment of Consolidated Statutes (1872), cap. 102, the proviso of the same as regards barring.

By the same Act, 1876, Sec. 4 and Art. 18 of the Treaty of Washington—

1. With respect to the first of these, the witness, Silas Fudge, says:—"I witnessed the disturbance at Long Harbour on Sunday the 6th January last: I am certain it was the 6th; I saw the seines in the water, two of them Americans, again. He (*i.e.*, Jacobs, an American) had his in the boat; he had shot once and discharged his seine into Farrel's, who was working for him."

John Cluett stated that he was in Long Harbour on Sunday in January last. "They (the Americans) commenced hauling herring on Sunday about mid-day; the first American seine shot was that of Jacobs; there were two more American seines shot. He (Jacobs) had just hauled herring and shot them into Farrel's seine, who was working for him; we remonstrated about breaking the law and fishing Sundays."

All the evidence of the other witnesses is corroborative of the above; and the fact is even acknowledged by the Americans in their own evidence, as appears by the statements inclosed in the correspondence on this subject. It is therefore evident that they were illegally fishing, using seines, and hauling herring in January last contrary to the above quoted statute, which prohibits the same between the 20th October and 25th April in any year.

2. That the American Captains were setting and putting out seines and hauling and taking herring on Sunday the 6th January, in direct violation of Sec. 4, cap. 6. This is proved by the evidence of all the witnesses.

John Saunders says:—"In January last—one Sunday, I don't know the date—the Americans laid out their seines, assisted by the English employed by them; the Newfoundlanders told them to take them up, as it was not legal their fishing on Sundays; there was no other reason for destroying nets but for fishing on Sundays. They went to McCauley, who had laid his seine out for barring herring; the Newfoundlanders said it should not be done on a Sabbath-day."

3. That the Americans were barring herring, that is, confining them in the seines for a considerable time, instead of forthwith hauling them. By the evidence of Silas Fudge—"He (Captain Jacobs) had shot once, and discharged his seine into Tom Farrel's, who was working for him."

John Saunders says:—"Jacobs upset his seine into Farrel's seine, who was employed by him. Farrel was barring for the Americans, and was not allowed by Jacobs to haul his seine.

Mark Bolt says:—"The Americans do not bar fish; this was the first time I ever knew them to do so."

Richard Hendriken says:—

"Samuel Jacobs would persist in hauling, and hauled once and barred them in Farrel's net. Farrel was working for them, and had been barring herring for several pays, perhaps about a fortnight, by the Americans' orders. I believe it is illegal barring herring, but we have no power to stop it; it is no good telling a magistrate; they take no notice of him."

4. That they were interfering with the rights of British fishermen in their peaceable use of that part of the coast occupied by them, &c. By all the evidence given, it occurred on Tickle Beach, Long Harbour, on which, as was seen by us, was a Newfoundland fishing settlement, the land being granted by Government, as stated by Mark Bolt, who says:—

"I have been in the neighbourhood fourteen or fifteen years. The ground I occupy, 150 feet, was granted me for life by Government, and for which I now pay a fee; there are two families on the beach; there were three in the winter; our living is dependent on our fishing off this settlement."

The above are the main points in the evidence on which my Report is founded.

In conclusion, I beg to inform you that I have forwarded a copy of the Report to his Excellency the Governor of Newfoundland, and the duplicate direct to their Lordships, in order to insure their receiving it at the same time as the Colonial Office will.

I have, &c.
(Signed) GEO. L. SULIVAN.

Inclosure 3 in No. 13.

Report on Differences that arose between British and United States' Fishermen in January 1878, by Captain Sulivan, of Her Majesty's ship "Sirius."

HAVING carefully weighed the evidence given on oath before me by Newfoundland fishermen present at the time, together with that inclosed in the correspondence forwarded for my perusal, I am of opinion—

1. That the Americans were using seines for catching herring on the 6th January, 1878, in direct violation of Title XXVII, chap. 102, sec. 1, of the Consolidated Statutes of Newfoundland, viz.: "No person shall haul or take herring by or in a seine or other such contrivance on or near any part of the coast of this Colony or of its dependencies, or in any of the bays, harbours, or other places therein, at any time between the 20th day of October and the 25th day of April."

2. That the American Captains were setting and putting out seines, and hauling and taking herring on Sunday the 6th January, in direct violation of sec. 4, chap. 7, of the Act passed 26th April, 1876, entitled "An Act to amend the law relating to the Coast Fisheries," viz.: "No person shall, between the hours of 12 o'clock on Saturday night and 12 o'clock on Sunday night haul or take any herring, caplin, or squid, with net seines, bunts, or any such contrivance, or set or put out any such net seine, bunt, or contrivance, for the purpose of such hauling or taking."

3. That they were barring fish in direct violation of the continuance of the same Act, Title XXVII, chap. 102, sec. 1, of the Consolidated Statutes of Newfoundland, "or at any time use a seine or other contrivance for the catching or taking of herrings except by way of shooting and forthwith hauling the same."

4. That, contrary to the terms of the Treaty of Washington, in which it is expressly provided that they do not interfere with the rights of private property, or with British fishermen, in the peaceable use of any part of the said coasts in their occupancy for the same purpose (see Article XVIII of the above-named Treaty), they were fishing illegally, interfering with the rights of British fishermen, and their peaceable use of that part of the coast then occupied by them, and of which they were actually in possession, their seines and boats, their huts, gardens, and land granted them by Government being situated thereon (see Mark Bolt's evidence).

5. It is distinctly shown in the evidence that the cause of the difference commenced with the Americans by their persisting in shooting their seines on the Sunday, as the Englishmen who worked for them would not do it on that day, not only on account of its being illegal, but of their religious regard for the Sabbath, which is always strictly kept by them; and although it must be observed that the result of this illegal fishing would have been that the Americans would have secured the whole of the herring in the bay on that day to the exclusion of the rights and fair chances of all the others during the week, yet there is no evidence to prove that this, or anything else but the fact of its being Sunday, and the law and custom among themselves regarding it, prompted them to demand that the seines should be withdrawn.

6. It is shown by the evidence of all those witnesses present at the time that the Americans were remonstrated with, and told to take their seines up prior to any serious steps being taken, and it is also distinctly proved that no violence was resorted to until

after the exasperating conduct of Captain Jacobs, the American master of a schooner, concerned in this illegal fishing, who threatened them with a revolver if they prevented him or interfered with his seine.

7. It does not appear that the native fishermen were aware of the illegality of hauling a seine in the month of January; it is, therefore, to be presumed that the Americans were also ignorant of that law, although their ignorance cannot exonerate them from the breach, nor does it exonerate John Hickey, an Englishman, who is charged with the same offence, and whom it is my intention to summons before me to answer to that charge.

8. The statement of the Americans, that they were compelled to leave the harbour and leave off fishing, is entirely without foundation, which is proved by the evidence of those examined before me, among whom was Mr. Snellgrove, Collector of Customs, who was there a week after the occurrence, and communicated with them, and by the evidence of others to the effect that they remained for about a fortnight or more, "until the herrings slacked," and with respect to their loss of the haul of herring by the seine being emptied, the fish were not their lawful property, having been illegally caught.

In support of this view of the conduct of the Americans, I am not only borne out by the evidence of the Fortune Bay fishermen, who made their statements in a remarkably frank and straightforward manner, but by the self-convicting evidence of those very Americans themselves, whose depositions, given on oath, show them to have been illegally fishing, and who were liable thereby to the forfeiture of their seines, nets, &c., by chap. 102, sec. 12, of the Consolidated Statutes.

(Signed) GEO. L. SULIVAN,
Captain and Senior Officer.

Inclosure 4 in No. 13.

Deposition of John Saunders.

THE examination of John Saunders, of Tickle Beach, Long Harbour, taken upon oath, and who saith:—

In January last there were a great number, close on 100, schooners and boats fishing for herring, both American and Newfoundlanders. The Americans were employing the English to haul their seines for them. There were some English schooners who had seines also. One Sunday, I do not know the date, John Hickey laid out a seine and was told by the English or Newfoundlanders to take it up, as it was Sunday, which he did. The Americans laid out their seines, assisted by the English employed by them. The Newfoundlanders told them to take them up, as it was not legal their fishing on that day, being Sunday; J. McDonald took his up. Jacobs upset his net into Farrel's seine, who was employed by him. Farrel was barring for the Americans, and was not allowed by Jacobs to haul his seine until the hard weather came. After Jacobs had upset his seine into Farrel's he took it up to shoot again, and threatened with the revolver anyone who interfered. Then they told McCauley to take his up, but he didn't, so the people hauled it in and tore it up.

I don't know any man concerned in the destruction of the net that I could swear to but one, John Pitman, a servant to Samuel Pardy, who was at "Jack Fountain."

There was no other reason that I know of destroying nets but for fishing on Sunday, and because they would not take them up when they were told. The Americans never hauled a seine before that day; they always employed the English to use their seines and bought fish from the English. The only reason that the Americans laid their seines out that day was because there were plenty of herrings, and no Englishman would haul them, being Sunday, excepting Hickey, who had been compelled to take his seine up.

Q. Where does Philip Farrel live?—*A.* In Bay-de-North, and so does Thomas Farrel.

Q. Was any obstruction or hindrance placed in the way of the Americans before or after that Sunday?—*A.* No.

Q. Did they remain in the harbour until the close of the season: until the herrings slacked away were any Americans compelled to leave the coast after this circumstance?—*A.* No; there was nothing to prevent their remaining, and they remained for some days, until the weather become soft, and there were no more herrings in the bay. Most of them left, but one American schooner remained about three weeks after that, when

another lot of herrings came into the bay, and he filled up and went away the next fair wind. Jim Boy was the Captain's name.

Q. Do you know any American of the name of Dago?—*A.* Yes; he has part in this seine. The Americans hauled their seine on the beach immediately in front of my property.

Q. Do you know the names of the schooners?—*A.* No.

Q. Do you know the names of the owners of the seine?—*A.* Yes; Captain Dago and McCauley.

Q. Do you know anything the Americans did by way of revenge?—*A.* The Americans, in revenge for the destruction of the net, afterwards drifted their vessels all about the bay or river with their anchors hanging, and so hooked and destroyed many nets, about fifty or sixty I should think. The name of one of these Captains was Smith—but I dont't know the name of his vessel—and the other was Pool. We all believe that this was done in revenge. They were pretending to be at anchor, where there was about fifty fathoms of water, but were drifting all over the bay and hooking the nets; there was no weather to cause them to drift. Our small boats were anchored off the beach. We had never any difficulty with the Americans before this, but were always on good terms with them.

(Signed) JOHN SAUNDERS, his ⋈ mark.

Sworn before me at Tickle Beach, Long Harbour, this 13th day of June, A.D. 1878.

(Signed) GEO. L. SULIVAN,

Captain and Senior Officer on the Coast of Newfoundland.

Inclosure 5 in No. 13.

Deposition of Mark Bolt.

THE examination of Mark Bolt, of Tickle Beach, Long Harbour, taken upon oath, and who saith:—I am a native of Dorsetshire, England. I have been in this country twenty-one years, and have been fishing all that time. I have lived in this neighbourhood fourteen or fifteen years, and at Tickle Beach since last fall. The ground I occupy (150 feet) was granted me for life by Government, and for which I have to pay a fee. There are two families on the beach; there were three in the winter. Our living is dependent on our fishing off this Settlement. If these large American seines are allowed to be hauled, it forces me away from the place.

One Sunday in January last, John Hickey, Newfoundlander, came first, and hove his seine out. Five Newfoundlanders came and told him to take it up, and he did not; then others came and insisted upon it; then he took it up. If he had then refused to take it up it would have been torn up.

Then Jacobs, an American, came and laid his seine out and hauled about 100 barrels of herring in the big American seine, and capsized into Tom Farrel's seine—a Newfoundland fisherman employed by Jacobs and fishing for him.

Philip Farrel was also fishing for the Americans, being master of McCauley's seine. The Newfoundlanders then capsized Tom Farrel's seine of fish, who was only fishing for the Americans. After this Jim Macdonald, another American, threw out his seine. Then the people went and told Macdonald that he was not allowed to fish on Sundays, and he must take his seine up, and he took up his seine and carried it on board his vessel. Jacobs would not allow his seine to be touched, but drew a revolver. They then went to McCauley, an American, who had laid his seine out for barring herring; this American also employed a Newfoundlander to lay his seine out. The Newfoundlanders said it should not be done on a Sabbath-day, and they resolved to tear up all the seines they could get hold of. They managed to seize McCauley's and tore it up. They would have torn up any they could have got at if laid out, whether English or American, because it was Sunday. The Americans do not bar fish. This was the first time I ever knew them to do so; they usually buy the fish from the Newfoundlanders, and also barter flour and pork for them, and I have never known anything to complain of against them previous to this.

Q. Did the American schooners continue to fish after the destruction of McCauley's seine?—*A.* Yes.

They (the Americans) continued to fish, and left about the usual time, the 10th March. I do not know any reason for the conduct towards the Americans except that they were fishing on Sunday. I do not know what become of the nets that were

torn up; it was left on the beach for some days and then taken away. I do not know who took it away; the Americans, perhaps, but I don't know.

The Americans were often set afterwards, but not on Sunday; the Americans did not leave off catching herring after this on other days. The English did not prevent the Americans hauling their seines, but the Americans usually employed the English to haul them, as their crews were not sufficient in number and are not acquainted with the work. The American crews are employed salting and freezing the fish, while the English employed by them with the American seines are catching them. The seine torn up was being worked by an Englishman for McCauley, the American, namely, Philip Farrel.

Jacobs' seine was in the water a night and a day. I was not aware that it was illegal to haul or catch herring by or in a seine at that time of the year, nor that barring is prohibited at all seasons, nor that the seine must be shot and forthwith hauled, but have heard some reports to that effect.

The nearest magistrate is at St. Jacques, about 25 or 30 miles from this, and there is no means of communicating with him excepting by a sailing boat.

The seine that was destroyed belonged to men called Dago and McCauley, who I believe were each of them Captains of schooners, but the names of the vessels I do not know.

(Signed) MARK BOLT.

Sworn before me at Tickle Beach, Long Harbour, this 13th day of June, A.D. 1878.

(Signed) GEO. L. SULIVAN,
Captain and Senior Officer on the Coast of Newfoundland.

Inclosure 6 in No. 13.

Deposition of Richard Hendriken.

THE examination of Richard Hendriken, of Hope Cove, Long Harbour, taken upon oath, and who saith :—

I have been nine years in Long Harbour. I was here in January last, when the American seine was destroyed. It was destroyed on account of barring herring on Sunday. I was watching their proceedings from the point opposite; they laid their seine out and went to haul it in because the English would not haul it in on Sunday, and the bay was full of fish. The fish would have remained. The Americans generally employ some Englishmen to work with their own crew; they don't generally lay out their own seines. Captain Dago and Samuel Jacobs would persist in hauling, and hauled once and barred them in Farrel's net. Farrel was working for him, and had been barring herrings for several days, perhaps about a fortnight, by the Americans' orders. I believe it is illegal to bar herrings; it destroys the fish, but we have no power to stop it. It is no good telling a magistrate; the Americans take no notice of them. The nearest magistrate to this place is at Harbour Briton, twenty-five or thirty miles off. The only thing to let people know what is right and what is wrong is to have a notice board in each harbour, and some heavy fine imposed on law-breakers.

James Tamel is harbour-master.

I don't know if he is a special constable or not; but Mr. Enburn told me he was to see the Yankees did not heave their ballast over, and that their measures were correct, but they would not listen to him. They hove their ballast overboard, and had tubs 22 inches in depth instead of 16 inches; in these tubs they measured the fish they bought from the Newfoundlanders, and they would not alter them. The fish are sold to the Americans by the barrel; for 100 barrels it is usual to pay for 90, which is considered fair, but a flour barrel cut down to 16 inches in depth is the proper measure; they only cut them to 22 inches or more, and insist on having them filled. The vessels from St. John's and Halifax always take the proper size tubs, but the Americans constantly overreach us, and choose the most ignorant to deal with, or those who are not so sharp as themselves. They generally otherwise behave well, and we have never had any quarrel with them before, but have always been on good terms. If the natives did not see the laws carried out themselves there might as well be no laws, for there is often no one else to enforce it. It is the only way I know, and is pretty well understood by both foreigners and natives.

(Signed) RICHARD HENDRIKEN, his ⋈ mark.

Sworn before me at Tickle Beach, Long Harbour, this 14th day of June, A.D. 1878.
(Signed) GEO. L. SULIVAN,
Captain and Senior Officer on the Coast of Newfoundland.

Inclosure 7 in No. 13

Deposition of Ambrose Pope.

THE examination of Ambrose Pope, of Stone Cove, Long Harbour, taken upon oath, and who saith :—I was at Tickle Beach on a Sunday in January last. I don't know the date. I saw the Newfoundlanders hauling a seine and leave it on the beach; it was torn in hauling it on shore. It was evening when I saw the seine hauled on the beach, and it was laying there when I left the beach.

I don't know if any was carried away. I don't know anything more about it. The Americans we thought had no right to haul their seines on Sunday.

(Signed) AMBROSE POPE, his ⋈ mark.

Sworn before me at Anderson Cove, this 15th day of June, A.D. 1878.
(Signed) GEO. L. SULIVAN,
Captain and Senior Officer on the Coast of Newfoundland.

Inclosure 8 in No. 13.

Deposition of James Tharnell.

THE examination of James Tharnell, of Anderson's Cove, Long Harbour, taken upon oath, and who saith :—I am a special constable for this neighbourhood. I did not see anything of the alleged outrage last January, but I heard something about it. I believe some of the men named Pope were on the beach, but which I do not know.

Q. Have you formed any opinion as constable as to the cause of the dispute ?—*A.* Mr. Snellgrove, of the Customs, and myself, from what we were informed of the circumstances, were of opinion that the Americans were acting illegally in shooting their seines, but notwithstanding that nothing would have been said to them for that had it not been on the Sabbath day. The men forbid them hauling seines on the Sabbath day, and told them to take them up or they would take them up for them, and what annoyed them so much was that the Americans drew their revolvers; probably if it had not been for the threat of the revolvers, the seines would only have been taken up and not torn. They asked him three times to take them up before they did so themselves.

The people were not aware that it was illegal to set the seines that time of the year, and were only prompted to their act by the fact that it was Sunday. We all consider it to be the greatest loss to us for the Americans to bring those large seines to catch herring. The seines will hold 2,000 or 3,000 barrels of herring, and, if the soft weather continues, they are obliged to keep them in the seines for, sometimes, two or three weeks, until the frost comes, and by this means they deprive the poor fishermen of the bay of their chance of catching any with their small nets, and then, when they have secured a sufficient quantity of their own, they refuse to buy of the natives.

If the Americans had been allowed to secure all the herrings in the bay for themselves, which they could have done that day, they would have filled all their vessels, and the neighbouring fishermen would have lost all chance on the following week-days. The people believed that they (the Americans) were acting illegally in thus robbing them of their fish. If the natives had not defended themselves by enforcing the law, there was no one else to do it. I was sworn in as a special constable by Mr. Herbert, the magistrate of Harbour Briton, last October.

On the arrival of the Americans I showed my authority, signed by Mr. Herbert, and they laughed at it, and said it had no stamp, and they didn't, therefore, recognize it.

I told them the lawful size of a tub—sixteen gallons—and they said they required a brand on it. I have no means of branding tubs; there is no means to brand on the coast, and it is not the custom. I don't know if it is the custom at St. John's to brand them. I have cautioned the Americans about throwing ballast out inside Hoodey's Island, where it is very shallow; but they have continually done so notwithstanding up to this. There are now several shallow places there and in the cove, where the Americans

have been in the habit of throwing out their ballast, and small vessels now, of twenty-eight to thirty tons, repeatedly ground on this ballast there thrown out by the Americans. I believe there was less thrown out last winter after I spoke to them about it; but I have no power, moral or otherwise, to enforce any Rules, and they don't seem to care much about me.

(Signed) JAMES THARNELL, his ⋈ mark.

Sworn before me at Tickle Beach, Long Harbour, this 14th day of June, A.D. 1878.
(Signed) GEO. L. SULIVAN,
Captain and Senior Officer on the Coast of Newfoundland.

Inclosure 9 in No. 13.

Deposition of George Snellgrove.

THE examination of George Snellgrove of St. Jacques, Fortune Bay, taken upon oath, and who saith :—I am sub-collector of Customs for the district of Fortune Bay. I went to Long Harbour on the 8th January, two days after the dispute between the Americans and Newfoundland fishermen had taken place.

Captains Jacobs and Dago informed me that an American seine had been taken up by the Newfoundland fishermen on the Sunday previous and destroyed; that the seine belonged to Dago and McCauley, and that they had other seines out, but they had taken them up when they found that the other was destroyed. One of these Captains said that the fishermen had threatened to take up the seine if they didn't themselves. Captain Jacobs showed me a revolver, and said that he had threatened them with it. I remonstrated with him for doing so, when he replied that I couldn't suppose that he was really going to use it; that he only did it to frighten them; he had taken care there were no charges in it. I said to him, "Do you suppose that you would have got off that beach alive if you had used it;" and he said he never intended to use it.

Captain Warren told me that on the fishermen coming to haul in the seine that Captain Dago hailed them to say that they would take the seine in themselves if they waited; and that he (Warren) said to Dago, "It is too late now; you ought to have done it when they told you first; they are too excited now."

I then communicated with the natives of the place, who related the circumstances, and gave their reasons that the Americans were fishing illegally, and would have secured the whole of the fish which they considered part of their property; and that they would have been distressed for the winter. They told me that they had at first told them to take up their seines, and they refused; that Captain Jacobs had threatened them with a revolver, but, notwithstanding this, they had taken up one and destroyed it.

I saw Captain Jacobs several times afterwards, and in the course of conversation with him I said, if I had been there you would not have been allowed to shoot your seine. "What!" he said, "could you prevent me?" I said "Yes;" I should have seen the law carried out and taken your seine and boat, which you forfeited for breaking the law, and I told him I would take the fine as well of 200 dollars, at which he said--"Do you think I care about paying the fine; I could pay the fine," by which I understood him to mean that the fine was not worth considering, as the quantity of fish would have more than paid for it.

Q. Was there anyone in Long Harbour on the Sunday referred to who could have enforced the law, and protected the interests of the fishermen?—*A.* No.

Q. Is it not illegal shooting seines at all at that time of the year?—*A.* There is an Act to that effect, but it has never been carried out in Fortune Bay, nor are the natives aware of its illegality at that time of the year, nor would they have molested the Americans had it not been Sunday, and which they knew it to be not only the law but the infallible custom to desist from fishing on that day.

Q. Has there ever been, to your knowledge before, quarrelsome disputes or ill-feeling between the Americans and native fishermen?—*A.* No, never; always on the best terms.

Q. How long did you remain in Long Harbour?—*A.* I remained till the 12th January.

Q. Did you observe during your stay in Long Harbour whether the three American Captains remained and continued to fish or not?—*A.* I did, and I know that they continued to fish; they were not molested as far as I know.

Q. Was there anything to cause them to leave the harbour, or to cease fishing?—

A. No, and they had not left it when I left; there were no further disputes to my knowledge afterwards.

(Signed) GEO. THOS. SNELLGROVE,
Sub-Collector of Her Majesty's Customs.

Sworn before me at St. Jacques, Fortune Bay, the 17th day of June, A.D. 1878.
(Signed) GEO. L. SULIVAN,
Captain and Senior Officer on the Coast of Newfoundland.

Inclosure 10 in No. 13.

Deposition of Silas Fudge.

THE examination of Silas Fudge, of Bellaram, Fortune Bay, taken upon oath, and who saith:—

I am mate of my father's schooner. I witnessed the disturbance at Long Harbour on Sunday the 6th January last. I am certain that it was on the 6th January it happened.

I saw the seines in the water; two of them American and one English. We told them to take them up.

John Hickey, the Englishman, took his up; McCauley, the American, who owned the other, refused to take his up. There was another seine, which I did not see, in the water, belonging to Captain Jacobs. He had his in the boat at the time. He had shot once and discharged his seine into Thomas Farrel's, who was working for him, and was going to shoot his seine out again. I saw it in the boat ready for shooting when the crowd came over. The first spoke to McDonald, and asked him if he would take his seine up, and he said, "Yes, if I am forced;" and they then went to Hickey, and told him to take his up, and he took it up; then they went to McCauley and asked him to take his up, and he said he would not. They then told him that if he didn't they would take it up for him. They then went to Jacobs, and told him they would let go the herring out of the seine of Tom Farrel, who was an Englishman. Jacobs then drew a revolver, and threatened to shoot any man who touched his property. The crowd were very excited. I saw them haul McCauley's seine in, and tear it up. That was the end of the row that day. Farrel had, during the previous week, secured herring in the American seine, and then had placed his own round them, and taken up the American's. This was done before Sunday. It was in this seine of Farrel's that Jacobs emptied his own seine.

Q. You knew that the American fish were in the Englishman's seine; why was Farrel's seine allowed to remain?—*A.* Because he had not shot it on the Sunday, but on the week-day.

Q. Are you aware that it was illegal to use seines to catch herrings that time of the year?—*A.* No; I don't know.

Q. Did you believe it to be lawful to use seines for herring that time of the year?—*A.* Yes, I thought so, as far as I could understand. I suppose the Americans thought, with reference to the destruction of the seine, that we did it in envy of them, but it wasn't; but it was from regard to the Sabbath, on which day we never fish.

Q. How far from the beach were the American seines shot?—*A.* Close to the beach; the hauling lines were on the beach.

The Americans remained in the bay after the occurrence for several days; they were never molested or interfered with afterwards; they continued to fish until they left the harbour; they were not compelled to leave the harbour, but I believe they were unsuccessful on account of the bad weather and for want of frost.

(Signed) SILAS FUDGE.

Sworn before me at St. Jacques, Fortune Bay, the 17th day of June, A.D. 1878.
(Signed) GEO. L. SULIVAN,
Captain and Senior Officer on the Coast of Newfoundland.

Inclosure 11 in No. 13.

Deposition of John Cluett.

THE examination of John Cluett, of Belloram, Fortune Bay, taken upon oath, and who saith:—

I was in Long Harbour one Sunday in January last.

Q. Did you see anything of the quarrel between the Americans and other fishermen?—*A.* I did.

Q. Tell me what you know of it.—*A.* They commenced hauling herrings on Sunday, about mid-day. The first American seine shot was Captain Jacob's; there were two more American seines shot. There was an Englishman working for the Americans who had a seine moored there for several days, but it was not shot or attempted to be hauled on the Sunday.

The first seine we came to was Captain McDonald's; they asked him if he was going to take his seine up. He said, "If we are forced to take it up we will;" and we told him if he didn't take it up we would take it up for him.

The next we came to was a man belonging to Fortune Bay, called John Hickey, an Englishman, and we told him to take up the seine, and he said he would take it up and he did. The next we came to was Peter McCauley, and we told him the same as the others, and he refused to take it up. Then we went on to Captain Jacobs, and when we got to him he was in his skiff, a little off the shore: he had just hauled herring and shot them into Farrel's seine, who was working for him; they remonstrated about breaking the law and fishing on Sunday; there was an altercation between us; he said he would defend his seine if they touched it in a threatening way. I don't know what he said: there was a great crowd, and he was in an awful rage, and I heard that he drew a revolver, but I didn't see it; he then took his seine on board; then all the seines were taken up but Farrel's and McCauley's. Farrel's seine was not touched because it was not laid on that day, and they therefore let it alone, although Jacobs' fish were in it; but McCauley's seine was taken up and destroyed, and that is all I know.

Q. Did the American Captain remain in the harbour after?—*A.* Yes; I think about a fortnight, but perhaps more. They continued to fish and haul herring on week-days but not on Sunday again.

Q. Were they ever molested or interfered with in any way subsequently or not?—*A.* Not to my knowledge; they remained there as long as they chose, and there was never any more dispute. I don't know that it is illegal to haul seines that time of the year. I have heard of the law, but I have never seen it carried out; it had nothing to do with this dispute. The only cause of it was on account of its being Sabbath. I never saw herrings hauled on a Sunday before, either by American or Englishman.

The Americans, by hauling herring that day when the Englishmen could not, were robbing them of their lawful and just chance of securing their share in them, and, further, had they secured all they had barred they could have, I believe, filled every vessel of theirs in the bay. They would have probably frightened the rest away, and it would have been useless for the English to stay, for the little left for them to take they could not have sold.

The Americans would have a better chance than the English any day on account of the size of their nets, but the English would have had their fair chance the next day, and they thought they were justified, in the absence of any proper authority or power to enforce the law, to defend their rights themselves. There is no power or authority to enforce the law on all parts of the coast, and none nearer to Long Harbour than about 30 or 40 miles.

If there was not a good feeling and mutual understanding between all fishermen, whether foreigners or Englishmen, there would be no law carried out or upheld at all, but there was always prior to this a very good feeling and a mutual understanding between the Americans and ourselves, and I don't know anything to prevent the same in future. After the destruction of McCauley's seine some of the American schooners, one of which was Peter Smith's, drifted about the harbour among the fishermen's nets when blowing hard, with their anchors hanging to their bows, and destroyed several nets. I don't know if this was done out of revenge or not. I don't think it was done purposely.

(Signed) JOHN CLUETT.

Sworn before me at St. Jacques, Fortune Bay, this 17th day of June, A.D. 1878.

(Signed) GEO. L. SULIVAN,

Captain and Senior Officer on the Coast of Newfoundland.

No. 14.

Sir J. Pauncefote to Mr. Malcolm.

Sir, *Foreign Office, July* 29, 1878.

WITH reference to your letter of the 26th April last, I am directed by the Marquis of Salisbury to transmit to you, to be laid before Her Majesty's Secretary of State for the Colonies, the accompanying letter, together with its inclosures, which has been received from the Admiralty, addressed to Vice-Admiral Inglefield by Captain Sulivan, of Her Majesty's ship "Sirius," who had been directed to hold an inquiry on the spot into the circumstances connected with the quarrel which took place in January last between English and American fishermen in Fortune Bay;* and I am to request that, in laying these papers before Sir M. Hicks Beach, you will move him to favour Lord Salisbury with his opinion as to what instructions should now be addressed to Her Majesty's Minister at Washington upon the subject.

I am to request that the inclosures to this letter, which are sent in original, may be returned to this Office with your reply.

I am, &c.

(Signed) JULIAN PAUNCEFOTE.

No. 15.

Mr. Herbert to Sir J. Pauncefote.—(Received August 5.)

Sir, *Downing Street, August* 3, 1878.

WITH reference to the letter from this Department of the 26th April and to previous correspondence, respecting the interference with United States' fishermen by fishermen of Newfoundland which took place in January last at Long Harbour, Fortune Bay, I am directed by the Secretary of State for the Colonies to transmit to you, to be laid before the Secretary of State for Foreign Affairs, a copy of a further despatch from the Governor of Newfoundland on the subject, inclosing a Report from Captain Sulivan, R.N., the Senior Naval Officer on that station, of the result of his inquiry into the matter, together with copies of the depositions on which the Report is founded.

I am also to inclose copies of two letters from Captain Sulivan to the Commander-in-chief on the North American station in explanation of the Report, which have been communicated to this Department by the Admiralty. Sir Michael Hicks Beach desires me to suggest, for the consideration of the Marquis of Salisbury, that such of the papers in the case as his Lordship may think proper should now be communicated to the United States' Minister, in answer to the representation which he has made to Her Majesty's Government on the subject, and that it should be pointed out to him that on the occasion referred to the United States' fishermen would appear to have been committing three distinct breaches of the laws of the Colony, but that, nevertheless, no violence was used by the fishermen of Newfoundland, except in the case of one vessel, whose master refused to comply with the request which was made to him that he would act in accordance with the law of the Colony, which prohibits fishing on Sunday.

I am, &c.

(Signed) ROBERT G. W. HERBERT.

P.S.—Since the above was written, your letter of the 29th July has been received, the inclosures to which are herewith returned.

Inclosure in No. 15.

Governor Sir J. Glover to Sir M. Hicks Beach.

Sir, *Government House, Newfoundland, June* 26, 1878.

WITH reference to my despatches of the 11th and 25th February, 1878, reporting the destruction of an American seine at Long Harbour, Fortune Bay, in

* Inclosures 2 to 11 in No. 13.

January last, I have the honour to inclose copies of a Report from Captain G. L. Sulivan, R.N., Her Majesty's ship "Sirius," Senior Naval Officer, together with the depositions on which the Report is based.

2. I have nothing to add to my former despatches, but would observe that the full Report now forwarded only confirms the opinion expressed in my despatch of the 11th February, that the Americans were acting illegally in using their seines as they were when the above-named occurrence took place.

I have, &c.
(Signed) JOHN H. GLOVER.

[For Inclosures, see Inclosures 2 to 11 in No. 13.]

No. 16.

The Marquis of Salisbury to Mr. Welsh.

Sir, *Foreign Office, August* 23, 1878.

HER Majesty's Government have had under their consideration your letter of the 19th March, making representations relative to certain disturbances which occurred in January last between British and United States' fishermen at Fortune Bay on the coast of Newfoundland, and requesting, in accordance with the instructions of your Government, that an investigation might be made into the alleged facts of the case; and I have now the honour to transmit to you, for your information and for communication to your Government, the accompanying copy of a Report drawn up by Captain Sulivan, R.N., of Her Majesty's ship "Sirius," the officer entrusted with the duty of instituting an inquiry into the matter on the spot.*

You will perceive that the Report in question appears to demonstrate conclusively that the United States' fishermen on this occasion had committed three distinct breaches of the law, and that no violence was used by the Newfoundland fishermen except in the case of one vessel, whose master refused to comply with the request which was made to him, that he should desist from fishing on Sunday in violation of the law of the Colony and of the local custom, and who threatened the Newfoundland fishermen with a revolver, as detailed in paragraphs 5 and 6 of Captain Sulivan's Report.

I have, &c.
(Signed) SALISBURY.

No. 17.

Mr. Welsh to the Marquis of Salisbury.—(Received August 24.)

My Lord, *Legation of the United States, London, August* 24, 1878.

I HAVE the honour to acknowledge the receipt of your note of the 23rd instant, inclosing the Report of Captain Sulivan, R.N., in relation to the fishery disturbances at Newfoundland; and I beg to inform your Lordship that I shall take an early opportunity of forwarding copies of the note and of the Report to the Department of State.

I have, &c.
(Signed) JOHN WELSH.

No. 18.

Mr. Meade to Sir J. Pauncefote.—(Received September 4.)

Sir, *Downing Street, September* 4, 1878.

WITH reference to a letter from this Department of the 3rd August, and to previous correspondence respecting the interference with United States' fishermen

* Inclosure 3 in No. 13.

by fishermen of Newfoundland, which took place in January last at Long Harbour, Fortune Bay, I am directed by the Secretary of State for the Colonies to transmit to you, for the information of the Marquis of Salisbury, a copy of a despatch from the Governor of Newfoundland, written in reply to one in which Sir Michael Hicks Beach suggested whether it might not be desirable that some steps should be taken for making the fishermen at Long Harbour better acquainted with the law which prohibits the using of seines for taking herring on or near the coasts of the Colony at any time between the 20th day of October and the 25th day of April in each year

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

Inclosure in No. 18.

Governor Sir J. Glover to Sir M. Hicks Beach.

Sir, *Government House, Newfoundland, August* 22, 1878.

I HAVE the honour to acknowledge the receipt of your despatch dated 30th July, 1878, which I have communicated to my Government, who will cause the necessary steps to be taken in order that the fishermen of Long Harbour may become better acquainted with the fishery laws of Newfoundland.

I have, &c.
(Signed) JOHN H. GLOVER.

No. 19

Mr. Evarts to Mr. Welsh.—(Communicated to the Marquis of Salisbury by Mr. Welsh, October 12.)

Sir, *Department of State, Washington, September* 28, 1878.

I RECEIVED in due course your despatch of the 24th August ultimo, inclosing Lord Salisbury's reply of the British Government to the representations that had been made to it as early as March last by you, under instructions from the Department.

I must understand Lord Salisbury's note accompanying the copy of Captain Sulivan's Report, which he communicates to this Government, as adopting that naval officer's conclusions of fact respecting the violent injuries which our fishing fleet suffered at the hands of the Newfoundland fishing population at Fortune Bay in January of this year, as the answer which Her Majesty's Government makes to the representations laid before it on our part, verified by the sworn statements of numerous and respectable witnesses.

His Lordship has not placed in our possession the proofs or depositions which form the basis of Captain Sulivan's conclusions of fact, and I am unable, therefore, to say whether, upon their consideration, the view which this Government takes of these transactions, upon the sworn statements of our own respectable citizens, would be at all modified. In the absence of these means of correcting any mistakes or false impressions which our informants may have fallen into in their narrative of the facts, it is impossible to accept Captain Sulivan's judgment upon undisclosed evidence as possessing judicial weight.

You will, therefore, lay before Her Majesty's Government the desire which this Government feels to be able to give due weight to this opposing evidence, before insisting upon the very grave view of these injuries which, at present, its unquestionable duty to the interests which have suffered them, and its confidence in the competency and sobriety of the proofs in our possession, compels this Government to take. Should Her Majesty's Government place a copy of the evidence upon which Captain Sulivan bases his Report in your hands, you will lose no time in transmitting it for consideration. I regret that any further delay should thus intervene to prevent an immediate consideration of the facts in the matter by the two Governments in the presence of the same evidence of those facts for their scrutiny and judgment.

But, a careful attention to Lord Salisbury's note discovers what must be regarded as an expression of his views, at least of the authority of Provincial legis-

lation and administrative jurisdiction over our fishermen within the three-mile line, and of the restrictive limitations upon their rights in these fishing-grounds under the Treaty of Washington. Upon any aspect of the evidence, on one side and the other. as qualifying the violent acts from which our fishing fleet has suffered at the hands of the Newfoundland coast fishermen, the views thus intimated seem to this Government wholly inadmissable, and do not permit the least delay, on our part, in frankly stating the grounds of our exception to them.

The Report of Captain Sulivan presents, as a justificatory support of the action of the Newfoundland shore fishermen in breaking up the operations of our fishing fleet inside the three-mile line, at the times covered by these transactions, the violation of certain municipal legislation of the Newfoundland Government which, it is alleged, our fishermen were in the act of committing when the violent interruption of their industry occurred.

I do not stop to point out the serious distinction between the official and judicial execution of any such laws and the orderly enforcement of their penalties after solemn trial of the right, and the rage and predominant force of a volunteer multitude driving off our peaceful occupants of these fishing grounds pursuing their industry under a claim of right secured to them by Treaty. I reserve this matter for a complete examination when the conflicting proofs are in my possession. I shall assume, for my present purpose, that the manner of exerting this supposed provincial authority was official, judicial, and unexceptionable.

I will state these justifications for the disturbance of our fishing fleet in Captain Sulivan's own language, that I may not even inadvertently impute to Lord Salisbury's apparent adoption of them any greater significance than their very language fairly imports.

Captain Sulivan assigns the following violations of law by our fishermen as the grounds of rightful interference with them on the occasion in question:—

"1. That the Americans were using seines for catching herring on the 6th January, 1878, in direct violation of title xxvii, chap. 102, sect. 1 of the Consolidated Statutes of Newfoundland, viz., 'No person shall haul or take herring by or in a seine, or other such contrivance, on or near any part of the coast of this Colony or of its dependencies, or in any of the bays, harbours, or other places therein, at any time between the 20th day of October and the 25th day of April.'

"2. That the American captains were setting and putting out seines, and hauling and taking herring, on Sunday, the 6th day of January, in direct violation of sect. 4, chap. vii of the Act passed 26th April, 1876, entitled 'An Act to amend the Law relating to the Coast Fisheries,' viz., 'No person shall, between the hours of 12 o'clock on Saturday night and 12 o'clock on Sunday night, haul or take any herring, caplin, or squid with net seines, bunts, or any such contrivances for the purpose of such hauling or taking.'

"3. That they were barring fish, in direct violation of the continuance of the same Act—title xxvii, chap. 102, sect. 1 of the Consolidated Statutes of Newfoundland—'or at any time use a seine or other contrivance for the catching or taking of herrings, except by way of shooting and forthwith hauling the same.'

"4. That, contrary to the terms of the Treaty of Washington, in which it is expressly provided that they do not interfere with the rights of private property, or with British fishermen in the peaceable use of any part of the said coasts in their occupancy for the same purpose (see Article XVIII of the above-named Treaty), they were fishing illegally, interfering with the rights of British fishermen and their peaceable use of that part of the coast then occupied by them, and of which they were actually in possession, their seines and boats, their huts, gardens, and land granted by Government, being situated thereon."

The facts which enter into the offences imputed under the first, second, and third heads of Captain Sulivan's statement, and such offences thus made out, would seem to be the only warrant for his conclusion under his fourth head, that the United States' fishermen have exceeded their Treaty right, and, in their actua prosecution of their fishing, were, when interrupted by the force complained of, interfering with the rights of private property, or with British fishermen in the peaceable use of that part of the coast then being in their occupancy for the same purpose, contrary to the proviso of Article XVIII of the Treaty of Washington.

It is no part of my present purpose to point out that this alleged infraction o. the reserved rights of the local fishermen does not justify the methods of correction

or redress used to drive off our fishermen and break up their prosecution of the fishing. This may be reserved also for discussion when both Governments have a fuller knowledge of the actual circumstances of the transaction.

In transmitting to you a copy of Captain Sulivan's Report, Lord Salisbury says: "You will perceive that the Report in question appears to demonstrate conclusively that the United States' fishermen on this occasion had committed three distinct breaches of the law, &c."

In this observation of Lord Salisbury this Government cannot fail to see a necessary implication that Her Majesty's Government concedes that in the prosecution of the right of fishing accorded to the United States by Article XVIII of the Treaty, our fishermen are subject to the local regulations which govern the coast population of Newfoundland in their prosecution of their fishing industry, whatever those regulations may be, and whether enacted before or since the Treaty of Washington.

The three particulars in which our fishermen are supposed to be constrained by actual legislation of the province cover in principle every degree of regulation of our fishing industry within the three-mile line which can well be conceived. But they are in themselves so important and so serious a limitation of the right secured by the Treaty as practically to exclude our fishermen from any profitable pursuit of the right, which, I need not add, is equivalent to annulling or cancelling, by the Provincial Government, of the privilege accorded by the Treaty with the British Government.

If our fishing fleet is subject to the Sunday laws of Newfoundland, made for the coast population; if it is excluded from the fishing-grounds for half the year, from October to April; if our "seines and other contrivances" for catching fish are subject to the regulation of the Legislature of Newfoundland, it is not easy to see what firm or valuable measures for the privilege of Article XVIII as conceded to the United States, this Government can promise to its citizens under the guarantee of the Treaty.

It would not, under any circumstances, be admissible for one Government to subject the persons, the property, and the interests of its fishermen to the unregulated regulations of another Government, upon the suggestion that such authority will not be oppressively or capriciously exercised, nor would any Government accept as an adequate guarantee of the proper exercise of such authority over its citizens by a foreign Government, that presumptively regulations would be uniform in their operation upon the subjects of both Governments in similar case. If there are to be regulations of a common enjoyment, they must be authenticated by a common or a joint authority.

But, most manifestly, the subject of the regulation of the enjoyment of the shore fishery by the resident Provincial population, and of the inshore fishery by our fleet of fishing-cruizers, does not tolerate the control of so divergent and competing interests by the domestic legislation of the Province. Protecting and nursing the domestic interest at the expense of the foreign interest, on the ordinary motives of human conduct, necessarily shape and animate the local legislation. The evidence before the Halifax Commission makes it obvious that, to exclude our fishermen from catching bait, and thus compel them to go without bait, or buy bait at the will and price of the Provincial fishermen, is the interest of the local fishermen, and will be the guide and motive of such domestic legislation as is now brought to the notice of this Government.

You will, therefore, say to Lord Salisbury that this Government cannot but express its entire dissent from the view of the subject that his Lordship's note seems to indicate. This Government conceives that the fishery rights of the United States, conceded by the Treaty of Washington, are to be exercised wholly free from the restraints and regulations of the Statutes of Newfoundland, now set up as authority over our fishermen, and from any other regulations of fishing now in force or that may hereafter be enacted by that Government.

It may be said that a just participation in this common fishery by the two parties entitled thereto, may, in the common interest of preserving the fishery and preventing conflicts between the fishermen, require regulation by some competent authority. This may be conceded. But should such occasion present itself to the common appreciation of the two Governments, it need not be said that such competent authority can only be found in a Joint Convention, that shall receive the approval of Her Majesty's Government and our own. Until this arrangement shall be consummated, this Government must regard the pretension that the legislation

of Newfoundland can regulate our fishermen's enjoyment of the Treaty right as striking at the Treaty itself. It asserts an authority on one side, and a submission on the other, which has not been proposed to us by Her Majesty's Government, and has not been accepted by this Government. I cannot doubt that Lord Salisbury will agree that the insertion of any such element in the Treaty of Washington would never have been accepted by this Government, if it could reasonably be thought possible that it could have been proposed by Her Majesty's Government. The insertion of any such proposition by construction now is equally at variance with the views of this Government.

The representations made to this Government by the interests of our citizens affected, leave no room to doubt that this assertion of authority is as serious and extensive in practical relations as it is in principle. The rude application made to the twenty vessels in Fortune Bay of this asserted authority, in January last, drove them from the profitable prosecution of their projected cruizes. By the same reason the entire inshore fishery is held by us upon the same tenure of dependence upon the Parliament of the Dominion or the Legislatures of the several Provinces.

I cannot but regret that this vital question has presented itself so unexpectedly to this Government, and at a date so near the period at which this Government, upon a comparison of views with Her Majesty's Government, is to pass upon the conformity of the proceedings of the Halifax Commission with the requirements of the Treaty of Washington. The present question is wholly aside from the considerations bearing upon that subject, and which furnishes the topic of my recent despatch.

In the opinion of this Government it is essential that we should at once invite the attention of Lord Salisbury to the question of Provincial control over the fishermen of the United States, in their prosecution of the privilege secured to them by the Treaty. So grave a question, in its bearing upon the obligations of this Government under the Treaty, makes it necessary that the President should ask from Her Majesty's Government a frank avowal or disavowal of the paramount authority of Provincial legislation to regulate the enjoyment by our people of the inshore fishery, which seems to be intimated, if not asserted, in Lord Salisbury's note.

Before the receipt of a reply from Her Majesty's Government it would be premature to consider what should be the course of this Government should this limitation upon the Treaty privileges of the United States be insisted upon by the British Government as their construction of the Treaty.

You will communicate this despatch to Lord Salisbury by reading the same to him, and leaving with him a copy.

I am, &c.
(Signed) WM. M. EVARTS.

No. 20.

The Marquis of Salisbury to Mr. Welsh.

Sir, *Foreign Office, November 7,* 1878.

HER Majesty's Government have had under their consideration the despatch from Mr. Evarts, dated the 28th September, and communicated to me on the 12th ultimo, respecting the complaints made by the Government of the United States of the injuries sustained by American fishermen in Fortune Bay in January last.

This despatch is in reply to my letter of the 23rd August, in which I forwarded a copy of the Report furnished by Captain Sulivan, of Her Majesty's ship "Sirius," on the occurrences in question. Mr. Evarts now remarks that the United States' Government have not been put in possession of the depositions which form the basis of that Report, and are unable, therefore, to say whether, upon their consideration, the view which the Government of the United States takes of these transactions upon the sworn statements of their own citizens would be at all modified.

Her Majesty's Government have not had the opportunity of considering the statements in question; but the depositions which accompanied Captain Sulivan's Report, and which I now have the honour to forward,* appeared to them, in the absence of other testimony, to be conclusive as regards the facts of the case.

* Inclosures 2 to 11 in No. 13.

Apart, however, from the facts, in respect to which there appears to be a material divergence between the evidence collected by the United States' Government and that collected by the Colonial authorities, Mr. Evarts takes exception to my letter of the 23rd on the ground of my statement that the United States' fishermen concerned have been guilty of breaches of the law. From this he infers an opinion on my part that it is competent for a British authority to pass laws, in supersession of the Treaty, binding American fishermen within the three-mile limit. In pointing out that the American fishermen had broken the law within the territorial limits of Her Majesty's dominions, I had no intention of inferentially laying down any principles of international law; and no advantage would, I think, be gained by doing so to a greater extent than the facts in question absolutely require.

I hardly believe, however, that Mr. Evarts would in discussion adhere to the broad doctrine which some portions of his language would appear to convey, that no British authority has a right to pass any kind of laws binding Americans who are fishing in British waters; for if that contention be just, the same disability applies *à fortiori* to any other Power, and the waters must be delivered over to anarchy. On the other hand, Her Majesty's Government will readily admit—what is, indeed, self-evident—that British sovereignty, as regards those waters, is limited in its scope by the engagements of the Treaty of Washington, which cannot be modified or affected by any municipal legislation. I cannot anticipate that with regard to these principles any difference will be found to exist between the views of the two Governments.

If, however, it be admitted that the Newfoundland Legislature have the right of binding Americans who fish within their waters by any laws which do not contravene existing Treaties, it must further be conceded that the duty of determining the existence of any such contravention must be undertaken by the Governments, and cannot be remitted to the discretion of each individual fisherman. For such a discretion, if exercised on one side can hardly be refused on the other. If any American fisherman may violently break a law which he believes to be contrary to Treaty, a Newfoundland fisherman may violently maintain it if he believes it to be in accordance with Treaty. As the points in issue are frequently subtle, and require considerable legal knowledge, nothing but confusion and disorder could result from such a mode of deciding the interpretation of the Treaty.

Her Majesty's Government prefer the view that the law enacted by the Legislature of the country, whatever it may be, ought to be obeyed by natives and foreigners alike who are sojourning within the territorial limits of its jurisdiction; but that if a law has inadvertently been passed which is in any degree or respect at variance with rights conferred on a foreign Power by Treaty, the correction of the mistake so committed, at the earliest period after its existence shall have been ascertained and recognized, is a matter of international obligation.

It is not explicitly stated in Mr. Evart's despatch that he considers any recent Acts of the Colonial Legislature to be inconsistent with the rights acquired by the United States under the Treaty of Washington. But if that is the case, Her Majesty's Government will, in a friendly spirit, consider any representations he may think it right to make upon the subject, with the hope of coming to a satisfactory understanding.

I have, &c.
(Signed) SALISBURY.

No. 21.

Mr. Welsh to the Marquis of Salisbury.—(*Received November* 11.)

My Lord, *Legation of the United States, London, November* 9, 1878.

I HAVE to acknowledge the receipt of your Lordship's letter of the 7th instant, in reply to Mr. Evarts' despatch of the 28th September, in relation to injuries sustained by American fishermen in Fortune Bay in January last. I shall transmit to Mr. Evarts, by the mail to-day, the printed copy of your Lordship's communication, for which I am indebted to the courtesy of the Foreign Office.

I have, &c.
(Signed) JOHN WELSH.

NORTH AMERICA. No. 3 (1878).

CORRESPONDENCE respecting Occurrences at Fortune Bay, Newfoundland, in January 1878.

Presented to both Houses of Parliament by Command of Her Majesty. 1878.

LONDON:
PRINTED BY HARRISON AND SONS.

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NORTH AMERICA. No. 2 (1878).

CORRESPONDENCE

RESPECTING THE

AWARD

OF THE

HALIFAX FISHERIES COMMISSION.

Presented to both Houses of Parliament by Command of Her Majesty.
1878.

LONDON:
PRINTED BY HARRISON AND SONS.
[C.—2183.] *Price* 3*d.*

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No. 1.

Mr. Evarts to Mr. Welsh.—(*Communicated to the Marquis of Salisbury by Mr. Welsh, October* 10, 1878.)

Sir, *Department of State, Washington, September* 27, 1878.

I AM directed by the President to present to the attention of Her Majesty's Government the sentiments of this Government respecting the result of the deliberations of the Commission, lately sitting at Halifax, for the determination of the question submitted to it under the Articles of the Treaty of Washington relating to the fisheries. It is the purpose of the present communication to put you fully in possession of these sentiments that you may impart them to Lord Salisbury with the same frankness that they are disclosed to yourself.

It is a matter of sincere regret to the President that the actual result of the deliberations of this Commission has been such as to require from this Government the course of observation upon the same, which it becomes my duty to submit to the consideration of Her Majesty's Government. For reasons of paramount importance to the interests of the two countries, in their future treatment of the subject of the fisheries, a candid statement of the views of this Government, as to the position in which the action of the Commission has placed those interests, is due alike to the British Government and ourselves. Nor are these views expressive only of the sentiments of the Executive Department of the Government. Upon the papers being laid before Congress for its necessary action, upon the question of making an appropriation from the Treasury to meet what should prove to be the proper obligations of the Government under the Treaty, Congress, with great unanimity, concurred with the Executive in the opinion that the attention of the British Government should be invited to the subject of the Award, as looked upon by this Government, in advance of the final action of the Executive in reference to its payment. Accordingly the sum appropriated by Congress to meet the Award is, by the "Appropriation Act" "placed under the direction of the President of the United States with which to pay the Government of Her Britannic Majesty the amount awarded by the Fisheries Commission, lately assembled at Halifax, in pursuance of the Treaty of Washington, if, after correspondence with the British Government on the subject of the conformity of the Award to the requirements of the Treaty, and to the terms of the question thereby submitted to the Commission, the President shall deem it his duty to make the payment without further communication with Congress."

The occasion for this correspondence with the British Government arises from the great importance of reaching a complete and explicit understanding between the two Governments, as to the conformity of the Award made by the Commission to the terms of the Treaty of Washington by which its authority and jurisdiction are communicated and defined. If the Award in respect to the fisheries had relation only to the sum of the payment involved, considerable as that is, the Government might prefer to waive any discussion which could affect no continuing and permanent interests of the two countries, and would, therefore, comprehend only such considerations as would touch the principles or elements of computation applied by the Commission in arriving at a pecuniary amount, the payment of which carried

no consequences. It is true, even in such case, the indisputable right of the parties to an arbitration public or private, to examine an award in respect of its covering only the very matter submitted, should not be too readily relinquished from mere repugnance to question, a result which, at least, if undisturbed, serves the good purpose of closing the controversy. If the benevolent method of arbitration between nations is to commend itself as a discreet and practical disposition of international disputes, it must be by a due maintenance of the safety and integrity of the transaction in the essential point of the Award, observing the limits of the submission.

But this Government is not at liberty to treat the Fisheries Award as of this limited interest and operation in the relations of the two countries to the important, permanent, and difficult contention on the subject of the Fisheries, which for sixty years has at intervals pressed itself upon the attention of the two Governments, and disquieted their people. The temporary arrangement of the Fisheries by the Treaty of Washington is terminable, at the pleasure of either party, in less than seven years from now. The Fisheries Award, upon such termination of the Treaty arrangements, will have exhausted its force as compensation for a supposed equivalent and terminated privilege. If the Government by silent payment of the Award should seem to have recognized the principles upon which it proceeds, as they may then be assumed or asserted by Her Majesty's Government, it will at once have prejudiced its own rights, when it shall become necessary to insist upon them, and seem to have concealed or dissembled its objections to the Award when Great Britain was entitled to an immediate and open avowal of them.

Upon these considerations the President and Congress have required that the sentiments of this Government respecting the Fisheries Award should be set before Her Majesty's Government, to the end that a full interchange of views, in a friendly spirit, between the two Governments, should leave no uncertainty as to the degree of concurrence or of difference in their respective estimates of this transaction.

It is greatly to be regretted that the Protocols of the Commission make no record of the steps by which the majority reached the conclusion which they announced as the Award of the Commission, and the dissenting Commissioner, on the other hand, arrived at so widely different a result. Had the record disclosed the methods of reasoning on the processes of calculation respecting either of the privileges which, under the submission of the Treaty, were to be measured and compared, upon which these divergent results of their deliberations were reached, the task of exposing the manner and extent in which, in the opinion of the Government, the Award transcends, the submission of the Treaty would be much simpler. Indeed, in the view which this Government takes of the narrow and well-defined question submitted to the Commission by the Treaty, and of the indisputable result of the evidence pertinent thereto, there seems little reason to doubt that if the Protocols exhibited a trace even, of the elements of computation by which the two concurring Commissioners made up their judgment, they would inevitably disclose the infirmity of the actual Award, and make any careful demonstration of the same superfluous.

I desire that you will first call Lord Salisbury's attention to the nature of the question submitted to the Halifax Commission as adjusted through the diplomatic Conferences of the Joint High Commission, and expressed in the Treaty.

In the first place, the United States, in the Fishery Articles of the Treaty of Washington, did not intend to, and did not, waive or curtail in the least, the construction of the fishery and appurtenant privileges accorded in the Ist Article of the Convention of 1818, as claimed by them and actually possessed and enjoyed by them under such claim, at and before the negotiation of the Treaty of Washington. Neither the Protocols of the Conferences of the Joint High Commissioners, nor the text of the Treaty negotiated by them, indicate any intention of submitting to the interpretation of the Halifax Commission the degree of privilege accorded to the United States by the Convention of 1818. On the other hand, it is manifest from the instructions to Her Majesty's High Commissioners, as well as from the Protocols of the Conferences, that a settlement of the disputed interpretation of the Convention of 1818 was contemplated as possible only by the diplomatic deliberations of the Joint High Commission, and such conclusions thereon as they might find it in their power to embody in the Treaty of Washington. This task, however, they did not undertake, but provided only for a temporary possessory privilege that should supersede, during its continuance, any determination of such disputed

interpretation. In this disposition of the subject, it would seem quite beyond the scope of the jurisdiction of the Halifax Commission to include in any measure of the additional privilege accorded to the United States by Article XVIII of the Treaty of Washington, any contribution for the enjoyment of the privileges accorded to the United States by the Convention of 1818, as claimed and actually possessed by them, at the time of the negotiation of the Treaty of Washington. A reference to document No. 15, filed with the Halifax Commission, in support of the case of Her Britannic Majesty's Government, and found at page 238 of the Congressional publication of the proceedings of the Halifax Commission, will substantiate this proposition.

I do not regard this point of serious importance in the exposition of the subject, except that I desire to preclude, in behalf of the United States, any implication or argument hereafter to be drawn from my passing over, without criticism, this possible element in the admeasurement of the Award. The United States still maintains its interpretation of the privilege secured by the Convention of 1818, and protests against any implication from the magnitude of the Award of the Halifax Commission, or otherwise, from its proceedings under the Treaty of Washington, that the United States have sanctioned or acquiesced in, or by payment of that Award would sanction or acquiesce in any lesser measure of the privileges secured to the United States under the Convention of 1818, than, as is well known to Her Majesty's Government, they have always insisted upon.

In the next place the United States did not submit to the Halifax Commission under the Fishery Articles of the Treaty of Washington any valuation of any general economic or political advantages, which grow out of access to fishing grounds for the development of a mercantile or naval marine, and which, therefore, it might be argued, would be enhanced by adding the area of the inshore fisheries of the Gulf of St. Lawrence to the fields for that enterprise, from the earliest period, open to, and occupied by, the bold and hardy seamen of this country. Still less did the United States submit to that Commission a pecuniary measurement of the removal of occasions of strife between the fishermen, or misunderstanding between the Governments of the two countries, by the temporary obliteration of a restrictive line, dividing the inshore from the deep-sea fisheries on portions of the coast of British North America.

Both of these subjects are cousiderations, Governmental in their nature, suitable to be entertained, with many others, in the diplomatic negotiations which ended in the Treaty. They are neither of them computable in money. That which relates to the maintenance of good understanding and good neighbourhood between the United States and the British North American Provinces can, least of all things, be admitted as an estimable element in a pecuniary computation. The importance of such maintenance of good understanding and good neighbourhood the United States will never under-value. In this interest large fiscal concessions were made by the United States in the adjustments of the Treaty of Washington. After such concessions the superadded submission to the Halifax Commission of the question of equalizing, by a pecuniary measure, those concessions with supposed equivalent concessions by Her Majesty's Government, was entertained and agreed to by the United States, mainly, if not entirely, in the disposition to meet any just interest of the British North American Provinces to be assured of the equality of these intended equivalents. But the maintenance of these good relations is of common interest to the two countries, and can never be made the occasion of pecuniary tribute, as if of more importance to one than to the other. No such calculation entered into the enlightened and conciliatory motives which animated and shaped the important series of negotiations which produced the Treaty of Washington. In the definition of whatever unadjusted computation was referred, for pecuniary settlement, to the Halifax Commission, care was taken to include nothing which, suitably to the honour of both countries, was not measurable by a scale of industrial and commercial profits.

If these plain considerations shall be viewed in this light by Her Majesty's Government, it is hoped that a concurrence of opinion as to the nature of the question actually submitted to a pecuniary measure by the Halifax Commission may be easily reached.

It cannot be very material to recall Lord Salisbury's attention to the historical attitude of the two Governments towards the subject in contention as to the fisheries, by any present exposition of the matter. The sources of knowledge on this subject are common to the public cognizance of the two Governments. Our

diplomatic intercourse has unfolded the views of successive British and American Cabinets upon the conflicting claims of mere right, on the one side and the other, and at the same time evinced on both sides, an amicable preference for practical and peaceful enjoyment of the fisheries compatibly with a common interest, rather than a sacrifice of such common interest to a purpose of insisting upon extreme right, at a loss, on both sides, of what was to each the advantage sought by the contention. In this disposition the two countries have inclined, more and more, to retire from irreconcileable disputations as to the true intent covered by the somewhat careless, and certainly incomplete text of the Convention of 1818, and to look at the true elements of profits and prosperity in the fisheries themselves, which alone, to the one side or the other, made the shares of their respective participation therein worthy of dispute. This sensible and friendly view of the matter in dispute was greatly assisted by the experience of the provincial populations of a period of common enjoyment of the fisheries without attention to any sea-line of demarcation, but with a certain distribution of industrial and economical advantages in the prosecution and the product of this common enjoyment. The form of this experience was two-fold. First, for a period of twelve years under the Reciprocity arrangement of trade between the United States and those provinces; and, second, for a briefer period after the termination of the Reciprocity Treaty, under a system of licences, which obliterated the sea-line of circumscription to our fishery fleet upon the payment of fees deemed adequate by the provincial Governments.

In this disposition and with this experience, the negotiations of the Treaty of Washington were taken up and produced the Fishery Articles of that comprehensive Treaty. The results of this experience, and the influence of this disposition, are plainly marked in the pertinent Protocol, and in the text of the Articles.

At the outset it was apparent that neither a confirmation or rectification of the old sea-line of exclusion, or the adoption of a new one, had any place in the counsels or purposes of Her Majesty's Government, or in the interests or objects of Her Majesty's provincial subjects. It had become thoroughly understood, that the line of the Convention of 1818 had become inapplicable, and in some respects insufferable to the common interests.

The mackerel, which, always an inshore as well as a deep sea fish, off our coasts, at the date of the Convention of 1818, and for twenty years after, as an object of pursuit to our fishermen, was confined to the coast of the United States, and that fishery was substantially unknown, in any commercial sense, in the provincial waters. Either a change of habits in the fish, or an extension of the enterprize of our fishermen, had opened up the mackerel fishery of the Gulf of St. Lawrence to our pursuit. The gradual increase of the fishing coast population of the provinces had supplied the fishermen and excited the local interests, for the prosecution from the shore, as the base of its operations, of the new industry of inshore mackerel fishery.

Upon the concurrence of these circumstantial changes it was natural enough for the coast population and the public men of the provinces to conclude that the territorial authority which, under the Convention of 1818, gave the provinces the monopoly of the inshore mackerel fishery, only needed to be insisted upon, by a vigorous exclusion of our fishermen, to be fruitful of great local prosperity.

These calculations were disappointed. It was soon found that the provinces themselves were comparatively valueless as a market for mackerel, and that the quality of the fish, as respects the methods of its preparation for export, excluded it from the general foreign market which was open to the products of the cod fisheries. The near market of the United States was essential to the local prosperity of the inshore mackerel fishermen of the provinces. The political control of that market by the United States quite overreached the provincial control of the inshore fishing-grounds. Fish that cannot find a market will not long be pursued for gain; and the fishing-coast population and the statesmen of the provinces alike, saw that a participation in the mackerel market of the United States was the indispensable condition of prosperity to their inshore fishery. Experience confirmed the logic of this reasoning. While the Reciprocity Treaty endured, settlements throve and wealth increased. When it was withdrawn, population shrunk and wealth declined; and, but for the hope of its renewal, a destruction of this industry seemed imminent.

Upon the other hand, the mackerel fishermen of the United States felt that a participation in the inshore fisheries of the Gulf of St. Lawrence was no equivalent for a surrender of our mackerel market to the participation of the inshore fishermen

of the provinces. They justly reasoned that this arrangement, in respect of the mackerel catch within the line, instead of placing the provincial fishing industry upon an equal footing with ours, really put us at quite a disadvantage. Ordinarily, home products have a certain measure of advantage over duty-free competing imports in freight, ocean or inland—insurance, and interest, and factorage. But here, what passes for our home product is acquired upon the very shore of our foreign competitor. Its pursuit is at the expense of an extended voyage, with costly outfit and large investment, at great risk, with long delay, measured by heavy insurance and accruing interest. Bringing it to what is called the home market involves return voyage and the attendant burdens of expense. The farmer fishermen of the provincial coasts leave the plough in the furrow and the hay-cart in the field, and take to the simple implements and open boats, with which fishing from the shore is prosecuted, when the mackerel show themselves. They cure their catch as a part of their home labour, and ship it at low rates to our market by bottoms which make a returning commercial freight. At these odds, the share of the inshore mackerel fishery of the Gulf of St. Lawrence seemed to our fishermen but a poor addition to their former extensive rights to be purchased by so great a disadvantage in their general fishing industry, on our own coasts and in the deep sea, as well as inshore fisheries of the provincial waters.

These views, too, were confirmed by our experience during the Reciprocity arrangement, and after its close. Both periods unmistakeably marked the policy of an open market for the products of the provincial fisheries as disastrous to our fishing industry.

With these opinions and these experiences, on the one side and on the other, the High Commissioners undertook an adjustment of the opposing interests upon the principle of obliterating the sea-line between the fishermen of the two countries, and finding such compensation for this concession as might seem equal and just.

In the Conferences of the Joint High Commission, it is very apparent that our High Commissioners regarded the obliteration of the sea-line as of no great pecuniary value to our fishing industry. Accordingly, they offered but 1,000,000 dollars for this concession in perpetuity. No doubt politically, and in the interest of good neighbourhood, this Government did regard, and at all times would regard, the restoration of the relations between the two countries in the common enjoyment of these fisheries, to the ancient footing of the Treaty of 1783, as most grateful in sentiment and as a most valuable guarantee against any renewal of strife. These considerations, for reasons already stated, could not be worthily entertained upon either side as an element of the pecuniary measure of the privileges to be accorded.

In these Conferences it is not less apparent that Her Majesty's High Commissioners recognized the possession of our market for the product of the provincial fisheries as the one thing essential to the prosperity of those fisheries, which could not be dispensed with or replaced by any money purchase. This commercial advantage was, of course, both practically and suitably to the dignity of the negotiation measurable in money. It seemed to our High Commissioners to exceed in value to the provinces, as it unquestionably did in loss to us, any reasonable estimate of the value of the privilege our fishermen were to acquire. This basis, however, of freedom of the fishing grounds to our fishermen, and freedom of our market to the fishermen of the provinces, in simplicity and national equivalency, presented advantages which might well have dispensed with any nice calculation of comparative pecuniary values in the exchange.

Her Majesty's High Commissioners, however, thought that this exchange of privileges, even with the added concession on our part, of throwing open to the provincial fishermen unrestricted participation in the valuable inshore fisheries of our own coasts above the thirty-ninth parallel, left still a claim for a pecuniary make-weight in favour of the provinces in the nature of owelty of partition. This led to the constitution of the Halifax Commission to consider and decide the single question whether, and how much, the pecuniary measure of the new fishing privilege opened to the United States fishermen exceeded the pecuniary measure of the new fishing privilege opened to the provincial fishermen, and of the possession of our market, free of duty, for all the products of the provincial fisheries. This difference between the two pecuniary valuations was in the nature of the problem no less than by the terms of the Treaty to be expressed and paid in money.

Upon the conclusion of the labours of the Halifax Commission, and the communication of the concurring judgment of the two Commissioners, awarding the

sum of 5,500,000 dollars as the amount to be paid by the United States under the Fishery Articles of the Treaty, and the judgment of the dissenting Commissioner that no sum whatever was payable by the United States under those Articles, it became the duty of this Government to compare this result with the authority imparted to the Commission by the Treaty, and to determine whether it comported with, or transcended, such authority.

It will not, I think, be questioned by Her Majesty's Government that, upon the proofs and arguments, in whatever form submitted by the two Governments to the Commission, the practical measure of the concession to the United States under Article XVIII of the Treaty was simply of a free and equal right to take part in the fisheries of the Gulf of St. Lawrence within the three miles line, instead of being excluded therefrom, as we were under the Convention of 1818. Nor do I anticipate that you will find any dissent on the part of Lord Salisbury from the proposition, that the proofs fully show that the fishery thus opened to us was the mackerel fishery within that line. While both Governments must regret that the sure footing for a concurrence of views between them, which might have been furnished by a careful system of Protocols of the Conferences of the Commission, is wanting, yet the proofs on both sides leave this proposition in no doubt. Indeed, since the publication by Parliament of the "Correspondence respecting the Halifax Fisheries Commission" has disclosed the advices given from time to time to Her Majesty's Government by Mr. Ford, the very intelligent and circumspect British Agent in attendance upon the Commission, of the developments of the real subject for valuation, there seems to be no room for any difference of views between the two Governments on this point. Thus, in his despatch of September 10th, 1877, presenting the position upon the completion of the British evidence, and before the opening of the proofs on the part of the United States, Mr. Ford says, "the mackerel fishery being that most extensively pursued by the Americans in British waters, is the branch of the inquiry to which the greatest attention was devoted." In giving, too, in the same despatch, the general result of any pecuniary measure of benefit to the United States fishermen from the concession of Article XVIII of the Treaty, which the completed British proofs had presented as a basis for an Award, Mr. Ford makes it very apparent that the mackerel catch within the three-mile line was the only item of appreciable importance. He says, "according to the evidence adduced on the British side it seems beyond doubt that at least three-quarters of the mackerel taken on the British North American coast is caught within the three-mile limit, while, owing probably to the existence of sandy shoals at some distance from the shore, the catch of this fish in the United States waters, north of the 39th parallel of north latitude, is principally beyond that distance." Mr. Ford, also, upon the mere British proofs, no less distinctly excludes the cod fishery as an element of the computation of the value to us of the concession of Article XVIII. He says, "the cod fishery is pursued to a limited extent only by United States fishermen within British territorial waters, and this is probably the case with regard to hake, haddock, pollock, &c;" and, again, "the evidence is somewhat vague as to the proportion of cod fish taken by Americans in British inshores, and it does not probably amount to anything considerable, except on certain portions of the north shore of the Gulf of St Lawrence."

Mr. Ford's despatch, upon a survey of the counterproofs of the United States, which had just been completed, under the date of 30th October, 1877, presents the contention between the parties, and as recognized by both sides, in the same light. He says, "78 witnesses, in all, have been examined, and 280 affidavits filed on the United States' side; and, as was the case on the British side, the main part of it has been directed to the mackerel fishery, with regard to which the United States' Counsel have sought to establish the following salient points:—

"1. That the fishing grounds principally resorted to by the United States' fishermen in the Gulf of St. Lawrence are on the banks situated outside the three-mile limit, and at the Magdalene Islands, to which they had access previous to the conclusion of the Treaty of Washington.

"2. That the fishing business is at the best an unprofitable one, as regards its net results to the owners or charterers of vessels. A mass of statistics has been put in evidence with a view to prove this assertion, and to show that the Canadian inshore fisheries can hardly be pursued by the United States' citizens except at a loss; while those on their own shore yield a greater prospect of remunerative results.

"3. That the remission of duties on Canadian fish is a great benefit to the producer, inasmuch as the chief market for mackerel is the United States."

In the same despatch Mr. Ford, in certain observations of his own upon the countervailing force of the proofs of the United States, as a whole, against the British proofs as a whole, shows that the valuation of the inshore mackerel fishery of the Gulf of St. Lawrence, opened to our fishermen, was the whole matter of contention before the Commission in respect of the concession of Article XVIII of the Treaty. He remarks, "I may, however, observe that, as it has never been denied, even by the British side, that a certain portion of the mackerel taken by the United States in the Gulf of St. Lawrence is caught outside the three-mile limit, there could be no difficulty in producing a considerable number of fishermen who would truthfully depose that the majority of their successful trips had been made outside the limit of British territorial jurisdiction. The main fact, however, remains practically intact, viz., that without access to the inshores it would be impossible for the general business of mackerel fishing by United States' vessels in the Gulf of St. Lawrence, to be pursued with profitable results."

It seems to this Government quite certain, then, that upon a correct exposition of the submission of the Treaty, and the concurring action of the two Governments in the production and application of what they deemed appropriate proofs, what the pecuniary value of our participation in the inshore mackerel fishery of the Gulf of St. Lawrence was fairly estimated at, constituted the extreme limit of any possible pecuniary award by the Halifax Commission against the United States. If, upon any rational view of the criteria of this value before the Commission, the Award of the two concurring Commissioners of 5,500,000 dollars as a twelve years' purchase of the privilege can be maintained, it may be fairly conceded that the imputation of invalidity to the award for transcending the submission of the Treaty will fail of adequate demonstration. If, on the other hand, the candid exploration of the evidence shall show that there exists no rational proportion between this award and the unquestionable limits of value which any view of the testimony must assign to the subject submitted for valuation by the Treaty, as correctly interpreted, then by the very statement of the proposition it is demonstrated that the concurring Commissioners have passed their judgment of valuation upon some other subject than that defined in Article XVIII of the Treaty, and have transcended the submission to their decision. In such case, the antecedent authority imparted to the Commission by the two Governments fails to justify the Award, and the subject of the Fisheries remains at the arbitrament of the two Governments, unconstrained though perhaps enlightened by the deliberations of the Halifax Commission.

In proceeding to apply the proposed test of conformity or nonconformity between the Award and the submission, I disclaim all right to trench upon the range of discretion, or to dispute the entire freedom in comparing, weighing, and extracting the true results from evidence which belongs to such special Tribunals as the Halifax Commission. I shall not seek in the least to impose any views of my Government upon the evidence in the place of any that may be assumed even to have been taken by the concurring Commissioners. I do, however, insist that upon any question of fact within the submission, the record of the evidence cannot be surpassed by spontaneous conjectures or imaginations of the Commissioners. I have no difficulty in saying that the error of the concurring Commissioners, if error they have fallen into, does not seem to me of this nature. That error is not of mistaking the evidence adduced upon the subject submitted to them, but of mistaking the subject submitted to them, and thus liberating their judgments from obedience to the evidence as thus adduced.

Fortunately, there are trustworthy criteria for determining the value of the concession of Article XVIII, as I have defined that concession to be. They are resorted to upon one side and the other, and, confessedly, furnish the material upon which the appraisement, if confined to the subject as truly defined, must turn. If, then, upon the evidence, if found conflicting or divergent, the largest measure of valuation deducible therefrom be given in favour of the concession of Article XVIII, and that extreme value shall show no rational or approximate relation to the sum awarded, there would seem to be no escape from the conclusion that the concurring Commissioners accepted some other subject for their appraisement than that submitted to them.

It happened that, before the Halifax Commission had concluded its labours, five fishing seasons of the Treaty period had already elapsed, and the actual

experience of the enjoyment by the United States' fishermen of the privilege conceded, replaced any conjectural estimate of its value by reliable statistics of its pecuniary results. These statistics disclosed that the whole mackerel catch of the United States for these five seasons in the Gulf of St. Lawrence, both within and without the three-mile line, was 167,945 barrels. The provincial estimates claimed that three-quarters of this catch was within the three-mile line, and so to be credited to the privilege conceded by Article XVIII. The United States' estimates placed the proportion at less than a quarter. Upon the provincial claim of three-quarters, the product to our fishermen of these five years of inshore fishing would be 125,961 barrels. It was established, upon provincial testimony, that the price which mackerel bore in the provinces, cured and packed ready for exportation, was 3 dol. 75 c. per barrel, and this would give as the value, cured and packed, of the United States' inshore catch for five years, the sum of 472,353 dollars. But in this value are included the barrel, the salt, the expense of catching, curing, and packing, which must be deducted before the profit, which measures the value of the fishery privilege, is reached. Upon the evidence 1 dollar a barrel would be an excessive estimate of net profit, and this would give a profit to our fishermen from the enjoyment for these five seasons of the fishery privilege, conceded under Article XVIII, of but 25,000 dollars a-year, or, for the whole Treaty period of twelve years, of 300,000 dollars.

Although there would seem to be no reason for distrusting this commercial and pecuniary measure of the privilege in question, yet, if it should be pretended that the provincial value should not be taken, but the value in the market of the United States; and, further, that an extravagant rate of 10 dollars per barrel should be assumed as that value; and, again, beyond all bounds of even capricious estimate, a conjectural profit of 50 per cent. should be assigned to the fishing adventures, we should have but 125,000 dollars a-year, or 1,500,000 dollars for the twelve years of the Treaty, for the gross valuation of the concession to the United States by Article XVIII, undiminished by a penny, for the counter-concessions of the United States of Articles XIX and XXI. Yet this sum, thus reached, is but little more than one-quarter of the Award of the concurring Commissioners, after taking into account the deductions required for the privileges of Articles XIX and XXI.

The proofs disclose another wholly independent criterion of the value of the privilege conceded to our fishermen by Article XVIII of the Treaty, drawn from the experience of some years intervening between the abrogation of the Reciprocity Treaty and the negotiation of the Treaty of Washington. The Provincial Government in these years adopted a licence system, by which vessels of the United States were admitted to the inshore fishery upon the payment of fees for the season, rated by the ton. The experience of this system showed that under an exaction of 50 cents per ton, our fishing fleet took out licences; that when the fee was raised to 1 dollar per ton, the number of licences fell off about one-half, and when a fee of 2 dollars per ton was exacted, but few licences were taken out. The fairness of this measure of the value of the privilege is obvious. It furnishes a compensatory rate between opposing interests, suggested and acted upon by them without coercion, and by concurring consent.

The tonnage taking out licences under the first and lowest rate was about 32,000 tons. Assuming, contrary to experience, that this tonnage would have borne the highest rate of 2 dollars per ton, the sum of 64,000 dollars per annum would have measured the value of the privilege in question, and would have yielded for the Treaty period of twelve years 768,000 dollars. By this method of valuation of the privilege of Article XVIII (without deducting a penny for the counter-privileges of Articles XIX and XXI) would be but about 14 per cent. of the Award of the concurring Commissioners, after they had taken into account these privileges.

You will say then, to Lord Salisbury, that with every anxiety to find some rational explanation of the enormous disparity between the pecuniary computations of the evidence and the pecuniary measure announced by the concurring Commissioners, this Government has been unable to do so upon any other hypothesis than that the very matter defined in Article XVIII, and to which the proofs on both sides were applied, and the very matter measured by the Award of the concurring Commissioners, were not identical nor even similar, and that such Award, upon this reason, transcends the submission.

The demonstration at which I have aimed appears so conclusive upon the mere consideration of the concession of Article XVIII, as to supersede, so far as the immediate argument goes, an exhibition of the reduction even of the moderate sum

above assigned, as the true appraisal of the concession of that Article, by the pecuniary value, as laid before the Commission, of the counter-concessions of Articles XIX and XXI. But a brief statement of the views of this Government on the treatment of these counter-concessions in the deliberations of the Halifax Commission, is requisite both to the completeness and the frankness of this exposition.

In brief, it may be said that Her Majesty's Government formally insisted in their "Case" and in their "Reply" laid before the Commission, that the concession of Article XIX, whereby British subjects are admitted to the freedom of our coast fisheries north of the thirty-ninth parallel, is, to quote the language of the "Case," "absolutely valueless;" and that the concession of Article XXI, admitting fish and fish-oil, the product of the provincial fisheries, to our markets duty-free, to quote the language of the "Reply," "has not resulted in pecuniary profit to the British fishermen, but, on the contrary, to the American dealer or consumer,"

If I have been at all successful in showing the enormous disproportion between the sum of 5,500,000 dollars announced as their award by the concurring Commissioners, and the pecuniary value which the evidence assigns to the concessions of Article XVIII by itself considered, I need spend little time in showing that these Commissioners must have accepted the views of Her Majesty's Government that nothing was to be allowed for countervailing value to the concessions of Articles XIX and XXI, or, that these Commissioners had in their minds a measure for the concession of Article XVIII still more inconsistent with the true Treaty definition of the subject described in that Article and submitted to the appraisement of the Commission.

If the concession of Article XIX was held by the Commissioners to be "absolutely worthless," as asserted in the "Case" of Her Majesty's Government, it must have been because the pecuniary profit to the provincial fishermen of the privilege as actually enjoyed by them was the true measure of estimation of the value of the concession. In this view the immense value of these fisheries, as shown in the evidence, all went for nothing, because the population, capital or enterprise in the provinces, could not carry on, what to them were remote fisheries in competition with our own coast population. Without insisting upon the unreasonableness of measuring the value of our fishing grounds by the incompetency of provincial resources to engage in the fishery opened to them, this disposition of the value of the concession of Article XIX recognizes the whole force and result of the reasoning by which I have assigned the true criteria of value for the privilege of Article XVIII, under the experience of the actual five years' enjoyment thereof by our fishermen, who were able to take advantage of the privilege and did so, to the furthest extent compatible with profit. The view of the reasoning by which a right of fishery, valuable in its own capacity, is measured by the tenants' incapacity to fish, is obvious. It furnishes no true criterion of the rent value of a fishery, which is what needed to be got at both under Article XVIII and Article XIX. Under Article XVIII we are furnished a true criterion by the experience of a tenant, confessedly willing and able to improve the fishery to the utmost, and actually doing so.

I now desire you to present to Lord Salisbury's attention the subject of the concession of a free market in the United States for the products of the provincial fisheries, as made by Article XXI. The value of this privilege to the provinces was required by the Treaty to be measured by the Halifax Commission, and deducted from their appraisement of the concession of Article XVIII in favour of the United States.

The statistics of the importation under this privilege showed that at the rate of duty prevalent before that concession, a revenue of about 200,000 dollars per annum on mackerel alone, and of more than 300,000 dollars on all kinds of fish (mackerel included) and fish-oil would have accrued to the United States. For the purpose of argument, conceding that but one-half of this annual sum of 300,000 dollars should be set down as pecuniary profit to the Provincial interests, the sum of 1,800,000 dollars would need to be deducted, on the score of Article XXI, from the true valuation of the privilege conceded by Article XVIII. If I have assigned correctly the highest possible measure of the privilege of Article XVIII, upon the evidence, as not being more than 1,500,000 dollars, this low valuation of the privilege of Article XXI more than extinguishes it.

Whatever disposition the concurring Commissioners made of this countervailing concession of Article XXI—whether they gave it a value commensurate

with the statistical evidence of the revenue loss to the United States, and market gain to the Provincial interest, or considered it absolutely valueless—the matter is one of much moment.

If these concurring Commissioners gave the sum of 5,500,000 dollars as the appraisement of the concession of Article XVIII, after deducting some 2,000,000 dollars for the countervailing concession of Article XXI, the argument, as it seems to this Government, adequate before, becomes still more conclusive that the measurement, thus enhanced to some 7,500,000 dollars, was not applied and confined to the very subject submitted to the appraisement of the Commission by Article XVIII.

But, it may be said, these concurring Commissioners may have treated the concession of Article XXI as absolutely valueless to the Provincial interests, and it was competent for them to do so. But this alternative is little consistent with the whole tenour of the views of Her Majesty's Government, as maintained by successive Cabinets, and insisted upon in responsible negotiations, by their most eminent Representatives through a long course of years. Certainly, ever since 1851, when Lord Elgin, as Governor-General of Canada, communicated, through the British Minister at Washington, Sir Henry Bulwer, to Mr. Webster, Secretary of State, the opinion of the British Government that the admission of the product of the Provincial fisheries duty free to our market was the one indispensable condition to our participation in the inshore fisheries of the Provinces, down to the negotiation of the Treaty of Washington, the attitude of the British Government on this point has been explicit and unequivocal.

Lord Elgin declared, "Her Majesty's Government are prepared, on certain conditions and with certain reservations, to make the concession to which so much importance seems to have been attached by Mr. Clayton, viz., to throw open to the fishermen of the United States the fisheries in the waters of the British North-American Colonies, with permission to those fishermen to land on the coasts of those Colonies for the purpose of drying their nets and curing their fish, provided that in so doing they do not interfere with the owners of private property, or with the operations of British fishermen.

"Her Majesty's Government would require, as an indispensable condition in return for this concession, that all fish, either fresh or cured, imported into the United States from the British North-American possessions, in vessels of any nation or description, should be admitted into the United States duty free, and upon terms in all respects of equality with fish imported by citizens of the United States."

The deliberations of the Joint High Commission, as preserved in the Protocols of their Conferences on the fisheries, exhibit, with perfect distinctness, the British opinion as to a free market for the product of the Provincial fisheries being a value to the Provincial interests which could not be missed, or replaced by a pecuniary substitute, in any settlement of the question. Thus our High Commissioners stated "that if the value of the inshore fisheries could be ascertained, the United States might prefer to purchase for a sum of money the right to enjoy, in perpetuity, the use of these inshore fisheries in common with British fishermen, and mentioned 1,000,000 dollars as the sum they were prepared to offer." The British High Commissioners replied "that this offer was, they thought, wholly inadequate, and that no arrangement would be acceptable of which the admission into the United States, free of duty, of fish, the produce of British fisheries, did not form a part." After a consideration of commercial equivalents, in which the offers of our High Commissioners were not accepted by the British High Commissioners, all such propositions on our part were withdrawn, and our Commissioners renewed their proposal to pay a money equivalent for the use of the inshore fisheries, and further proposed that, "in case the two Governments should not be able to agree upon the sum to be paid as such equivalent, the matter should be referred to an impartial Commission for determination." To this the British High Commissioners replied, "that it would not be possible for them to come to any arrangement except one for a term of years, and involving the concession of free fish and fish-oil by our High Commissioners; but that, if free fish and fish-oil were conceded, they would inquire of their Government whether they were prepared to assent to a reference to arbitration as to money payment." Our High Commissioners replied "that they were of opinion that free fish and fish-oil would be more than an equivalent for those fisheries, but that they were also willing to agree to a reference to determine that question, and the amount of any money payment that might be found necessary to complete an equivalent." Hereupon, as stated in the Protocol, "the British Commissioners having referred the

last proposal to their Government, and received instructions to accept it," the fishery Articles of the Treaty were agreed to.

These opinions of Her Majesty's Government were entirely in accord with the views of the leading Provincial statesmen. Mr. Stewart Campbell, of Nova Scotia, declared that " under the Reciprocity Treaty the total exemption from duty of all fish exported from the maritime Provinces to the markets of the United States was also a boon of inestimable value to the very large class of British subjects directly and indirectly connected with our fisheries and its resulting trade." Sir John Macdonald said, in the Parliament of the Dominion, " the only market for the Canadian No. 1 mackerel in the world is the United States. That is our only market, and we are practically excluded from it by the present duty. The consequence of that duty is that our fishermen are at the mercy of the American fishermen; they are made the hewers of wood and drawers of water for the Americans. They are obliged to sell their fish at the Americans' own price. The American fishermen purchase their fish at a nominal value, and control the American market. The great profits of the trade are handed over to the American fishermen or the American merchants engaged in the trade, and they profit to the loss of our own industry and our own people."

It may be that Her Majesty's Government has surrendered these opinions, and that the statesmen of the Dominion and the people of the provinces now think that the possession of our market for the products of the provincial fisheries is of no pecuniary advantage to these provincial interests. In such case, in any future negotiation respecting the fisheries, this Government would expect no stress to be laid upon the question of the possession of our own markets. If Her Majesty's Government accepts the award of these concurring Commissioners as carrying the necessary consequence that the concession of Article XXI is of no value to British or provincial interests, that element of calculation will disappear from any possible exchange of equivalents that the exigencies of any future friendly negotiations may need to find at their service. A privilege that is valueless when granted to and enjoyed by a beneficiary may well be reserved and withheld, without the charge of its being ungracious to do so.

If, on the other hand, Her Majesty's Government adheres to the views of the value of our market for the product of the Provincial fisheries, so often and so earnestly pressed upon the attention of this Government, and asserts that the Award of the concurring Commissioners must be held, upon necessary reasoning, to have measured and deducted this great value of free market from the appraisement of the concession of free fishing to us, made by them under Article XVIII, this Government will expect the more ready acceptance by Her Majesty's Government of the proposition, that these concurring Commissioners, in their Award, mistook the subject submitted by Article XVIII to their pecuniary measurement, and exceeded the authority under which the Commission acted.

You will, however, very earnestly press upon Lord Salisbury's attention, in advance of any declaration from Her Majesty's Government of their present views of the value of our markets for the products of the Provincial fisheries, that this Government has not changed or at all modified its opinions on this subject. To dissemble or conceal from Her Majesty's Government this fact would be uncandid, and, by silence on our part now, breed mischief for future contentions or negotiations. This Government holds now, as it did by the mouth of its High Commissioners in the Conferences on the subject of the fisheries which produced the pertinent Articles of the Treaty, " That free fish and fish-oil would be more than an equivalent for those fisheries." The measure of pecuniary value which I have drawn from the revenue loss to the United States, calculated with extreme moderation, is an inadequate expression of the benefit to the Provincial interests and injury to our own from their free importations. It is still the opinion of this Government that the possession of our market is of vital importance to the maritime provinces, and such possession a formidable menace, if not a fatal wound, to our own fishing interests. I do not think that I misunderstand or misrepresent those interests when I say that, standing as we now do, midway in the Treaty-period, it would be better for those interests to surrender the enjoyment of the fishing privilege of Artlcle XVIII for the remaining six years of the twelve, upon a resumption by the Government of the control of our own market for this unexpired period.

If Her Majesty's Government and the Provincial statesmen are firm in the opinion that the concession of Article XVIII parts with so much to us, and the

concession of Article XXI is valueless to British and Provincial interests, it may be well worth while for the two Governments to consider whether a mutual resumption of these exchanged interests may not be desirable. In the future, as in the past, this Government will go very far in concessions to remove occasions of strife between the fishermen of the two nations. But these contributions to goodwill, as I have before insisted, are not to be confounded with pecuniary tribute on one side or the other.

It was in this spirit that the free importation of coal, salt, and lumber, which was in debate as a measure of wholly domestic interest to ourselves, but with divided opinions, was proposed to the British Government for reciprocal arrangements in respect of these Articles to be incorporated in the Treaty of Washington. The proposal was rejected by the British Government and the Provincial interests, doubtless, upon a measuring cast as to whether this reciprocity carried more benefit or injury to Provincial interests, and what we thought an appreciably greater advantage to the Provinces than to ourselves, was rejected as unimportant to them. The contrast between this indifference to a free market for coal, salt, and lumber, and the inexorable demand for a free market for fish and fish-oil, speaks volumes for the pecuniary value of this latter to Provincial interests.

Her Majesty's Government, it may reasonably be assumed, has given to this Award of the concurring Commissioners its careful attention, and subjected it, in the light of the diplomatic negotiations which established the Halifax Commission, and the evidence before that Commission, to a comparison with the authority imparted by the Treaty, to determine whether it conforms to that authority and is valid, or transcends that authority and, for that reason, is void. Whatever opinion Her Majesty's Government may have formed on this point has not, so far as this Government is aware, been made public at home, and has not been communicated to this Government. In inviting a full exposition of the views of Her Majesty's Government upon the matter, as now brought into consideration between the two Governments, you will say to Lord Salisbury that, wholly unsupportable as the pecuniary measure of the single and fragmentary matter, not embraced in the diplomatic concurrence of the High Commissioners, and thus left by them to impartial appraisement, seems to this Government, it will receive and examine with entire candour any opposing views in maintenance of the validity of the Award which Her Majesty's Government may present. If, as I shall not cease to anticipate, Her Majesty's Government shall agree that the subject submitted to the Halifax Commission has not been adequately disposed of by the concurring Commissioners, the way will seem to this Government to be thereby opened for a more permanent and comprehensive settlement of the fishery interests of the two countries than was reached by the Treaty of Washington. If the present correspondence shall not result in this desired agreement, and even if the opposing views which may be communicated by Her Majesty's Government should affect our present judgment in the very matter of the validity of the Award, I cannot, in all candour, hold out any expectation that this Government can ever recognize the valuation of the countervailing concessions of Articles XVIII, XIX, and XXI, involved in this Award, as a guide even, much less a standard, for any future treatment of the fishery contentions, which the exigencies of the situation as now left may require.

Passing from the grave question which touches the essential elements of the Award, upon considerations vital to the whole system of arbitration, I desire you, further, to call Lord Salisbury's attention to a particular point in the actual Award; that is to say, the failure of the three Commissioners to agree in any result, and the consequent announcement of that inability, and the promulgation of the widely different conclusions which the two concurring Commissioners and the dissenting Commissioner had reached.

The question presented on the face of the Award of the Halifax Commission, viz., whether the concurrence of the three Commissioners in their Award was required by the Treaty, was made a matter of public discussion, both in Great Britain and in the Provinces, before and during the sitting of the Commission. In this discussion, so far as it has fallen under my notice, the legal, political, and popular organs of opinion seemed quite positive that this unanimity was required by the Treaty. In this country the matter was little considered, either because the British view of the subject was accepted, or because complete confidence in our Case, on its merits, supervaded any interest in the question. The point comes up now, for the first time, for consideration between the two Governments, and will

need attention from either, only, in case Her Majesty's Government sho ld fail to concur in the views of this Government which condemn the Award on the grave grounds already presented.

The question involves nothing more than the interpretation of the Treaty, and is quite clear of any intermixture with the substance of the Award as satisfactory or unsatisfactory to either party. It turns, first, upon the mere text of the Treaty; and, second, upon the surrounding circumstances and the different subjects to be treated by the various Boards of Arbitration framed by the Treaty of Washington, so far as they may be rightly resorted to in aid of a just construction of the text.

By the Treaty of Washington four Boards are constituted for the determination of certain matters to be submitted to their respective decisions.

1. The Geneva Arbitration was composed of five members, in regard to whose deliberations and conclusions Article II of the Treaty expressly provides that "all questions considered by the Tribunal, including the final Award, shall be decided by a majority of all the Arbitrators."

2. A Board of Assessors under the Geneva Arbitration, in case the Tribunal should not award a gross sum, was to be composed of three members. In the action of this Board, Article X of the Treaty declares that "a majority of the Assessors in each case shall be sufficient to a decision."

3. A Commission of three members to determine reciprocal claims between the two countries arising during the Civil War. Article XIII provides that "a majority of the Commissioners shall be sufficient for an award in each case."

4. The Halifax Commission, composed of three members, undistinguished, among themselves, by any description of umpirage to either, and with no provision in any form for an award by less than the whole number. The Treaty expressly accepts awards, signed by the assenting Arbitrators, or Assessors, or Commissioners under the other Articles, while, in the case of the Halifax Commission, this provision takes the place of such acceptance: "The Case on either side shall be closed within a period of six months from the date of the organization of the Commission, and the Commissioners shall be requested to give their award as soon as possible thereafter."

The argument from this comparison is obvious. The High Contracting Parties possessed a common system of jurisprudence, according to which a reference to Arbitrators *ex vi termini* required the Award to be the act of the Arbitrators, that is, of all of them. The parties to an arbitration, public or private, might accord to any lesser number the power of award, but express stipulations in the submission alone could carry that authority. Acting in full view of this rule, to which a desired exception needed to be expressed, in three cases, in the same deliberate and solemn instrument, the High Contracting Parties imparted the authority to a majority by careful and solicitous provisions to that end. In the case of the Halifax Commission, last in the order of the Treaty, and with the previous arrangements, in this regard, in their minds and under their eyes, this power is withheld. It is impossible, because it is plainly irrational, to say that a Treaty provision containing power to a majority to bind, and a Treaty provision expressing no such authority, mean one and the same thing. The High Contracting Parties have excluded any such conclusion, by the sedulous discrimination which the text of the Treaty discloses.

To the countervailing suggestion that this variation from the system of the Treaty in the case of the Halifax Commission is most reasonably accounted for by inadvertence on the part of the High Joint Commissioners, the answer is obvious. If either of the High Contracting Parties should so allege, which it certainly would not do without much deliberation, the suggestion would not affect the argument as to the meaning of the Treaty as it stood, but would be in the nature of an appeal to the other High Contracting Party to waive the objection and reform the Treaty. No doubt cases may exist where such appeals should be frankly responded to, though against interest.

But, you will say to Lord Salisbury that the suggestion of inadvertence in the negotiations, never to be lightly indulged in, overlooks an adequate and presumptively the real reason for the requirement of unanimity in the case of the Fisheries Commission, while it was expressly waived in the other submissions of the Treaty.

In the matters of computation submitted in the several other references of the Treaty, two circumstances distinguished them from that subjected to the Award of the Halifax Commission. First, they were wholly matters of determinate proof, an appraisement of the ships and cargoes destroyed by the "Alabama" and her

consorts, an estimation of damages to persons or property suffered by individual British subjects or American citizens for which reparation should be made—these were matters of definite affirmative proof in pounds or dollars before any award could be asked, and were subject to correction by equally definite opposing proofs before any award could be granted. Second, the assessments carried no measurement of any still subsisting interests between the High Contracting Parties which would survive the payment of the several awards. It was then quite suitable to these references to accept the judgment of a majority and dispense with the concurrence of both parties, as represented in the Commissions, in the results of the contentions before them.

The matter submitted to the Halifax Commission was different in nature, and in the relations of the High Contracting Parties to the subject of contention. Both these traits of this dispute conspired to urge upon the High Contracting Parties the need of every possible guaranty against unreasonable or illusory estimates on the part of the Commission to the prejudice of one party or the other. Besides, this computation touched a matter in which large classes and interests of either community felt a concern, and it was essential that dissatisfaction with results should be alleviated by confidence in the judgment. So vague a subject of valuation as the twelve years' prospective catch of mackerel within three miles of the shore on the coasts of the United States and of the Provinces, so diffuse a problem as the distribution of the burdens of duties between producer and consumer, gave too large a range for floating speculations, unless anchored to sober sense by the requirement of unanimity. The permanent importance of these valuations in future negotiations of the two countries, forbade their submission to any Commission uncontrolled by the necessary concurrence of the Representatives of both countries, in any award. The interests and feeling of the large populations, on the one side and the other, dependent for prosperity, if not for livelihood, on these fisheries, made the two Governments careful to secure them, in any result, against a sense of injustice as well as of disappointment, by the conservative requirement of unanimity.

In submitting to Her Majesty's Government the failure of the Commissioners to come to the agreement which, in this interpretation of the Treaty, is requisite to the validity of the Award, the Government wishes to lay no undue stress upon this objection. If Her Majesty's Government concurs in this construction of the authority conferred upon the Halifax Commission, this agreement between the Governments will enable them, presently, to make more complete, as well as more satisfactory, arrangements for the reciprocal interests of the industry and commerce of the Provinces and of the United States than at present exist. If, on the other hand, Her Majesty's Government shall announce to this Government their construction of the Treaty to be that the concurrence of a majority of the Commissioners warrants a valid award, notwithstanding the declared dissent of the third Commissioner, this Government will not refuse to accord to that opinion, thus expressed, all the weight which it desires for its own views. You will therefore say to Lord Salisbury that, upon such a declared disagreement upon the true interpretation of the Treaty in respect of unanimity of the Commissioners, this Government will regard the maintenance of entire good faith and mutual respect in all dealings under the beneficent Treaty of Washington as of paramount concern, and will not assume to press its own interpretation of the Treaty, on this point, against the deliberate interpretation of Her Majesty's Government to the contrary.

You will promptly communicate these views to Her Majesty's Government by delivering a copy of this despatch to Lord Salisbury, and requesting an early attention to its contents.

I am, &c.
(Signed) WM. M. EVARTS.

No. 2.

The Marquis of Salisbury to Mr. Welsh.

Sir, *Foreign Office, November* 7, 1878.

HER Majesty's Government have given their attentive consideration to the despatch relating to the proceedings of the Halifax Fisheries Commission, addressed to you by Mr. Evarts, the Secretary of State of the United States, a copy of which you were

good enough to place in my hands on the 10th ultimo; and I have now the honour to make the following observations in reply, which I shall feel greatly obliged by your communicating to Mr. Evarts with the least possible delay :—

Her Majesty's Government fully appreciate the frankness with which Mr. Evarts has requested you to communicate to them the views of the Government of the United States on this question, and it is their desire to reciprocate in the fullest degree the wish expressed by Mr. Evarts to come to a complete and explicit understanding between the two Governments as to the conformity of the Award made by the Commission to the terms of the Treaty of Washington.

I must, in the first instance, recall to your recollection the circumstances which led to the organization of the Halifax Commission.

The Reciprocity Treaty of the 5th June, 1854, between Great Britain and the United States, terminated in 1866, not from any desire on the part of Her Majesty's Government to put a period to its stipulations, but in consequence of the notice provided for in Article V of that Treaty having been given by the United States' Government. The mutual privileges in respect to free fishing and free trade in certain productions, which had under its operation been enjoyed by the inhabitants of the United States and of Her Majesty's North American Possessions, thus came to an end. The effect of this determination of the Reciprocity Treaty was to revive the difficulties incidental to the Fisheries question; difficulties so well known to both Governments that it is needless for me to enlarge upon them on the present occasion.

The danger, however, of collision between the fishermen of the two nations began to manifest itself soon after the termination of the Reciprocity Treaty; and Her Majesty's Government were anxious to come to a speedy and satisfactory solution of the question. With this view Her Majesty's Minister at Washington addressed, on the 26th January, 1871, a note to Mr. Fish, in which he stated that Her Majesty's Government deemed it of importance to the good relations which they were ever anxious should subsist and be strengthened between the United States and Great Britain that a friendly and complete understanding should be come to between the two Governments as to the extent of the rights belonging to the citizens of the United States and Her Majesty's subjects respectively with reference to the Fisheries on the coasts of Her Majesty's Possessions in North America, and as to any other questions between them affecting the relations of the United States towards those Possessions.

As the consideration of these matters would, however, involve investigations of a somewhat complicated nature, and as it was very desirable that they should be thoroughly examined, he was directed by Lord Granville to propose to the Government of the United States the appointment of a Joint High Commission which should be composed of members to be named by each Government, should hold its sessions at Washington, and should treat of and discuss the mode of settling the different questions arising out of the Fisheries, as well as all those affecting the relations of the United States towards Her Majesty's Possessions in North America.

To this note Mr. Fish replied on the 30th January of the same year, and whilst stating that the President shared with Her Majesty's Government the appreciation of the importance of a friendly and complete understanding between the two Governments with reference to the subjects specially suggested for the consideration of the proposed Joint High Commission, he added that it would be desirable to include in the deliberations of that Commission a consideration of the other questions then at ssue between the two Governments, particularly those known as the "Alabama" claims.

It was, thus, owing to the importance attached by Her Majesty's Government to the Fisheries question, and to their anxiety to come to a satisfactory settlement of the difficulties connected with it, that the negotiations were commenced which led to the organization of the Joint High Commission and ultimately to the Treaty of Washington. A large portion of the deliberations of that Commission was devoted to the difficult and long-standing question now under consideration, and after many proposals and counter-proposals, including offers on the part of the United States' Commissioners to grant commercial privileges far in excess of the mere remission of duty on fish and fish oil, in order that they might acquire for United States fishermen unrestricted access to the inshore waters of British North America, Articles XVIII to XXV and XXXII and XXXIII were at length agreed to, and constitute the authority under which the Halifax Commission acted.

Article XXII provided that—

"Inasmuch as it is asserted by the Government of Her Britannic Majesty that the privileges accorded to the citizens of the United States under Article XVIII of this

Treaty are of greater value than those accorded by Articles XIX and XXI of this Treaty to the subjects of Her Britannic Majesty, and this assertion is not admitted by the Government of the United States, it is further agreed that Commissioners shall be appointed to determine, having regard to the privileges accorded by the United States to the subjects of Her Britannic Majesty, as stated in Articles XIX and XXI of this Treaty, the amount of any compensation which, in their opinion, ought to be paid by the Government of the United States to the Government of Her Britannic Majesty in return for the privileges accorded to the citizens of the United States under Article XVIII of this Treaty; and that any sum of money which the said Commissioners may so award shall be paid by the United States' Government, in a gross sum, within twelve months after such Award shall have been given."

The Acts necessary to enable the several Articles of the Treaty relating to the fisheries to be carried into effect were passed by the Imperial Parliament of Great Britain on the 6th August, 1872; by the Parliament of Canada on the 14th June, 1872; by the Legislature of Prince Edward Island (which did not at that time form part of the Dominion) on the 29th June, 1872, by the Colony of Newfoundland on the 28th March, 1874; and by the United States' Congress on the 25th February, 1873. So scrupulous, moreover, were Her Majesty's Government that United States' citizens should enjoy in the fullest degree the benefits secured to them under the Treaty, that United States' fishermen were admitted to the practical use of the inshore fishing grounds in advance of the formal Legislative Acts necessary for that purpose, and this concession was acknowledged by the Government of the United States as a "liberal and friendly act." Her Majesty's Government consider that it is important, in examining this subject, to bear in mind the distinction between that part of the Treaty relating to Fishery rights in British waters and the part relating to claims then pending on other heads. As regards the Fishery rights, the citizens of the United States were, by the Treaty, put into actual possession and enjoyment of them. That enjoyment has been had and cannot be recalled. Whether any and what sum was to be paid by the Government of the United States for the rights thus conceded was to be determined, and determined without appeal, by the Tribunal constituted under the Treaty.

United States fishermen having entered into the enjoyment of the privileges thus secured to them, it became necessary to take immediate steps for the constitution of the Commission appointed to meet at Halifax in the manner prescribed by the Treaty.

Various circumstances, however, with which your Government are familiar, contributed to occasion delay in the complete organization of the Commission, and it was not, therefore, until the 1st March, 1877, that an identic note was addressed to the Austro-Hungarian Ambassador in London by the Earl of Derby and by the United States' Minister in London, requesting that his Excellency would be pleased to name the third Commissioner in the manner provided for by Article XXIII of the Treaty. His Excellency thereupon named M. Maurice Delfosse, the Belgian Minister at Washington, and apprized the Governments of Great Britain, the United States, and Belgium of the selection thus made.

Her Britannic Majesty's Government having previously appointed Sir Alexander T. Galt to be their Commissioner, and Francis Clare Ford, Esq., to be their Agent, and the Government of the United States having similarly appointed the Honourable Ensign H. Kellogg to be their Commissioner, and the Honourable Dwight Foster to be their Agent, the constitution of the Commission was complete in accordance with the terms of the Treaty; and after previous communication between the three Commissioners, the 15th June, 1877, was fixed for the first day of meeting.

The Commission was accordingly organized by holding the first conference at the City of Halifax on that day, when all the Commissioners were present and produced their respective powers. The Honourable Dwight Foster and Mr. Ford were also present as Agents of their respective Governments.

M. Delfosse was then, upon the proposal of the United States' Commissioner, elected President of the Commission, and a Secretary having been appointed by him, the three Commissioners proceeded, in accordance with the XXIIIrd Article of the Treaty, to make and sign a solemn declaration that they would impartially and carefully examine and decide the matters referred to them to the best of their judgment and according to justice and equity.

The Commission then, after a meeting on the next day for the purpose of approving and signing the Protocol of the previous day's proceedings, adjourned until the 28th day of July, 1877.

The Commission having met pursuant to adjournment on the 28th day of July, the United States Agent named the Counsel retained on behalf of the United States,

and at the next Conference, held on the 30th day of July, the Case of Her Majesty's Government was opened, and was concluded on the 18th day of September; that of the United States of America was opened on the 19th of the same month, and closed on the 24th day of October.

It is unnecessary that I should here recite each step in these lengthened proceedings: it will be sufficient to note that eighty-four witnesses in all were examined on behalf of Her Britannic Majesty's Government and seventy-eight on the part of the United States of America. These witnesses were subjected to the most searching cross-examination by Counsel of the greatest ability; and amongst those examined were to be found the names of many persons who, from their special knowledge of the subject, both practically and generally, were well qualified to express an opinion, and whose evidence was entitled to the greatest weight in the investigation of the matter.

Three hundred and nineteen affidavits were produced in support of the Case of Her Britannic Majesty's Government, and 280 in support of that of the United States; the deponents comprising those who were also in a position to give valuable and convincing testimony with regard to the Fisheries, but who from various causes were unable to give oral evidence before the Commission.

A voluminous mass of documentary and statistical matter was produced and submitted to the Commission on either side, and about fourteen entire days were devoted to the arguments of Counsel upon the whole case.

The Commission held in all seventy-eight sittings, of about four hours' duration each, and the proceedings terminated on the 23rd day of November, 1877, by the announcement of the following Award:—

"The undersigned Commissioners appointed under Articles XXII and XXIII of the Treaty of Washington of the 8th May, 1871, to determine, having regard to the privileges accorded by the United States to the subjects of Her Britannic Majesty, as stated in Articles XIX and XXI of said Treaty, the amount of any compensation which in their opinion ought to be paid by the Government of the United States to the Government of Her Britannic Majesty, in return for the privileges accorded to the citizens of the United States, under Article XVIII of the said Treaty;

"Having carefully and impartially examined the matters referred to them according to justice and equity, in conformity with the solemn declaration made and subscribed by them on the fifteenth day of June, one thousand eight hundred and seventy-seven;

"Award the sum of five millions five hundred thousand dollars, in gold, to be paid by the Government of the United States to the Government of Her Britannic Majesty, in accordance with the provisions of the said Treaty.

"Signed at Halifax, this twenty-third day of November, one thousand eight hundred and seventy-seven.

(Signed) "Maurice Delfosse.
"A. T. Galt."

"The United States' Commissioner is of opinion that the advantages accruing to Great Britain under the Treaty of Washington are greater than the advantages conferred on the United States by the said Treaty, and he cannot, therefore, concur in the conclusions announced by his colleagues.

"And the American Commissioner deems it his duty to state further that it is questionable whether it is competent for the Board to make an Award under the Treaty, except with the unanimous consent of its members.

(Signed) "E. H. Kellogg,
"*Commissioner.*"

It was thus assuredly not without the most thorough and laborious investigation of the question submitted to their appreciation that a majority of the Commissioners arrived at the decision above quoted; and it must be observed that the whole of the proceedings were held in strict conformity with the terms of the Treaty of Washington, whilst the Award was given by a majority of the Commissioners in the very terms contained in Article XXII of the Treaty.

In the despatch which has been communicated to Her Majesty's Government, Mr. Evarts seeks to invalidate the Award, which is the result of this exhaustive investigation, upon the ground that, in estimating the claims of Great Britain, the Commissioners must be assumed to have taken into consideration circumstances which the Treaty of Washington had not referred to them. There is nothing upon the face of

the Award which gives any countenance to the supposition that the Commissioners travelled beyond the limits assigned to them by the Treaty. Mr. Evarts' argument in favour of this contention is entirely deduced from what he considers to be the magnitude of the sum awarded. It is, he contends, so far in excess of what the United States' Government believe to be the true solution of the problem submitted by the Treaty, that some factor which the Treaty has not recognized must necessarily, in his opinion, have been imported into the calculation.

Mr. Evarts proceeds to give in detail the considerations by which, in his judgment, the result arrived at should be tested. He gives his reasons for believing that mackerel is the only fish to whose capture in the waters opened by Great Britain any value should be assigned, and that no account is to be taken of herring, halibut, cod, hake, pollack, or bait fishes. He computes the number of mackerel which the United States' fishermen have caught within a three-mile line from the shore during the years of the Treaty period which have expired; and infers from it the number which they are likely to catch within the same area during the interval that remains; and he concludes this branch of his argument by estimating, on various hypotheses, the profit which the United States' fisherman is likely to have made from the mackerel which he has probably caught. On the other side, he estimates at a high value the profit which the British fishermen have derived from the opening of the markets of the United States; and concludes that the sum fixed by the Award is so much larger than these considerations would have justified, that the United States' Government can only explain its magnitude on the assumption that the Commission has mistaken the question that was referred to it.

That Mr. Evarts' reasoning is powerful it is not necessary for me to say; nor, on the other hand, will he be surprised to hear that Her Majesty's Government still retain the belief that it is capable of refutation. But, in their opinion, they would not be justified in following him into the details of his argument. These very matters were examined at great length and with conscientious minuteness by the Commission whose Award is under discussion. The decision of the majority was given after full hearing of all the considerations that either side was able to advance; and that decision, within the limits of the matter submitted to them, is, under the Treaty, without appeal. The argument of Mr. Evarts amounts to a review of their Award upon the questions of fact and of pecuniary computation referred to them. He contends that the sum awarded is excessive; and that therefore the Award must have been arrived at by some illegitimate process. But to argue against the validity of an Award, solely on the ground that the conclusion arrived at by the Arbitrators on the very point referred to them is erroneous, is in effect the same thing as to dispute the judgment which they have formed upon the evidence.

Her Majesty's Government do not feel that it is their duty to put forward any opinion, adverse or favourable, to the decision which the majority of the Commissioners have passed upon the affidavits and depositions which they had to consider. Her Majesty's Government could not do so without undertaking the same laborious investigation as that which was performed by the Commission, a task for which the interval which has been left between October 10, the day on which Mr. Evarts' despatch was delivered to me, and November 23, the day on which the payment awarded is to be made, would certainly not suffice.

But they are precluded from passing in review the judgmen of the Commission by a far more serious disqualification. They cannot be judges of appeal in this cause, because they have been litigants. As litigants they have expressed the view upon the facts which they felt bound in that capacity to maintain. Their computations have been totally different in method and result from those which the American Counsel sustained, and which, in part, Mr. Evarts reiterates in his despatch. The interpretation which they have given to the data laid before the Tribunal has been in complete antagonism to his. They have been of opinion, and have insisted with all the force of argument that their Agents could command, that 15,000,000 dollars was the legitimate compensation which, under the Treaty, was their due. The majority of the Commissioners has decided to reduce that claim nearly by two-thirds. Having formally engaged to submit the matter to this arbitration, they do not think that it is open to them to inquire how it was that the Commission came to form an opinion upon their claims so widely different from their own. Still less can they admit that either side is entitled to treat this difference as ground for assuming that the Arbitrators have imported into their judgment considerations which the Treaty did not authorize them to entertain. Her Majesty's Government can only accept now, as on similar occasions they have accepted before, the decision of the Tribunal to which they have solemnly and voluntarily submitted.

At the close of his despatch Mr. Evarts refers to a consideration, which I ought not to pass over without observation, though he does not place it in the first rank among the objections which he raises against the Award. He calls attention to the fact that the Award of the Commission was not unanimous, and that in the Treaty of Washington no stipulation is, in this case, made that the decision of the majority is to be binding.

The opinion that, according to the Treaty of Washington, the Fishery Commission was incapable of pronouncing any decision unless its members were unanimous, is one in which Her Majesty's Government are unable to concur.

It is not difficult to produce from text-books, even of very recent date, authority for the doctrine that in International Arbitrations the majority of the Arbitrators binds the minority unless the contrary is expressed.

"Halleck's International Law," edited by Sir Sherstone Baker, 1878, says (Chap. xiv, Sect. 6) :—

"The following Rules, mostly derived from the Civil Law, have been applied to International Arbitrations where not otherwise provided in the Articles of Reference. If there be an uneven number the decision of a majority is conclusive."

Bluntschli (Sect. 493) says :—

"La décision est prise à la majorité des voix."

Calvo (i, p. 791), lays down :—

"A défaut d'obligations nettement tracées dans l'acte de compromis, les arbitres, pour s'acquitter de leur mandat, se guident d'après les règles tracées par le droit civil : ainsi ils doivent procéder conjointement, discuter et délibérer en commun, décider à la majorité."

I am not aware of any authorities who, in respect to International Arbitrations, could be quoted in the contrary sense ; and it would not be difficult to show, by a reference to cases in the American as well as in the English Courts, that the same rule has always been judicially applied in the case of Arbitrations of a public nature.

The language and stipulations of the Treaty itself, so far as they are explicit upon the subject, point to a similar conclusion. Mr. Evarts, indeed, argues that the requirement of unanimity was intended, because, while it is not disclaimed in the case of the Fishery rights, it is disclaimed in the case of three other Arbitrating Tribunals set up by the Treaty. It is evident that, at most, this omission would have left the matter in uncertainty. The suggestion that the framers of the Treaty meant by their silence to prescribe a mode of proceeding which, before a Tribunal thus constituted, is unexampled, can only be accepted on the hypothesis that they were deliberately preparing an insoluble controversy for those by whom the Treaty was to be executed.

It appears to me that if the language employed in the case of the other Tribunals set up by the Treaty be examined carefully a more probable solution of the difficulty may be found. The words used in each case are somewhat peculiar, and lend themselves to the supposition that what the draftsman was thinking of when he employed them was not the question whether unanimity should or should not be required, but under what circumstances the Tribunal should be held to be fully constituted for the purpose of giving a decision. It was obvious that in the course of a protracted and manifold inquiry, in which questions would constantly come up for decision, it was a matter of great practical importance to lay down whether for each decision the presence of the whole Tribunal was required, or whether any condition might be prescribed under which, in spite of the absence of any one member from illness or other cause, a valid decision might yet be given.

The difficulty of conducting, on the more rigid rule, a lengthened inquiry, involving frequent decisions, is a matter of ordinary experience. A common mode of escape from it is to fix some number, short of the entire complement, as the quorum or minimum number which must be present to give validity to a decision. The framers of the Washington Treaty adopted an arrangement somewhat different in form, but similar in effect. They laid down that the decisions should be valid so long as they were adopted by a number not less than the majority of the whole body. That this is the meaning of the three passages in which the word majority appears may be gathered both from the expressions themselves and from the connection in which they are found. The following is a portion of the first paragraph of Article XIII on the Commission of Civil War Claims :—

"They shall be bound to receive and consider all written documents or statements which may be presented to them by or on behalf of the respective Governments in support of, or in answer to, any claims ; and to hear, if required, one person on each side, on behalf of each Government, as Counsel, or Agent for such Government, *on each*

and every separate claim. A majority of the Commissioners shall be sufficient for an Award in each case."

Here it is evident that the multiplicity of the claims was the matter specially under consideration; and that "the sufficiency of a majority of the Commission for an Award" was stipulated with a view to the possible delay which the requirement of a full Tribunal in each case might cause. That the majority should be sufficient for an Award in the case of one member being absent was a rule which it was necessary to lay down; for where frequent decisions are not required, provisions of the kind are not customary. On the other hand, it is a universal practice that upon public Arbitrations thus constituted, in case of difference of opinion, the majority shall prevail. It is, therefore, consistent with sound principles of interpretation, to assume that the phrase was meant to apply to the point on which a provision was necessary, and not to the point on which a provision was superfluous.

The same reasoning is applicable to the case of the Geneva Tribunal, which had to decide on the alleged failure of neutral duty in Great Britain as to seventeen different ships, besides questions arising in respect to damages. The Board of Assessors which was provided in case the Geneva Tribunal had not awarded a gross sum was a Commission of Claims which would have had to adjudicate upon a very large number of individual losses. In these cases, therefore, as in that which has been just adverted to, the Joint High Commission took a natural and a judicious course in providing that a decision should not be invalid by reason of the absence of a member of the Tribunal, so long as a majority concurred in the Award.

On the other hand, no such provision was necessary in the case of the Halifax Commission, which, beyond questions of procedure, had but one issue before it, and but one decision to pronounce. In this case it was not necessary to lay down, as in the other cases, that "a majority of the Commissioners should be sufficient for an Award," or that "all questions should be decided by a majority of *all* the Arbitrators."

This construction of the Treaty appears to Her Majesty's Government more natural and more respectful to the Joint High Commission than the assumption that, having resolved to leave one particular case to a mode of Arbitration which was entirely novel, and wholly unlikely to issue in a decision, they carefully abstained from the use of any words to indicate the unusual resolution they had formed.

It further appears to Her Majesty's Government that a distinct intimation of the true meaning of the Joint High Commission in respect to the Fishery Award is to be found in the composition of the Tribunal which they adopted. This constitution is consistent with the intention that the majority should decide; it is not consistent with the supposed intention that the dissent of one Commissioner should prevent any decision from being pronounced. The XXIIIrd Article of the Treaty makes the following provision for the constitution of the Tribunal:—

"The Commissioners referred to in the preceding Article shall be appointed in the following manner, that is to say:—

"One Commissioner shall be named by Her Britannic Majesty, one by the President of the United States, and a third by Her Britannic Majesty and the President of the United States conjointly; and in case the third Commissioner shall not have been so named within a period of three months from the date when this Article shall take effect, then the third Commissioner shall be named by the Representative at London of His Majesty the Emperor of Austria and King of Hungary. In case of the death, absence, or incapacity of any Commissioner, or in the event of any Commissioner omitting or ceasing to act, the vacancy shall be filled in the manner hereinbefore provided for making the original appointment, the period of three months in case of such substitution being calculated from the date of the happening of the vacancy.

"The Commissioners so named shall meet in the City of Halifax, in the Province of Nova Scotia, at the earliest convenient period after they have been respectively named, and shall, before proceeding to any business, make and subscribe a solemn declaration that they will impartially and carefully examine and decide the matters referred to them to the best of their judgment, and according to justice and equity; and such declaration shall be entered on the record of their proceedings.

"Each of the High Contracting Parties shall also name one person to attend the Commission as its Agent, to represent it generally in all matters connected with the Commission."

This is the ordinary form of Arbitration in which each side chooses an Arbitrator, and an umpire is chosen by an indifferent party to decide between the two. The appointment of the umpire is of no utility, the precautions for securing his impartiality are

unmeaning, if the adverse vote of one of the Arbitrators may deprive his decision of all force and effect.

In ordinary phraseology the decision of a body of members means a decision come to by a majority of voices. In the common use and understanding of language, this is the interpretation which suggests itself to every reader, when it is stated that a number of men have expressed an opinion or have arrived at a determination. The requirement of unanimity is the exception, and therefore can only be conveyed by an explicit statement. There are, of course, well-known exceptions, as in the case of trial by jury. But in such cases the constitution of the deciding body is diametrically opposed to that adopted in the case of the Fishery Commission. Instead of a provision that two-thirds shall be named by the parties to the suit, the most elaborate precautions are taken that the whole body shall be unbiassed. It is obvious that when unanimity is to be required, when any one member of the deciding body is to have the power of nullifying all the proceedings and preventing a decision, such an arrangement will only be endurable on the condition that each member shall be so chosen as to be as far as possible free from any inclination to exercise that power on one side rather than on the other. If a jury were constituted on the principle that the Plaintiff should choose one-third of it and the Defendant another third, very few persons would be found to expose themselves to the cost of an action at law. Had it been known five years ago that an Award would be prevented by the dissent of one of the members of an arbitration constituted on the same principle, though I do not venture to conjecture what the course of the United States' Government would have been, I feel confident that England would have declined to enter upon so unfruitful a litigation.

Her Majesty's Government may appeal to a cogent proof that in accepting this Arbitration they did not contemplate that the Award was liable to be prevented by the requirement of unanimity. Believing, in agreement with the majority of the Commission, that they were heavy losers by the exchange of concessions contained in Articles XVIII, XIX, and XXI of the Treaty, they nevertheless have for five years allowed those concessions to come into force, trusting to the compensation which the Commission would give to them. That they have done so is a sufficient proof that they did not anticipate a construction of the Treaty which would make the delivery of an Award almost impossible. A valuable property has actually passed into the enjoyment of others, and cannot be recalled. The price to be paid for it was to be determined later by a Tribunal agreed upon between the parties. Is it conceivable that they should have deliberately constituted a Tribunal for this purpose, in which a decision could be wholly prevented by the dissent of a member nominated by the party to whom the property had passed?

Reciprocating cordially the courteous and friendly sentiments by which Mr. Evarts' language is inspired, Her Majesty's Government feel confident that the United States' Government will not, upon reflection, see in the considerations which have been advanced any sufficient reason for treating as a nullity the decision to which the majority of the Commission have arrived.

I have, &c.

(Signed) SALISBURY.

NORTH AMERICA. No. 2 (1878).

CORRESPONDENCE respecting the Award of the Halifax Fisheries Commission.

Presented to both Houses of Parliament by Command of Her Majesty. 1878.

LONDON:
PRINTED BY HARRISON AND SONS.

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NORTH AMERICA. No. 4 (1878).

FURTHER CORRESPONDENCE

RESPECTING THE

AWARD

OF THE

HALIFAX FISHERIES COMMISSION.

Presented to both Houses of Parliament by Command of Her Majesty.
1878.

LONDON:
PRINTED BY HARRISON AND SONS.
[C.—2186.] *Price* 1*d.*

Further Correspondence respecting the Award of the Halifax Fisheries Commission.

No. 1.

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

Legation of the United States, London,
November 21, 1878.

My Lord,

I HAVE been instructed by the President of the United States to tender to Her Majesty's Government the sum of 5,500,000 dollars in gold coin, this being the sum named by the two concurring members of the Fisheries Commission (lately sitting at Halifax under authority imparted thereto by the Treaty of Washington), to be paid by the Government of the United States to the Government of Her Britannic Majesty.

I am also instructed by the President to say that such payment is made upon the ground that the Government of the United States desires to place the maintenance of good faith in Treaties, and the security and value of arbitration between nations, above all question in its relations with Her Britannic Majesty's Government, as with all other Governments.

Under this motive, the Government of the United States decides to separate the question of withholding payment from the considerations touching the obligation of this payment which have been presented to Her Majesty's Government in correspondence, and which it reserves and insists upon.

I am, besides, instructed by the President to say that the Government of the United States deems it of the greatest importance to the common and friendly interests of the two Governments, in all future treatment of any questions relating to the North American Fisheries, that Her Britannic Majesty's Government should be distinctly advised that the Government of the United States cannot accept the result of the Halifax Commission as furnishing any just measure of the value of a participation by our citizens in the inshore fisheries of the British provinces; and it protests against the actual payment now made being considered by Her Majesty's Government as, in any sense, an acquiescence in such measure, or as warranting any inference to that effect.

I have, &c.
(Signed) JOHN WELSH.

No. 2.

The Marquis of Salisbury to Mr. Welsh.

Foreign Office, November 21, 1878.

Sir,

I HAVE the honour to acknowledge the receipt of your letter of to-day, and of the draft for 5,500,000 dollars in gold, which you have delivered to me in payment of the Award pronounced in favour of the Government of Her Britannic Majesty by the Halifax Fishery Commission on the 23rd November, 1877, in accordance with the provisions of the XXIInd Article of the Treaty between Great Britain and the United States of America, signed at Washington on the 8th May, 1871.

I am, &c.
(Signed) SALISBURY.

NORTH AMERICA. No. 4 (1878).

FURTHER CORRESPONDENCE respecting the Award of the Halifax Fisheries Commission.

Presented to both Houses of Parliament by Command of Her Majesty. 1878.

LONDON:
PRINTED BY HARRISON AND SONS.

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CANADA.

CORRESPONDENCE

BETWEEN THE

IMPERIAL AND CANADIAN GOVERNMENTS

RELATIVE TO THE

Appointment of Sir A. T. Galt as High Commissioner to represent Canada in England and to reside in London.

Presented to both Houses of Parliament by Command of Her Majesty.
June 1880.



LONDON:
PRINTED BY GEORGE EDWARD EYRE AND WILLIAM SPOTTISWOODE,
PRINTERS TO THE QUEEN'S MOST EXCELLENT MAJESTY.
FOR HER MAJESTY'S STATIONERY OFFICE.

1880.

[C.—2594.] *Price* 1½*d.*

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APPENDIX.

Commission appointing the Honorable Sir A. T. Galt, K.C.M.G., to be High Commissioner for Canada.

Correspondence between the Imperial and Canadian Governments relative to the Appointment of Sir A. T. Galt as High Commissioner to represent Canada in England and to reside in London.

No. 1.

THE RIGHT HON. SIR MICHAEL HICKS BEACH, BART., to THE MARQUIS OF LORNE, K.T.

MY LORD, Downing Street, November 1, 1879.

I RECEIVED from your Ministers, during their recent visit to England, a confidential memorandum, of which I enclose a printed copy, urging the necessity of providing further means for constant and confidential communication between Her Majesty's Government and the Government of Canada, and recommending that a representative of the latter Government should be appointed to reside permanently in London, and that he should be granted a quasi-diplomatic position.

2. Her Majesty's Government are very sensible of the advantage which might result from the appointment by the Dominion Government of a gentleman who, residing in this country, would be fully empowered to explain their views on the various important questions connected with Canada, which, from time to time, demand consideration, and which might often be more satisfactorily, as well as more expeditiously, dealt with, if such means of oral communication were provided. Looking, however, to the position of Canada as an integral portion of the empire, the relations of such a person with Her Majesty's Government would not be correctly defined as being of a diplomatic character, and while Her Majesty's Government would readily accord to him a status in every way worthy of his important functions, his position would necessarily be more analogous to that of an officer in the home service, than to that of a Minister at a foreign court.

3. He would therefore primarily communicate with this Department on the various subjects which might be entrusted to him, and while Her Majesty's Government would readily avail themselves of any information he might afford, and give the fullest consideration to any representations he might make on behalf of the Canadian Government, it would, of course, rest with the Secretary of State for Foreign Affairs to determine in each case in what precise capacity his services might best be rendered in the event of any negotiations with a foreign court, on subjects affecting the interests of the Dominion. In some instances, for example, it might be desirable for him to remain in London and advise with Her Majesty's Government there, while in other cases he might, in accordance with the precedents which have been quoted, be more usefully engaged in assisting Her Majesty's representatives abroad.

4. I have deemed it necessary to refer to these details because it is desirable that there should be no misunderstanding as to the precise position which could be accorded by Her Majesty's Governments to an officer holding an appointment which the Government of Canada propose to establish, but I do not anticipate that the views which I have expressed will be felt by your Ministers as placing any insuperable difficulty in the way of the practical realization of their wishes; and I would only add that if such an appointment should be decided upon, it would seem, for the reasons I have stated, more appropriate that the officer should be designated by the title of "Dominion" or "Canadian Commissioner" than by any title implying a diplomatic status or position.

I have, &c.

(Signed) M. E. HICKS BEACH.

Governor General
The Right Hon. The Marquis of Lorne,
&c. &c. &c.

Enclosure in No. 1.

MEMORANDUM.

The policy of the Empire having devolved upon Canada the administration of the whole of British North America, and the care and protection of British interests therein, experience is daily showing the necessity of providing the means of constant and confidential communication between Her Majesty's Government and Her local advisers in Canada, in extension of the more formal relations subsisting through the correspondence of the Secretary of State for the Colonies with the Governor General.

Q 1655. Wt. 3579.

Canada has ceased to occupy the position of an ordinary possession of the Crown. She exists in the form of a powerful Central Government, having already no less than seven subordinate local executive and legislative systems, soon to be largely augmented by the development of the vast regions lying between Lake Superior and the Rocky Mountains. Her Central Government is becoming even more responsible than the Imperial Government for the maintenance of international relations towards the United States, a subject which will yearly require greater prudence and care, as the populations of the two countries extend along, and mingle across the vast frontier line, three thousand miles in length.

The Canadian Government has, in short, become the trustee for the Empire at large, or half the continent of North America, and is bound to administer the trust not only for the benefit of the present limited population, but with the intention and policy of making the great resources of the Dominion in the highest measure promotive of the interests of the British people and the dignity of the Crown.

The organisation, government, and settlement of the vast regions of British North America are all subjects which the Canadian Government must desire to deal with in the common interest of all, while in trade and commerce it is daily becoming more evident that advantage would arise in definitely settling such arrangements between the United Kingdom and her vast dependency as may produce more thorough identity of interest and more uniform policy towards each other, and towards foreign nations.

It appears to the Canadian Government eminently desirable to provide for the fullest and most frank interchange of views with Her Majesty's Government, and for the thorough appreciation of the policy of Canada on all points of general interest. Otherwise there appears to be danger of a feeling growing up of indifference, if not of actual antagonism and irritation on both sides. The idea must be avoided that the connection of Canada with the British Empire is only temporary and unabiding, instead of being designed to strengthen and confirm the maintenance of British influence and power.

It is now being found in practice that there are constantly questions arising, connected with the administration of affairs in Canada, requiring discussions in a mode, and to an extent wholly impracticable by the ordinary channel of correspondence through the Governor General; and periodical visits have to be made to London for this purpose by the important members of the Canadian Government, entailing serious inconvenience. At this moment the following subjects are thus under consideration: The Pacific Railway, and important collateral subjects—Treaties of Commerce with France and Spain—Esquimault Graving Dock—Military defence of Canada generally, and of British Columbia more especially—while the fishery and commercial clauses of the Washington Treaty may, at any moment, be re-opened by the United States; with many other matters of importance connected with the better organisation of the military force of the Dominion.

It is manifestly impossible that the views of the Canadian Government on such subjects can be submitted for the intelligent consideration of Her Majesty's Government in any other mode that that of personal communication; and as the subjects themselves relate to different departments of administration, the necessity arises for the absence from their posts at this moment of not less than three Ministers.

It is further submitted that the very large and rapidly augmenting commerce of Canada, and the increasing extent of her trade with foreign nations, is proving the absolute need of direct negotiations with them for the proper protection of her interests. In most of the treaties of commerce entered into by England, reference has only been had to their effect on the United Kingdom; and the Colonies are excluded from their operation, a fact which has been attended with most unfortunate results to Canada, as relates to France. This is, to a certain extent, unavoidable, in consequence of the control of all customs having been granted to Canada; but a necessity has thus arisen for providing separate and distinct trade conventions with all foreign powers with whom Canada has distinct trade. With the different views held by the Parliament of Canada on such subjects, from those of Her Majesty's Government, there is a manifest difficulty in asking the latter to become responsible for the representations required to be made, and foreign governments find it difficult to understand our present system. The Canadian Government therefore submit that when occasion requires such negotiations to be undertaken, Her Majesty's Government should advise Her Majesty specially to accredit the representative of Canada to the foreign court, by association for the special object, with the resident Minister or other Imperial negotiator.

The suggestion is merely asking Her Majesty's Government to establish as a rule the precedent which was created in 1871, when Sir John A. Macdonald was made a member of the Joint High Commission to Washington, and later, in 1874, when

Mr. George Brown was officially associated with Sir Edward Thornton, at the instance of the Canadian Government, for the purpose of negotiating a Treaty of Commerce between Canada and the United States.

With the view of giving effect to the foregoing policy, the Government of Canada suggests that Her Majesty's Government should consent to receive an official representative from Canada for the purpose of securing the most early and confidential communication of their views on all subjects; and that, when so requested, the proposed Minister should be duly accredited to Foreign Courts in the manner above mentioned.

The Canadian Government desires to surround the proposed appointment with all the importance which should attach to an official charged with such high duties. He should, therefore, be selected from the Queen's Privy Council for Canada, and specially entrusted with the general supervision of all the political, material and financial interests of Canada in England, subject to instructions from his Government.

The dignity of the office, and the advantage of its proper recognition, especially at Foreign Courts, appear to require a more expressive title than that of Agent-General; it is therefore suggested that the designation should be Resident Minister, or such other name of equal import as Her Majesty's Government may suggest.

The Canadian Government attaches great importance to this matter, and hopes that Her Majesty's Government will see no insuperable difficulty in giving the Canadian Representative a quasi-diplomatic position at the Court of St. James, with the social advantages of such a rank and position.

JOHN A. MACDONALD.
S. L. TILLEY.
CHARLES TUPPER.

No. 2.

GOVERNOR GENERAL THE MARQUIS OF LORNE, K.T., to THE RIGHT HONOURABLE SIR M. E. HICKS BEACH, BART.

Government House,
Ottawa, December 24, 1879.

SIR,

I HAVE the honour to transmit herewith, for your consideration, a copy of an approved report of a Committee of the Privy Council respecting the appointment of a Canadian Representative to reside in England, to be styled "High Comissioner of Canada," to confer with Her Majesty's Government on all important matters affecting the Dominion, which formed the subject of your despatch of the 1st November last.*

I have, &c.
(Signed) LORNE.

The Right Honourable Sir M. E. Hicks Beach,
&c. &c. &c.

Enclosure in No. 2.

COPY of a REPORT of a COMMITTEE of the HONOURABLE THE PRIVY COUNCIL for CANADA, approved by HIS EXCELLENCY THE GOVERNOR GENERAL, on the 22nd December 1879.

The Committee of Council have had under consideration the despatch from the Right Honourable the Secretary of State for the Colonies, dated 1st November last, upon the confidential memorandum of Sir John Macdonald, Sir Leonard Tilley, and Sir Charles Tupper, urging the necessity of providing further means for constant and confidential communication with Her Majesty's Government, and also for the representation of Canada in the future negotiation of Treaties of Commerce with foreign nations.

The Committee desire to express their gratification at the manner in which their views have been met by Her Majesty's Government, and they share in the conviction of Sir Michael Hicks Beach, that no insuperable difficulty exists in the realization of their wishes.

The Committee recognise the fact that Canada cannot, as an integral portion of the Empire, maintain relations of a strictly diplomatic character. But they respectfully submit that while this is true as respects foreign nations, it does not accurately represent the actual state of facts in regard to the United Kingdom. Her Majesty's Government is unquestionably the supreme governing power of the Empire, but, under the British

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* No. 1.

North America Act, self-governing powers have been conferred upon Canada in many most important respects, and Her Majesty's Government may on these points be more correctly defined as representing the United Kingdom than the Empire at large. In considering many questions of the highest importance, such as the commercial and fiscal policy of the Dominion as affecting the United Kingdom, the promotion of Imperial interests in the administration and settlement of the interior of the Continent, and on many other subjects, indeed on all matters of internal concern, the Imperial Government and Parliament have so far transferred to Canada an independent control that their discussion and settlement have become subjects for mutual assent and concert, and thereby have, it is thought, assumed a quasi-diplomatic character as between Her Majesty's Government representing the United Kingdom *per se* and the Dominion, without in any manner derogating from their general authority as rulers of the entire Empire.

The Committee would further respectively submit, in elucidation of the views contained in the memorandum, that the Government of Canada, in respect of negotiations with foreign powers, in no respect desire to be placed in the position of independent negotiators. On the contrary, they are fully convinced that it is through the influence and support of Her Majesty's Government, and by the effective use of their carefully trained and thorough diplomatic service that they can alone look for any measure of success. And it is with the view most thoroughly to satisfy foreign governments of the identity of interests of Her Majesty with themselves that they have so strongly sought the most official recognition possible for their representative. And in making their suggestion on this point, the Committee have had in mind the position assigned to the delegates from Canada in 1865 and 1866, which was that of belonging to the diplomatic corps, taking precedence after the foreign Ministers.

As the representative of Governor General and Executive Government of Canada, and especially when dealing with negotiations with any foreign powers, the duties of the proposed officer will, the Committee consider, be of a nature more analogous to diplomatic than to home service, but they confidently leave this subject in the hands of Her Majesty's Government, resting on the assurances conveyed in the despatch under consideration that Her Majesty's Government will accord to their representative a status in every way worthy of his important functions.

The officer will certainly primarily communicate with the Secretary of State for the Colonies on the various subjects on which he may receive instructions to address Her Majesty's Government, and the Committee do not doubt that every consideration will be given to such representations as he may make on behalf of the Canadian Government.

The Committee entirely agree that it will rest with the Secretary of State for Foreign Affairs to determine in each case in what precise capacity the services of the Canadian Officer can be best rendered in the event of negotiations with Foreign Courts on subjects affecting the interests of the Dominion. Manifestly it would not be the desire of the Canadian Government, that in every case their representative should be personally associated with the British Minister at the Foreign Courts, but only in such cases as might from their importance require it. On this point the Committee are fully assured that the Secretary of State for Foreign Affairs will meet their reasonable wishes as has been done in the cases cited.

The Committee understand, however, that in all cases of commercial treaties Her Majesty's Government will direct early communication to be made to the Canadian representative so as to permit him to take the instructions of his Government, and to make such representations as may be called for to Her Majesty's Government.

With reference to the designation of the proposed officer the Committee desire to accept the suggestion of Her Majesty's Government. As, however, Commissioners are very frequently appointed for special services of minor importance, it is considered desirable to make the appointment to London distinctive by styling the officer "High Commissioner of Canada in London," the Committee on this point being convinced that in reference especially to Foreign Governments the designation and status are of real importance.

It is intended to create the office under statute at the next Session of the Canadian Parliament; but should the public service require an earlier appointment, the Committee confidently rely on Her Majesty's Government giving immediate effect to the views expressed in the despatch from the Secretary of State for the Colonies, which, it is believed, are correctly understood by the Canadian Government.

(Certified) J. O. Coté,
Clerk, Principal Council, Canada.

No. 3.

THE SECRETARY OF STATE FOR THE COLONIES to GOVERNOR GENERAL, Canada.

(Telegraphic.)

London, February 7, 1880.

Her Majesty's Government will recognise Sir A. T. Galt as High Commissioner under the Great Seal of Canada.

(Signed) Secretary of State for the Colonies.

No. 4.

Governor General THE MARQUIS OF LORNE, K.T., to the Right. Hon. THE SECRETARY OF STATE FOR THE COLONIES.

(Received May 25, 1880.)

Canada, Government House, Ottawa,
May 12, 1880.

Sir,

I have the honour to transmit herewith attested copies of an Act passed during the last Session of the Dominion Parliament intituled, "An Act for the appointment of "a Resident Representative Agent for Canada in the United Kingdom."

I have, &c.

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

(Signed) LORNE.

Enclosure in No. 4.

Ottawa, May 12, 1880.

I Robert Le Moine, Esquire, Clerk of the Parliaments, and Custodian of the Statutes of the Parliament of the Dominion of Canada, certify the subjoined to be a true copy of the original enactment passed by the Senate and House of Commons in the 2nd Session of the fourth Parliament, held in the forty-third year of Her Majesty's Reign, and assented to in the Queen's name, by the Governor General, on Friday the 7th day of May 1880.

Robert Le Moine,
Clerk of the Parliaments.

Cap. 11.

An Act for the Appointment of a Resident Representative Agent for Canada in the United Kingdom.

Whereas the growing and varied interests of the Dominion render it expedient that Canada should appoint a Representative Agent in the United Kingdom, to watch over those interests, who shall be duly accredited to Her Majesty's Imperial Government; therefore Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:—

1. The Governor may, under the Great Seal of Canada, from time to time appoint an officer to be called "The High Commissioner for Canada," who shall hold office during pleasure.

2. It shall be the duty of the High Commissioner:

(1.) To act as Representative and Resident Agent of the Dominion in the United Kingdom, and in that capacity to execute such powers and to perform such duties as may from time to time be conferred upon and assigned to him by the Governor in Council:

(2.) To take the charge, supervision and control of the immigration offices and agencies in the United Kingdom, under the Minister of Agriculture:

(3.) To carry out such instructions as he may from time to time receive from the Governor in Council respecting the commercial, financial and general interests of the Dominion in the United Kingdom and elsewhere.

3. The High Commissioner shall receive a salary of not more than $10,000 per annum, and the same shall be payable out of any unappropriated moneys forming part of the Consolidated Revenue Fund of Canada.

No. 5.

GOVERNOR GENERAL THE MARQUIS OF LORNE, K.T., to the RIGHT HON. THE SECRETARY OF STATE FOR THE COLONIES.

(Received May 25, 1880.)

Canada, Government House, Ottawa,
May 12, 1880.

SIR,

WITH my Despatch of this date* I had the honour of forwarding to you attested copies of "An Act for the appointment of a Resident Representative Agent for Canada in "the United Kingdom." I now enclose a copy of an approved Report of the Committee of the Privy Council, recommending that Sir Alexander Tilloch Galt, G.C.M.G., be appointed "The High Commissioner for Canada" under the Act above cited.

I have, &c.
(Signed) LORNE.

The Right Honourable the Secretary of State
for the Colonies.

Enclosure in No. 5.

COPY of a REPORT of a COMMITTEE of the HONOURABLE the PRIVY COUNCIL for CANADA, approved by HIS EXCELLENCY THE GOVERNOR GENERAL on the 11th day of May 1880.

ON the recommendation of the Right Honourable Sir John A. Macdonald, the Committee advise that the Honourable Sir Alexander Tilloch Galt, G.C.M.G., be appointed "The High Commissioner for Canada" under the Act passed during the last Session of Parliament, intituled "An Act for the appointment of a Resident Representative Agent for Canada in the United Kingdom."

(Certified) J. O. COTÉ,
Clerk, Privy Council,
Canada.

No. 6.

THE EARL OF KIMBERLEY to GOVERNOR GENERAL THE MARQUIS OF LORNE, K.T.

MY LORD,

Downing Street, May 27, 1880.

I HAVE the honour to inform you that Her Majesty will not be advised to exercise her power of disallowance with respect to the Act of the Legislature of Canada, entitled "An Act for the appointment of a Resident Representative Agent for Canada in the United Kingdom," a transcript of which accompanied your Despatch of the 12th instant.†

I have, &c.
(Signed) KIMBERLEY.

Governor General the Right Honourable
the Marquis of Lorne.

No. 7.

GOVERNOR GENERAL THE MARQUIS OF LORNE, K.T., to THE EARL OF KIMBERLEY.

(Received June 2, 1880.)

MY LORD,

Citadel, Quebec, May 21, 1880.

I HAVE the honour to transmit herewith a copy of an approved report of a Committee of the Privy Council recommending that I should inform you that an Act had passed the Dominion Legislature authorising the appointment of a Resident Representative Agent for Canada, and that Sir Alexander Tilloch Galt had been appointed to that office, and further that copies of the Act and the Commission should be transmitted to you.

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* No. 4. † No. 4.

In my despatches of the 12th May,* I forwarded attested copies of the Act in question, and a copy of a report of Council appointing Sir Alexander Galt to the office of High Commissioner, and in my telegram of the 17th instant† I informed you that the Commission had been sent to Sir Alexander by the mail of the 14th instant.

I have, &c.

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

(Signed) LORNE.

Enclosure in No. 7.

COPY of a REPORT of a COMMITTEE of the HONOURABLE the PRIVY COUNCIL for CANADA, approved by HIS EXCELLENCY the GOVERNOR GENERAL on the 18th May 1880.

ON a memorandum dated 15th May 1880, from the Right Honourable Sir John A. Macdonald, submitting for your Excellency's consideration that it is expedient, now that the Act appointing a High Commissioner for Canada has been passed and a Commission under the Great Seal issued, appointing Sir Alexander T. Galt, G.C.M.G., to that office, that the Colonial Minister should be informed of the fact of such appointment, and Sir Alexander Galt duly accredited to Her Majesty's Government as such High Commissioner; further, that copies of the Act and Commission should be transmitted with your Excellency's despatch on the subject.

The Committee concur in the foregoing memorandum, and recommend that the same be approved and carried out.

(Certified) JOHN J. MCGEE,
Assistant Clerk, Privy Council, Canada.

APPENDIX.

COMMISSION appointing the Honourable SIR ALEXANDER TILLOCH GALT, G.C.M.G., to be High Commissioner for Canada.

(L.S.)

VICTORIA, by the grace of God, of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, &c. &c. &c.

To the Honourable Sir Alexander Tilloch Galt, Knight Grand Cross of our Most Distinguished Order of Saint Michael and Saint George.

Greeting.

WHEREAS it is in and by an Act of the Parliament of Canada, passed in the forty-third year of our reign, chaptered eleven, and intituled "An Act for the appointment of a Resident Representative Agent for Canada in the United Kingdom," amongst other things, in effect enacted that the Governor may under the Great Seal of Canada from time to time appoint an officer to be called "The High Commissioner for Canada," who shall hold office during pleasure. And further, that it shall be the duty of the High Commissioner to act as Representative and Resident Agent of the Dominion in the United Kingdom, and in that capacity to execute such powers and to perform such duties as may from time to time be conferred upon and assigned to him by the Governor in Council. To take the charge, supervision, and control of the Immigration Offices and Agencies in the United Kingdom, under the Minister of Agriculture. To carry out such instructions as he may from time to time receive from the Governor in Council respecting the commercial, financial, and general interests of the Dominion in the United Kingdom and elsewhere.

Know you, that reposing trust and confidence in the loyalty, integrity, and ability of you the said Sir Alexander Tilloch Galt, We do hereby nominate and appoint you the said Sir Alexander Tilloch Galt to be the High Commissioner for Canada,

To have, hold, exercise, and enjoy the said office unto you the said Sir Alexander Tilloch Galt, with all and every the duties, powers, rights, authority, privileges, emoluments, and advantages unto the said office of right and by law appertaining during pleasure.

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* Nos. 4 and 5. † Not printed.

In testimony whereof We have caused these our Letters to be made Patent, and the Great Seal of Canada to be hereunto affixed. Witness our right trusty and well-beloved Councillor, Sir John Douglas Sutherland Campbell (commonly called the Marquis of Lorne), Knight of our Most Ancient and Most Noble Order of the Thistle, Knight Grand Cross of our Most Distinguished Order of Saint Michael and Saint George, Governor General of Canada, and Vice Admiral of the same.

At our Government House in our City of Ottawa, this eleventh day of May, in the year of our Lord one thousand eight hundred and eighty, and in the forty-third year of our reign.

By Command. (Signed) J. C. AIKINS,
Secretary of State.

LONDON:
Printed by GEORGE E. EYRE and WILLIAM SPOTTISWOODE,
Printers to the Queen's most Excellent Majesty.
For Her Majesty's Stationery Office.

CANADA (TEMPERANCE ACT, 1878).

RETURN to an Address of the Honourable The House of Commons, dated 17 August 1880;—*for*,

"COPY of the ACT of the CANADIAN PARLIAMENT usually known as 'THE SCOTT TEMPERANCE ACT, 1878.'"

Colonial Office, 19 August 1880. } M. E. GRANT DUFF.

41 VICTORIA.

CHAPTER 16.

AN ACT respecting the Traffic in INTOXICATING LIQUORS.

[*Assented to 10th May* 1878.]

WHEREAS it is very desirable to promote temperance in the Dominion, and that there should be uniform legislation in all the Provinces respecting the traffic in intoxicating liquors. Preamble.

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

PRELIMINARY.

1. This Act may be cited as "The Canada Temperance Act, 1878." Short title.

2. In this Act, the expression "intoxicating liquor" means and comprehends any and every spirituous or malt liquor, and every wine, and any and every combination of liquors or drinks that is intoxicating; and the word "county" includes every town, township, parish, and other division or municipality, except a city, within the territorial limits of the county, and also a union of counties where united for municipal purposes. Interpretation.

3. Sections one, two, three, four, five, six, seven, eight, nine, and ten of the Act of the Legislature of the late Province of Canada, passed in the Session thereof held in the twenty-seventh and twenty eighth years of Her Majesty's Reign, and chaptered eighteen, and to be cited as "The Temperance Act of 1864," are hereby repealed from and after the passing of this Act, as to every municipality within the limits of the said late Province of Canada in which no bye-law passed and approved, or adopted and passed, under the authority and for the enforcement of the said Act. Repeal of certain sections of Act of the Province of Canada, 27 & 28 Vict. c. 18, as to municipalities in which no bye-law has been passed.

(*a.*) Is then in force, or

(*b.*) Is then only not in force for want of the delivery of a copy thereof to the proper officer, or

(*c.*) Is then suspended as to its operation until the expiration of the then existing licenses.

2. And as to every municipality within the limits of the said late Province of Canada in which a by-law passed and approved, or adopted and passed, under the authority and for the enforcement of the said Act is at the time of the passing of this Act. And as to municipalities in which a bye-law has been passed.

(*a.*) In force, or

(*b.*) Only not in force for want of the delivery of a copy thereof to the proper officer, or

(*c.*) Suspended

(*c.*) Suspended as to its operation until the expiration of the then existing licenses;

the said sections one, two, three, four, five, six, seven, eight, nine, and ten of the said Act shall be repealed upon, from and after the day next following the day on which such bye-law is repealed under the provisions of the said Act, or of this Act;

Proviso: if such a municipality is included in a county or city in which the second part is brought into force.

Provided always that if such municipality be included in the limits of, or have the same limits as any county or city in which the second part of this Act is brought into force before the repeal of such bye-law, then such bye-law shall thereupon *ipso facto* become and be null and void and of no effect whatever, and the said sections one, two, three, four, five, six, seven, eight, nine, and ten of the said Act shall be repealed upon, from and after the day on which the said second part of this Act comes into force and takes effect in such county or city; but no repeal of the said Act under the provisions of this section shall affect any act done or any right or right of action existing, accruing, accrued or established, or any proceedings commenced, or any penalty or forfeiture incurred under its provisions before the time when such repeal takes effect.

FIRST PART.

Proceedings for bringing the Second Part of this Act into Force.

Form of petition to Governor General.

4. Any petition to the Governor General in Council for the bringing of the second part of this Act into force in any county or city may be in the form in Schedule A. to this Act, or in words to the same effect.

Form of notice of desire to have votes of electors taken.

5. Such petition may be embodied as in Schedule A. to this Act, in a notice in writing addressed to the Secretary of State for Canada, and signed by electors qualified and competent to vote at the election of a member of the House of Commons in the county or city, to the effect that the signers desire that the votes of all such electors, hereinafter termed electors, be taken for and against the adoption of the petition.

Evidence of notice being given by one-fourth of electors.

6. Together with, or in addition to, every such notice, there shall be laid before the Secretary of State evidence that there are appended to it the genuine signatures of at least one-fourth in number of all the electors in the county or city named in it, and that such notice has been deposited in the office of the sheriff or registrar of deeds of or in the county or city, for public examination, by any parties, for ten days preceding its being laid before the Secretary of State; and that two weeks' previous notice of such deposit had been given in two newspapers published in or nearest to the county or city, and by at least two insertions in each paper.

In that case a proclamation may issue.

7. In case it appears by evidence to the satisfaction of the Governor General in Council that any such notice has appended to it the genuine signatures of one-fourth or more of all the electors in the county or city named in it, and has been duly deposited as aforesaid, after notice as aforesaid, his Excellency in Council may issue a proclamation under this part of this Act.

Proclamation to be published.

8. Such proclamation shall be inserted at least three times in the "Canada Gazette," and three times in the Official Gazette of the Province in which the county or city is situated.

What to be set forth in proclamation.

9. In such proclamation there may be set forth:—

(*a.*) The notice in full, with the proposed petition embodied in it;

(*b.*) The number of the signatures to the notice;

(*c.*) The day on which the poll for taking the votes of the electors for and against the petition will be held;

(*d.*) That such votes will be taken between the hours of nine o'clock in the forenoon and five o'clock in the afternoon of that day, and by ballot;

(*e.*) The name of the sheriff, registrar, or other person appointed returning officer for the purpose of taking, on that day, the votes of the electors for

for and against the petition, and of afterwards summing up the same and making a return of the result to the Governor General in Council;

(*f.*) The power of the returning officer to appoint a deputy returning officer at and for each polling place or station;

(*g.*) The place where, and the day and hour when, the returning officer will appoint persons to attend at the various polling stations, and at the final summing up of the votes on behalf of the persons interested in, and promoting or opposing respectively, the adoption of the petition;

(*h.*) The place where, and the day and hour when, the votes of the electors will be summed up, and the result of the polling declared by the returning officer;

(*i.*) The day on which, in the event of the petition being adopted by the electors, the second part of this Act will go into force in the county or city in question;

And any such further particulars with reference to the taking and summing up of the votes of the electors as the Governor General in Council may see fit to insert therein:

No polling on certain days.

2. But no polling of votes under this Act shall be held in any city, county, or district on the same day that any election may take place in such city, county or district for members to serve in the Parliament of Canada or in any of the local legislatures of the Dominion.

Who may be appointed returning officers.

10. Either the sheriff or the registrar of deeds, or one of the sheriffs, or one of the registrars of deeds for the county or city, or for a portion of the county or city in which the poll is to be held, or the nearest sheriff or registrar, or any other person may be appointed returning officer in any case under this part of this Act; and the naming of any person in any proclamation issued under this Act shall be a sufficient appointment, and sufficient evidence of the appointment of such person as returning officer for the purposes mentioned in the proclamation.

Returning officer to take oath of office.

11. On receiving a copy of the proclamation, the returning officer shall forthwith endorse thereon the date at which he shall have received the same; and before taking any further action thereon he shall take before a justice of the peace the oath of office in the form of Schedule B. to this Act.

12. All persons qualified to vote at the election of a member of the House of Commons in the county or city to which any proclamation issued under this Act relates on the day on which a poll is held in compliance with such proclamation, and no others, shall be qualified to vote and to have their votes polled on that day, for or against the adoption of the petition mentioned in such proclamation.

Returning officer to ascertain who are qualified to vote.

13. The returning officer shall ascertain from the lists of voters, which, under the provisions of this Act, are to be used at the polling of votes—and, in any county or city where there are voters entitled to vote but there are no lists of voters, from such other information as may be within his reach—the number of, or probable number of persons qualified to vote in each town, parish, township, local municipality, or other locality in the county or ward in the city where voters are so entiled to vote; and if such town, parish, township, local municipality, or other locality, or such ward, has not been subdivided for electoral purposes into polling districts by the Legislature, or by the local authorities under the legislation of the Province wherein such county or city is situate, or by the returning officer at the then last election of a member of the House of Commons in the county or city, he shall subdivide such town, parish, township, local municipality, or other locality in the county, or ward in the city, into polling districts in a convenient manner, so that there shall be at least one polling district for every 200 voters; and he shall also fix a polling station in a central and convenient place in each polling district; and the returning officer may in his discretion grant such additional polling places in such polling districts as the extent of the district and the remoteness of any body of its voters from the polling place may render necessary, although the voters thereof may be less than the number above specified:

To subdivide localities into polling districts.

And fix a polling station, or more, in each polling district.

Returning officer to post up notices indicating polling stations and limits of polling districts.

2. The returning officer shall then, eight days at least before the day on which the poll for taking the votes of the electors for and against the petition is to be held, by a notice under his hand, indicate, with reference to the holding of such poll, the several polling stations fixed by him, and the territorial limits to which they shall respectively apply, and shall cause the said notice to be posted up at four of the most prominent and conspicuous places in each polling district.

Further duties of returning officer.

14. It shall further be the duty of every person so appointed returning officer :—

Deputies.

Firstly. To appoint, by a commission under his hand, in the form Schedule C. to this Act, one deputy returning officer for each polling district comprised in the county or city, who shall, before acting as such, take before the returning officer, or a justice of the peace, the oath of office in the form Schedule D. to this Act;

Lists of voters.

Secondly. To furnish each deputy returning officer with a copy of the list, or of such portion of the list of voters, as contains the names, arranged alphabetically, of the electors qualified to vote at the election of a member of the House of Commons at the polling station for which he is appointed, such copy being first certified by himself, or by the proper custodian of the lists from which such copies are taken ;

Ballot boxes.

Thirdly. To deliver to each deputy returning officer, eight days at least before the polling day, a ballot box to receive the ballot papers of the voters, which ballot box shall be made of some durable material, with one lock and key, and a slit or narrow opening in the top, and so constructed that the ballot papers may be introduced therein, but cannot be withdrawn therefrom without the box being unlocked ;

Ballot papers.

Fourthly. To furnish each deputy returning officer with a sufficient number of ballot papers (all being of the same description, and as nearly as possible alike), to supply the number of voters on the list of such polling district, and with the necessary materials for voters to mark their ballot papers ;

Directions.

Fifthly. To furnish to each deputy returning officer at least ten copies of printed directions for the guidance of voters in voting, which printed directions the deputy returning officer shall, before or at the opening of the poll, on the day of polling, cause to be posted up in some conspicuous places outside of the polling station, and also in each compartment of the polling station.

Obtaining lists of voters.

15. The returning officer shall obtain the different lists of voters, or copies or extracts thereof, from the registrars, city or town clerks, clerks of the peace, or such other officers as may by law be the proper custodians of such lists, or of duly certified duplicates or copies thereof ; and the list of voters which would be used at an election of a member of the House of Commons in the same district at the same time shall be the lists of voters which shall be used at every polling of votes under the provisions of this Act ; and every such officer who shall omit or refuse to furnish such lists, copies or extracts of the voters' lists within a reasonable time to the returning officer requiring the same, shall incur a penalty of not less than 200 and not exceeding 2,000 dollars.

Penalty for refusing to furnish lists.

If ballot box be not furnished.

16. Whenever the returning officer fails to furnish to the deputy returning officer in any polling district the ballot box, within the time prescribed by this Act, it shall be the duty of such deputy returning officer in such polling district to cause one to be made.

Form of ballot papers.

17. The ballot of each voter shall be a printed paper, in this Act called a ballot paper, with a counterfoil, and the ballot paper and counterfoil shall be according to the form of Schedule E. to this Act.

Form of directions.

18. The printed directions to be furnished to the deputy returning officers shall be according to the form of Schedule F. to this Act.

Appointment of agents in each interest.

19. At the place and time named for that purpose in the proclamation, the returning officer shall, by an instrument in writing signed by him, appoint from and out of such persons as may apply to him to be so appointed, one person to attend at each polling station, and two persons to attend at the final summing up

up of the votes, as agents on behalf of the persons interested in and desirous of promoting the adoption of the petition, and one person to attend at each polling station, and two persons to attend at the final summing up of the votes as agents on behalf of the persons interested in and desirous of opposing the adoption of the petition.

Form of oath of person to be appointed agent.

20. Before any person is so appointed he shall make and subscribe, before the returning officer or any deputy returning officer, a declaration, in the form of Schedule G. to this Act, to the effect that he is interested in and desirous of promoting, or of opposing (as the case may be) the adoption of the petition.

Agent to produce appointment.

21. Every person so appointed, before being admitted to the polling station, or to the final summing up of the votes, as the case may be, shall produce to the deputy returning officer his written appointment.

Appointment and oath of substitute for agent.

22. In the absence of any person authorised as aforesaid to attend at any polling station, or at the final summing up of the votes, any elector in the same interest as the person so absent may, upon making and subscribing before the deputy returning officer at the polling station, or the returning officer at the final summing up of the votes, as the case may be, a declaration in the Form G. to this Act, be admitted to the polling station, or to the final summing up of the votes, as the case may be, to act for the person so absent.

Provision respecting attendance of agents.

23. Where in this part of this Act any expressions are used requiring or authorising any act to be done, or inferring that any act or thing is to be done in the presence of the agents of the persons interested, such expressions shall be deemed to refer to the presence of such agents as may be authorised to attend, and as have, in fact, attended at the time and place where such act or thing is being done; and the non-attendance of any agents or agent at such time and place shall not, if the act or thing be otherwise duly done, invalidate in any wise the act or thing done.

Polls to be held, votes by ballot.

24. On the day and at the hour fixed by proclamation as aforesaid, a poll shall be held at each polling station in the county or city, and the votes shall be taken by ballot.

Description of buildings in which polls are to be held.

25. The poll shall be held in each polling district in a room or building of convenient access, with an outside door for the admittance of the voters, and having, if possible, another door through which they may leave after having voted. One or two compartments shall be made within the room, so arranged that each voter may be screened from observation, and may, without interference or interruption, mark his ballot paper.

Hours for opening and closing polls.

26. Each deputy returning officer shall open the poll assigned to him at the hour of nine of the clock in the morning, and keep the same open until five of the clock in the afternoon; and shall, during that time, receive, in the manner hereinafter prescribed, the votes of the electors duly qualified to vote at such polling place.

Who may be present at the giving of votes.

27. In addition to the deputy returning officer such persons as may have been appointed or admitted under this Act as agents, and no others, shall be permitted to remain in the room where the votes are given during the time the poll remains open.

Agent's oath of secrecy.

28. Every agent on being admitted to the polling station shall take the oath to keep secret the space in which any of the voters may have marked his ballot paper in his presence, as hereinafter required; such oath shall be in the form of Schedule H. to this Act.

Opening, examining, and locking ballot box.

29. At the hour fixed for opening the poll the deputy returning officer shall, in the presence of such of the electors and agents as may be present, open the ballot box and ascertain that there are no ballots or other papers in the same, after which the box shall be locked, and the deputy returning officer shall keep the key thereof.

Calling voters.

30. Immediately after the ballot box shall have been locked, as above provided, the deputy returning officer shall call upon the electors to vote.

Where electors shall vote.

31. Each elector shall vote at the polling station of the polling district in which he is qualified to vote and no other; and it shall be the duty of the

deputy returning officer to secure the admittance of every elector into the polling station, and to see that he is not impeded or molested at or about the polling station.

Provision as to deputy returning officer or agent entitled to vote.

32. The returning officer, on the request of any elector entitled to vote at one of the polling stations, who shall be appointed deputy returning officer, or who shall be appointed to attend as agent at a polling station other than the one where he is entitled to vote, shall give to such elector a certificate that such elector is entitled to vote at such polling of votes at the polling station where such elector shall be stationed during the polling day, and on the production of such certificate such elector shall have the right to vote at the polling station where he shall be placed during the polling day, instead of at the polling station of the polling district where he would otherwise have been entitled to vote; but no such certificate shall entitle any such elector to vote at such polling station unless he has been actually engaged as such deputy returning officer, or agent during the day of polling.

Proviso.

Proceedings preparatory to voting.

33. Each elector, being introduced, one at a time for each compartment, into the room where the poll is held, shall declare his name, surname, and addition, which shall be entered or recorded in the voters' list to be kept for that purpose by the deputy returning officer, and, if the same be found on the list of electors for the polling district of such polling station, he shall receive from the deputy returning officer a ballot paper on the back of which such deputy returning officer shall have previously put his initials, so placed that when the ballot is folded they can be seen without opening it; and on the counterfoil to which he shall have placed a number corresponding to that opposite the voters' name on the voters' list: provided that such elector, if required by the deputy returning officer, or by any elector or agent, as aforesaid, present, shall, before receiving his ballot paper, take the oath or oaths of qualification required by the laws in force in the Province where the election is held, from a voter at the election of a member of the House of Assembly of that Province; the words "House of Commons of Canada" being in such case substituted for "House of Assembly" or such other change being made to make the oath applicable to the election of a member of the House of Commons of Canada.

Proviso: elector may be sworn.

Declaration and form of oath of voter where no lists of voters are required by law.

34. If the county or city be one in or for which the election law of the Province where such county or city is situate does not require lists of voters to be made to entitle them to vote, then in such case any elector claiming his ballot paper, shall declare his name, surname, addition and qualification, which shall be entered on a list kept for that purpose by the deputy returning officer; and before receiving his ballot paper such elector may be required by the deputy returning officer, or by any elector or agent present to take the oath of qualification required by the law in force in such Province from a voter at the election of a member of the House of Assembly; the words "House of Commons of Canada" being in such case substituted for "House of Assembly," or such other change being made as may be required to make the oath applicable to the election of a member of the House of Commons of Canada.

Mode of voting.

35. The elector, on receiving the ballot paper, shall forthwith proceed into one of the compartments of the polling station and there mark his ballot paper, making a cross in any part of the upper space if he votes for the petition, and in any part of the lower space if he votes against the petition, after which he shall fold it up so that the initials on the back can be seen without opening it, and hand it to the deputy returning officer, who shall, without unfolding it, ascertain by examining his initials and the number upon the counterfoil, that it is the same that he furnished to the elector, and shall first detach and destroy the counterfoil, and shall then immediately, and in the presence of the elector, place the ballot paper in the ballot box.

Electors to vote without delay.

36. Every elector shall vote without undue delay, and shall quit the polling station so soon as his ballot paper has been put into the ballot box.

Ballot paper not to be taken out of station.

37. No elector shall be allowed to take his ballot paper out of the polling station; and whoever shall do so shall thereby incur a penalty not exceeding 200 dollars, and not less than 50 dollars.

38. The

38. The deputy returning officer, on the application of any voter who is unable to read or incapacitated by blindness or other physical cause from voting in the manner prescribed by this Act, shall assist such voter by marking his ballot paper in the manner directed by such voter, in the presence of the sworn agents in the polling station, and of no other person, and by placing such ballot paper in the ballot box. Case of voter who cannot mark ballot paper.

39. And the returning officer shall cause a list to be kept of the names of voters whose ballot papers have been so marked, in pursuance of the next preceding section, with the reason why each ballot paper was so marked. And whenever the deputy returning officer shall not understand the language spoken by any elector claiming to vote, he shall swear an interpreter, who shall be the means of communication between him and such elector, with reference to all matters required to enable such elector to vote. List of such voters to be kept. Interpreter.

40. The deputy returning officer shall enter on the voters' list, to be kept by him (in the form of Schedule I. to this Act), opposite the name of each elector voting, the word "Voted," as soon as his ballot paper shall have been deposited in the ballot box. He shall also enter on the same list the word "Sworn" or "Affirmed" opposite the name of each elector to whom the oath or affirmation of qualification shall have been administered, and the words "Refused to be sworn" or "Refused to affirm" opposite the name of each elector who has refused to take the oath or to affirm. Entry of names of electors voting on voters' lists.

41. When no lists of voters are required by the law in force in the county or city for which the voting takes place, then the deputy returning officer shall cause the name, surname, and addition of every voter to be entered on a list to be made and kept for that purpose; upon which list shall be entered the word "Voted," opposite the name of each voter who shall have voted; or, "Sworn," or "Affirmed," or "Refused to be sworn," or "Refused to affirm," as the case may be, as above provided. Where no voters' lists required by law such names to be entered on a list made for the purpose.

42. No voter having refused to take the oath or affirmation of qualification required as aforesaid by this Act, when requested so to do shall receive a ballot paper or be admitted to vote. Case of voter refusing to swear or affirm.

43. No person shall vote more than once at the same polling of votes under the provisions of this Act. No elector to vote more than once.

44. If a person, representing himself to be a particular elector named on the register or list of voters, applies for a ballot paper after another person has voted as such elector, the applicant, upon taking the oath in the form of Schedule J. to this Act, and otherwise establishing his identity to the satisfaction of the deputy returning officer, shall be entitled to receive a ballot paper, on which the deputy returning officer shall put his initials, together with a number corresponding to a number entered on the list of voters opposite the name of such voter, and he shall thereupon be entitled to vote as any other elector: Case of elector in whose name another has voted.

The name of such voter shall be entered on the list of voters, and a note shall be made of his having voted on a second ballot issued under the same name, and of the oath or affirmation of qualification having been required and made, as well as of any objections made by any of the agents. Entry on list.

45. A voter who has inadvertently dealt with the ballot paper given him in such manner that it cannot be conveniently used, may, on delivering the same to the deputy returning officer, obtain another ballot paper in the place of that so delivered up. Elector spoiling his ballot paper may obtain another.

46. Immediately after the close of the poll, the deputy returning officer shall, in the presence of the agents, and if the agents are absent, then in the presence of at least three electors, open the ballot box and proceed to count the number of votes given for and against the petition. In doing so he shall reject all ballot papers which are not similar to those supplied by the deputy returning officer; and all those upon which there is any writing or mark by which the voter could be identified. Counting of votes by deputy returning officer.

47. The other ballot papers being counted, and lists kept of the number of votes given for and of the number of votes given against the petition, and of the number of rejected ballot papers, all the ballot papers indicating the votes given Duty of deputy returning officer after counting the votes.

given for and the votes given against the petition, respectively, shall be put into separate envelopes or parcels, and those rejected shall also be put into a different envelope or parcel; and all these parcels, being endorsed so as to indicate their contents, shall be put back into the ballot box.

Objection to ballot papers.

48. The deputy returning officer shall take a note of any objection made by any agent or any elector present to any ballot paper found in the ballot box, and shall decide any question arising out of the objection; and the decision of such deputy returning officer shall be final, subject only to reversal on a scrutiny as hereinafter provided.

To be numbered and initialed.

49. Each objection to a ballot paper shall be numbered, and a corresponding number placed on the back of the ballot paper, and initialed by the deputy returning officer.

Statement to be enclosed in ballot box for returning officer.

50. The deputy returning officer shall make out a statement of the accepted ballot papers, of the number of votes given each way, of the rejected ballot papers, of the spoiled and returned ballot papers, and of those unused and returned by him; and he shall make and keep by him a copy of such statement, and enclose in the ballot box the original statement, together with the voters' lists and a certified statement, at the foot of each list, of the total number of electors who voted on each such list, and such other lists and documents as may have been used at such election. The ballot box shall then be locked and sealed, and shall be delivered to the returning officer, who shall receive or collect the same, and in case of his being unable to do so, then to one or more persons specially appointed for that purpose by the returning officer, and who shall, on delivering the ballot boxes to the returning officer, take the oath in Schedule K. to this Act.

Delivery to returning officer.

Oath of person appointed to deliver ballot box.

Oath to be annexed to statement.

51. The deputy returning officer shall take the oath in form, Schedule L. to this Act, which shall be annexed to the statement above mentioned.

Certificates to agents.

52. The several deputy returning officers, on being requested so to do, shall deliver to each of the agents, or in the absence of such agents, to the electors present representing them, a certificate of the number of votes given in each interest, and of the number of rejected ballot papers.

Summing up of votes by returning officer.

53. The returning officer at the place, day, and hour appointed by the proclamation, and after having received all the ballot boxes, shall proceed to open them in the presence of the agents, if present, and of at least three electors if the agents are not present, and to add together the number of votes given in each interest, from the statements contained in the ballot boxes returned by the deputy returning officers.

Adjournment if ballot boxes are missing.

54. In case the ballot boxes should not have all been returned on the day fixed for adding up the number of votes given, the returning officer shall adjourn the proceedings to a subsequent day, such subsequent day not being more than a week later than the day originally fixed, for the purpose of adding up the votes.

Provision in case of loss of ballot boxes.

55. In case the ballot boxes or any of them have been destroyed or lost, or for any other reason are not forthcoming within the delay so fixed, the returning officer shall ascertain the cause of the disappearance of such ballot boxes, and shall call on each of the deputy returning officers whose ballot boxes are missing, or on any other person having the same, for the lists, statements, and certificates, or copies of the lists, statements, and certificates of the number of votes given in each interest required by this Act, the whole verified on oath—which oath the returning officer is hereby authorised to administer; and in case such lists or statements, or copies thereof, cannot be obtained, he shall ascertain by such evidence as he may be able to obtain, the total number of votes given in each interest at the several polling places, and he shall make his return accordingly, and shall mention specially in his report, to be sent with the return, the circumstances accompanying the disappearance of the ballot boxes, and the mode by which he ascertained the number of votes given in each interest.

Special mention in return.

Petition not adopted.

56. In case one-half or more of all the votes polled are against the petition, the same shall be held not to have been adopted; and the returning officer shall make his return to the Governor General in Council accordingly.

57. In

57. In case more than half of all the votes polled are for the petition, the same shall be held to have been adopted; and the returning officer shall make his return to the Governor General in Council accordingly. Petition adopted.

58. Within two weeks after the summing up of the votes, if no judge has appointed a day or place within the county or city for entering into a scrutiny of the ballot papers, as hereinafter provided for, and in case of such a scrutiny being entered into, then forthwith after the judge has determined whether the majority of the votes given was or was not in favour of the petition, the returning officer shall transmit his return to the Secretary of State, and shall send with it a report of his proceedings, in which he shall make any observations he may think proper as to the state of the ballot boxes or ballot papers as received by him; and in the event of a judge having determined, after a scrutiny of the ballot papers, that the majority of the votes given was or was not in favour of the petition, such return shall be based upon, and shall be conformable to such decision. Return to be sent to Secretary of State.

59. The returning officer shall also transmit to the Secretary of State, with his return, the original statements of the several deputy returning officers, referred to in section 50 of this Act, together with the voters' lists used in the several polling districts, and any other lists and documents used or required at such election, or which may have been transmitted to him by the deputy returning officers. What to be transmitted with return.

2. Such return and report shall be sent through the post office, after being registered. Transmission of return.

60. The property of the ballot boxes, ballot papers, and marking instruments procured for, or used at, any polling of votes under this Act, shall be in Her Majesty. Property of ballot boxes, &c.

Scrutiny.

61. If, within one week after the returning officer has summed up the votes, and declared the result of the voting, any elector applies upon petition to any judge of the superior court sitting in the district, if in the province of Quebec, or to the judge of the proper district or county court, if in the province of British Columbia; or to the judge of the proper county court, if in any other province, after giving such notice of the application, and to such persons as the judge directs, and shows by affidavit to the judge reasonable grounds for entering into a scrutiny of the ballot papers, and the petitioner enters into a recognizance before the judge in the sum of 100 dollars, with two sureties (to be allowed as sufficient by the judge upon affidavit of justification) in the sum of 50 dollars each, conditioned to prosecute the petition with effect, and to pay the party against whom the same is brought any costs which may be adjudged to him against the petitioner; the judge shall appoint a day and place within the county or city for entering into the scrutiny. A scrutiny may be had on application to a judge.

62. On the day and at the hour and place appointed, the returning officer shall attend before the judge with the ballot papers in his custody, and the judge, upon inspecting the ballot papers and hearing such evidence as he may deem necessary, and on hearing the parties, or such of them who may attend, or their counsel, shall, in a summary manner, determine whether the majority of the votes given was or was not in favor of the petition to the Governor General in Council: Proceedings upon such application.

2. At least one week's notice of the scrutiny shall be given by the petitioner to such persons as the judge directs. Notice of scrutiny.

63. The decision of the judge shall be final, and the costs shall be in his discretion, or he may apportion the costs as to him seems just. Decision final; costs.

Penalties.

64. No person shall—

Firstly: Forge or counterfeit or fraudulently alter, deface, or fraudulently destroy any ballot paper or the initials of the deputy returning officer signed thereon; or Certain Acts prohibited.

Secondly: Without authority supply any ballot paper to any person; or

Thirdly: Fraudulently put into any ballot box any paper other than the ballot paper, which he is authorized by law to put in; or

Fourthly: Fraudulently take out of the polling place any ballot paper or

Fifthly: Without due authority destroy, take, open, or otherwise interfere with any ballot box or packet of ballot papers then in use for the purposes of the poll:

Attempts. No person shall attempt to commit any offence specified in this section:

Contravention misdemeanor, and how to be punished. Any contravention of this section shall be a misdemeanor; and any person found guilty thereof shall be punishable, if he be a returning officer, deputy returning officer, or other officer engaged at the polling, by a fine not exceeding 1,000 dollars, or by imprisonment for any term less than two years, with or without hard labour, in default of paying such fine; and if he be any other person, by a fine not exceeding 500 dollars, or by imprisonment for any term not exceeding six months, with or without hard labour, in default of paying such fine.

Contravention by election officer, how punished. **65**. Every officer who is guilty of any wilful misfeasance or any wilful act or omission in contravention of this part of this Act, shall forfeit to any person aggrieved by such misfeasance, act, or omission, a penal sum not exceeding 500 dollars, in addition to the amount of all actual damages thereby occasioned to such person.

Provisions for maintenance of secrecy. **66**. Every officer and agent in attendance at the polling place shall maintain and aid in maintaining the secrecy of the voting at such polling place; and shall not communicate before the poll is closed to any person any information as to whether any person on the voters' list has or has not applied for a ballot paper or voted at that polling place:

Interference. 2. No officer or agent, and no person whosoever, shall interfere with or attempt to interfere with a voter when marking his vote, or otherwise attempt to obtain at the polling place information as to how any voter at such polling place is about to vote or has voted:

Communicating information. 3. No officer, agent or other person shall communicate at any time to any person any information obtained at a polling place as to how any voter at such polling place is about to vote or has voted:

Secrecy at counting of votes. 4. Every officer and agent in attendance at the counting of the votes shall maintain and aid in maintaining the secrecy of the voting; and shall not attempt to ascertain at such counting, or communicate any information obtained at such counting, as to how any vote is given in any particular ballot paper:

Inducing voters to display their ballots. 5. No person shall, directly or indirectly, induce any voter to display his ballot paper after he has marked the same, so as to make known to any person how he has so marked his vote:

Punishment for contravention. 6. Any contravention of this section shall be punishable by a fine not exceeding 200 dollars, or by imprisonment for any term not exceeding six months, with or without hard labour, in default of paying such fine.

Personation defined. **67**. A person shall, for all purposes of this Act, be deemed to be guilty of the offence of personation, who, at any polling of votes under this Act, applies for a ballot paper in the name of some other person, whether such name be that of a person living or dead, or of a fictitious person, or who having voted once at any such polling applies at the same polling for a ballot paper in his own name.

Punishment for personation. **68**. The offence of personation, or of aiding, abetting, counselling or procuring the commisssion of the offence of personation by any person, shall be punishable by a fine not exceeding 200 dollars, and by imprisonment for a term not exceeding six months.

Personation a corrupt practice. **69**. The offence of personation shall be deemed to be a corrupt practice within the meaning of this Act.

70. No

70. No polling of votes under this Act shall be declared invalid by reason of a non-compliance with the rules contained in this Act as to the taking of the poll or the counting of the votes, under the provisions of this Act, or of any mistake in the use of the forms contained in the schedules to this Act, if it appears to the tribunal having cognizance of the question that the polling of votes was conducted in accordance with the principles laid down in this Act, and that such non-compliance or mistake did not affect the result of the polling. Mistakes of form only not fatal.

Preservation of the Peace.

71. Every returning officer, and every deputy returning officer, from the time he shall have taken the oath of office, until the day after the summing up of the votes, shall be a conservator of the peace, invested with all the powers appertaining to a justice of the peace. Returning officer and deputy returning officer to be conservators of the peace.

72. Such returning officer, or deputy returning officer, may require the assistance of justices of the peace, constables, or other persons present, to aid him in maintaining peace and good order at such polling; and may also, on a requisition made in writing by any agent, or by any two electors, swear in such special constables as he deems necessary. May require assistance of special constables.

73. Such returning officer, or deputy returning officer, may arrest, or cause to be arrested, by verbal order, and place in the custody of any constable, or other persons, any person disturbing the peace and good order at the polling, and may cause such person to be imprisoned under an order signed by him until any period not later than the close of the poll May arrest disturbers of the peace.

74. The returning officer, or deputy returning officer, may, during any day whereon any poll is begun, holden, or proceeded with, require any person, within half-a-mile of the polling station, to deliver to him any fire-arm, sword, staff, bludgeon, or other offensive weapon in the hands or personal possession of such person, and any person refusing to deliver such weapon shall be liable to a fine not exceeding 100 dollars, and to imprisonment not exceeding three months in default of payment of such fine. May demand offensive weapons.

75. Every person convicted of a battery, committed during any day whereon any poll is begun, holden, or proceeded with, within the distance of two miles of the place where such poll is begun, holden, or proceeded with, shall be deemed guilty of an aggravated assault, and shall be punished accordingly. Punishment for battery.

76. Except the returning officer, or his deputy, or one of the constables, or special constables, appointed by the returning officer, or his deputy, for the orderly conduct of the poll and the preservation of the public peace thereat, no person who hath not had a stated residence in the polling district for at least six months next before the day of such polling, shall come, during any part of the day upon which the poll is to remain open, into such polling district armed with offensive weapons of any kind, as fire-arms, swords, staves, bludgeons, or the like; nor shall any person whosoever, being in such polling district, arm himself, during any part of the day, with any such offensive weapons, and thus armed, approach within the distance of one mile of the place where the poll for such polling district is held, unless called upon to do so by lawful authority. Entering polling district armed. Approaching polling station armed.

General Provisions.

77. No person shall at any polling either provide or furnish drink, or other refreshment, at the expense of such person, to any elector during such polling, or pay for, procure, or engage to pay for, any such drink or other refreshment. Treating electors forbidden.

78. No person shall furnish or supply any ensign, standard or set of colours, or any other flag, to or for any person or persons whomsoever, with the intent that the same should be carried or used in any county or city on any day of polling under this Act, or within eight days before such day, or during the continuance of such polling, by such person or any other, as a party flag to distinguish the bearer thereof, and those who may follow the same, as the supporters of the opinions entertained, or supposed to be entertained, by such person in either interest; nor shall any person, for any reason, carry or use any Flags, &c., not to be furnished or carried.

any such ensign, standard, set of colours or other flag, as a party flag in either interest, within any county or city on the day of any such polling, or within eight days before such day, or during the continuance of such polling.

Punishment for contravention.

79. Every person offending against any of the provisions of the three next preceding sections, shall be deemed guilty of a misdemeanour, punishable by fine not exceeding 100 dollars, or imprisonment not exceeding three months or by both, in the discretion of the court.

Sale, &c., of liquor on polling day prohibited.

80. No intoxicating, spirituous, or fermented liquors or strong drink, shall be sold or given at any hotel, tavern, or shop, or other place, within the limits of any polling district, during the whole of any day on which any poll is begun, holden, or proceeded with, under a penalty of 100 dollars for every offence ; and the offender shall be subject to imprisonment, not exceeding six months, at the discretion of the judge or court, in default of payment of such fine.

Punishment.

Prevention of Corrupt Practices.

Certain acts to be deemed bribery.

81. The following persons shall be deemed guilty of bribery, and shall be punishable accordingly :—

Giving or lending money.

(1.) Every person who, directly or indirectly, by himself or by any other person on his behalf, gives, or lends or agrees to give or lend, or offers or promises any money or valuable consideration, or promises to procure, or to endeavour to procure, any money or valuable consideration, to or for any voter, or to or for any person on behalf of any voter, or to or for any person, in order to induce any voter to vote, or refrain from voting, or corruptly does any such act as aforesaid on account of such voter having voted or refrained from voting at any poll under this Act.

Procuring office or employment.

(2.) Every person who, directly or indirectly, by himself or by any other person on his behalf, gives or procures, or agrees to give or procure, or offers or promises any office, place, or employment, or promises to procure, or to endeavour to procure, any office, place, or employment, to or for any voter, or to or for any other person, in order to induce such voter to vote, or refrain from voting, or corruptly does any such act as aforesaid, on account of any voter having voted or refrained from voting at any poll under this Act.

Gifts or promises to induce promotion or the contrary of adoption.

(3.) Every person who, directly or indirectly, by himself or by any other person on his behalf, makes any gift, loan, offer, promise, procurement, or agreement as aforesaid, to or for any person, in order to induce such person to procure, or endeavour to procure, or to prevent, or endeavour to prevent, the adoption of any petition under the provisions of this Act, or to procure, or endeavour to procure, the vote of any elector at any poll under this Act, or to prevent, or endeavour to prevent, any elector from voting at any poll under this Act.

Accepting the same.

(4.) Every person who, upon or in consequence of any such gift, loan, offer, promise, procurement, or agreement, procures or prevents, or engages, or promises or endeavours to procure or prevent, the adoption of any petition under the provisions of this Act, or the vote of any voter at any poll under this Act.

Paying money to be used in bribery.

(5.) Every person who advances or pays, or causes to be paid, any money to, or to the use of, any other person, with the intent that such money or any part thereof shall be expended in bribery or corrupt practices at any poll under this Act, or who knowingly pays, or causes to be paid, any money to any person in discharge, or repayment of any money wholly or in part expended in bribery or corrupt practices at any poll under this Act.

Punishment for bribery.

And any person so offending shall be guilty of a misdemeanour, and shall also be liable to forfeit the sum of 200 dollars, to any one who shall sue for the same, with full costs of suit : Provided always, that the actual personal expenses of any agent in either interest, his expenses for actual professional services performed, and *bonâ fide* payments for the fair cost of printing and advertising, shall be held to be expenses lawfully incurred, and the payment thereof shall not be a contravention of this Act.

82. The

82. The following persons shall also be deemed guilty of bribery, and shall be punishable accordingly:— Certain acts by voters to be deemed bribery.

(1.) Every voter who, before or during any polling of votes under this Act, directly or indirectly, himself or by any other person on his behalf, receives, agrees or contracts for any money, gift, loan, or valuable consideration, office, place, or employment, for himself or any other person, for voting or agreeing to vote, or for refraining or agreeing to refrain from voting at any poll under this Act. Receiving gifts or promises during polling.

(2.) Every person who, after any poll under this Act, directly or indirectly, by himself or by any other person on his behalf, receives any money or valuable consideration for having voted or refrained from voting, or having induced any other person to vote or refrain from voting at any poll under this Act. And after the polling.

And any person so offending shall be guilty of a misdemeanour, and shall also be liable to forfeit the sum of 200 dollars to any person who shall sue for the same, together with full costs of suit. Punishment for such offences.

83. Every person who corruptly, by himself or by or with any person, or by any other ways or means on his behalf, at any time either before or during any polling of votes under this Act, directly or indirectly gives or provides, or causes to be given or provided, or is accessory to the giving or providing, or pays wholly or in part any expenses incurred for any meat, drink, refreshment, or provision to or for any person, in order to procure or prevent, or for having procured or prevented, the adoption of any petition under the provisions of this Act, or for the purpose of corruptly influencing such person, or any other person, to give, or refrain from giving, his vote at such polling of votes, shall be deemed guilty of the offence of treating, and shall forfeit the sum of 200 dollars to any person who shall sue for the same, with full costs of suit, in addition to any other penalty to which he may be liable therefore under any other provision of this Act. Offence of treating defined. Penalty.

84. And the giving or causing to be given to any voter on the day of polling on account of such voter having voted or being about to vote, any meat, drink, or refreshment, or any money or ticket to enable such voter to procure refreshment, shall be deemed an unlawful act, and the person so offending shall forfeit the sum of 10 dollars for each offence to any person suing for the same, with full costs of suit. Giving meat or drink to electors to be deemed an unlawful act. Penalty.

85. Every person who, directly or indirectly, by himself or by any other person on his behalf, makes use of, or threatens to make use of any force, violence or restraint, or inflicts, or threatens the infliction by himself, or by or through any other person, of any injury, damage, harm or loss, or in any manner practises intimidation upon or against any person, in order to induce or compel such person to vote or refrain from voting, or on account of such person having voted or refrained from voting at any poll under this Act, or who by abduction, duress or any fraudulent device or contrivance, impedes, prevents or otherwise interferes with the free exercise of the franchise of any voter, or thereby compels, induces or prevails upon any voter either to give or refrain from giving his vote at any poll under this Act, shall be deemed to have committed the offence of undue influence, and shall be guilty of a misdemeanour, and shall also forfeit the sum of 200 dollars to any person suing for the same, with full costs of suit. Threats of violence, &c., forbidden. Undue influence. Penalty.

86. And whereas doubts may arise as to whether the hiring of teams and vehicles to convey voters to and from the polls, and the paying of railway fares and other expenses of voters, be or be not according to law, it is declared and enacted, that the hiring or promising to pay or paying for any horse, team, carriage, cab or other vehicle, by any agent or other person in either interest, to convey any voter or voters to or from the poll, or to or from the neighbourhood thereof, at any polling of votes under this Act, or the payment by any agent or other person in either interest, of the travelling and other expenses of any voter, in going to or returning from any polling of votes under this Act, are and shall be unlawful acts; and the person so offending shall forfeit the sum of 100 dollars to any person who shall sue for the same; and any voter hiring any horse, cab, cart, waggon, sleigh, carriage or other conveyance for any such agent, for the purpose of conveying any voter or voters to or from the polling Recital of doubts. Paying for conveyance of voters to poll illegal.

polling place or places, shall, *ipso facto*, be disqualified from voting at such polling of votes under this Act, and for every such offence shall forfeit the sum of 100 dollars to any person suing for the same.

Penalty.

Subornation of perjury or personation.

87. Every agent or other person in either interest, who corruptly, by himself or by or with any other person on his behalf, compels or induces or endeavours to induce any person to personate any voter, or to take any false oath in any matter wherein an oath is required under this Act, shall be guilty of a misdemeanour, and shall in addition to any other punishment to which he may be liable for such offence, be liable to forfeit the sum of 200 dollars to any person suing for the same.

Certain offences to be corrupt practices.

88. The offences of bribery, treating, or undue influence, or any of such offences, as defined by this Act, personation or the inducing any person to commit personation, or any wilful offence against any one of the seven next preceding sections of this Act shall be corrupt practices within the meaning of the provisions of this Act.

No excuse of privilege, &c., allowed for not answering questions in proceedings touching polling of votes under this Act.

89. No person shall be excused from answering any question put to him in any action, suit, or other proceeding in any court, or before any judge, commissioner, or other tribunal touching or concerning any polling of votes under this Act, or the conduct of any person thereat, or in relation thereto, on the ground of any privilege, or on the ground that the answer to such question will tend to criminate such person; but no answer given by any person claiming to be excused on the ground of privilege, or on the ground that such answer will tend to criminate himself, shall be used in any criminal proceeding against such person other than an indictment for perjury, if the judge, commissioner, or president of the tribunal shall give to the witness a certificate that he claimed the right to be excused on either of the grounds aforesaid, and made full and true answers to the satisfaction of the judge, commissioner, or tribunal.

Contracts or promises relating to polling of votes under this Act to be void.

90. Every executory contract, or promise, or undertaking, in any way referring to, arising out of, or depending upon, any polling of votes under this Act, even for the payment of lawful expenses, or the doing of some lawful act, shall be void in law; but this provision shall not enable any person to recover back any money paid for lawful expenses connected with such polling.

Penalties and Punishments Generally.

Penalty for neglect of duty by an election officer.

91. Any returning officer or deputy returning officer, who refuses or neglects to perform any of the obligations or formalities required of him by this Act, shall for each such refusal or neglect, forfeit the sum of 200 dollars to any person suing for the same.

Enforcement of penalties.

92. All penalties and forfeitures (other than fines in cases of misdemeanour) imposed by this part of this Act, shall be recoverable, with full costs of suit, by any person who will sue for the same by action of debt or information, in any of Her Majesty's Courts in the Province in which the cause of action arose, having competent jurisdiction; and in default of payment of the amount which the offender is condemned to pay, within the period fixed by the court, the offender shall be imprisoned in the common gaol of the place, for any term less than two years, unless such fine and costs be sooner paid.

What it shall suffice to state in declaration.

93. It shall be sufficient for the plaintiff, in any action or suit given by this Act, to state in the declaration that the defendant is indebted to him in the sum of money thereby demanded, and to allege the particular offence for which the action or suit is brought, and that the defendant hath acted contrary to this Act.

Time for bringing action or suit limited.

94. Every prosecution for any misdemeanour under this part of this Act, and every action, suit, or proceeding for any pecuniary penalty given by this Act to the person suing for the same, shall be commenced within the space of six months next after the act committed, and not afterwards (unless the same be prevented

prevented by the withdrawal or absconding of the defendant out of the jurisdiction of the court), and being commenced shall be proceeded with and carried on without wilful delay.

Effects of Decisions by Votes of Electors.

Effect of non-adoption of petition.

95. When in any county or city one half or more of all the votes polled have been against the adoption of any petition, embodied as aforesaid in any notice and in any proclamation, under this the first part of this Act, no similar petition shall be put to the vote of the electors of such county or city for a period of three years from the day on which such vote was taken.

If petition be adopted, the second part of this Act may be brought into force by Order in Council.

96. When any petition, embodied as aforesaid in any notice and in any proclamation under this the first part of this Act, has been adopted by the electors of the county or city named therein, and to which the same relates, the Governor General in Council may at any time after the expiration of 60 days from the day on which the same was adopted, by Order in Council, published in the "Canada Gazette," declare that the second part of this Act shall be in force and take effect in such county or city upon, from, and after the day on which the annual or semi-annual licenses for the sale of spirituous liquors then in force in such county or city will expire; provided such day be not less than 90 days from the day of the date of such Order in Council; and if it be less, then on the like day in the then following year; and upon, from, and after that day the second part of this Act shall become and be in force and take effect in such county or city accordingly.

Proviso.

No such Order in Council to be revoked for three years, and then only on similar petition, notice, and other proceedings.

97. No Order in Council issued under the provisions of this Act shall be revoked until after the expiration of three years from the day of the coming into force under it of the second part of this Act, nor unless nor until a petition to the Governor General praying for such revocation has been embodied in a notice in writing, addressed to the Secretary of State for Canada, and signed by one-fourth or more of the whole number of the electors then qualified and competent to vote at the election of a member of the House of Commons in the county or city named in such Order in Council, and such proceedings have been had thereon as are by this Act required to be had on a notice and petition for the bringing of the second part of this Act into force, and more than one-half of the votes polled have been found to be for the petition for the revocation of such Order in Council; and each and all of the provisions of the preceding sections of this Act shall apply (*mutatis mutandis*) to every case of a petition and notice for the revocation of an Order in Council under this section, and to the proceedings to be had and taken thereon, and the powers to be exercised and the offences that may be committed, and the penalties that may be incurred, in the course of and in connection with such proceedings.

Application of provisions of the preceding sections.

Provision for the Repeal of By-laws passed under the Temperance Act of 1864.

Proceedings for repeal of by-law under 27 & 28 Vict. c. 18.

98. In case a petition to the Governor General in Council praying for the repeal of a by-law passed by the Council of any county or city in Ontario or Quebec, under the authority and for the enforcement of the said "The Temperance Act of 1864," is embodied in a notice addressed to the Secretary of State of Canada, and signed by one-fourth or more of the electors of such county or city, and such proceedings are had thereon as are by this Act required to be had on a notice and petition for bringing the second part of this Act into force, and more than one-half of the votes polled are found to be for the petition, the Governor General in Council may, by Order in Council, repeal such by-law, and, thereupon, such by-law shall become and be repealed upon, from, and after the day of the publication of such Order in Council in the "Canada Gazette," and each and all the provisions of the preceding sections of this Act shall apply (*mutatis mutandis*) to every case of a petition and notice for the repeal of a by-law under this section, and to the proceedings to be had and taken thereon, and the powers to be exercised, and the offences that may be committed, and the penalties that may be incurred in the course of and in connection with such proceedings.

Application of provisions of preceding sections.

SECOND PART.

Prohibition of Traffic in Intoxicating Liquors.

No liquor to be sold, &c., when and where this part of this Act is in force, except for certain purposes.

99. From the day on which this part of this Act comes into force and takes effect in any county or city, and for so long thereafter as the same continues in force therein, no person, unless it be for exclusively sacramental or medicinal purposes, or for *bonâ fide* use in some art, trade, or manufacture, under the regulation contained in the fourth sub-section of this section, or as hereinafter authorised by one of the four next sub-sections of this section, shall, within such county or city, by himself, his clerk, servant, or agent, expose or keep for sale, or directly or indirectly, on any pretence or upon any device, sell or barter, or in consideration of the purchase of any other property give, to any other person, any spirituous or other intoxicating liquor, or any mixed liquor capable of being used as a beverage, and part of which is spirituous or otherwise intoxicating:

Licenses to be of no effect.

2. And neither any license issued to any distiller or brewer; nor yet any license for retailing on board any steamboat or other vessel, brandy, rum, whisky, or other spirituous liquors, wine, ale, beer, porter, cider, or other vinous or fermented liquors; nor yet any license for retailing on board any steamboat or other vessel, wine, ale, beer, porter, cider, or other vinous or fermented liquors, but not brandy, rum, whisky, or other spirituous liquors; nor yet any other description of license whatever; shall in any wise avail to render legal any act done in violation of this section:

Proviso: sales for sacramental purposes.

3. Provided always that the sale of wine for exclusively sacramental purposes shall be made by druggists and vendors as hereinafter provided, only on the certificate of a clergyman affirming that the wine is required for sacramental purposes:

And for medicinal and mechanical purposes.

4. Provided also, that the sale of intoxicating liquor for exclusively medicinal purposes or for *bonâ fide* use in some art, trade, or manufacture, shall be lawful only by such druggists and other vendors as may be thereto specially licensed by the Lieutenant Governor in each Province, the number not to exceed one in each township or parish, nor two in each town; and in cities not exceeding one for every four thousand inhabitants; such sale, when for medicinal purposes, to be in quantities of not less than one pint, to be removed from the premises and to be made only on the certificate of a medical man having no interest in the sale by the druggist or vendor, affirming that such liquor has been prescribed for the person named therein; and when such sale is for its use in some art, trade, or manufacture, the same to be made only on a certificate signed by two justices of the peace of the *bona fides* of the application, accompanied by the affirmation of the applicant, that the liquor is to be used only for the particular purposes set forth in the affirmation; and it shall be the duty of the druggist or other vendor to file the certificates and keep a register of all such sales, indicating the name of the purchaser and the quantity sold, and to make an annual return of all such sales on the 31st day of December in every year, to the collector of inland revenue within whose revenue division the county or city is situated:

Certificate to be produced.

Annual return to be furnished.

Proviso; distiller or brewer, &c., may sell liquor of his own manufacture in wholesale quantities, and to certain persons only.

5. Provided also, that any producer of cider in the county, or any licensed distiller or brewer, having his distillery or brewery within such county or city, may thereat expose and keep for sale such liquor as he shall have manufactured thereat, and no other; and may sell the same thereat, but only in quantities not less than ten gallons, or in the case of ale or beer not less than eight gallons, at any one time, and only to druggists and others licensed as aforesaid, or to such persons as he has good reason to believe will forthwith carry the same beyond the limits of the county or city, and of any adjoining county or city in which the second part of this Act is then in force, and to be wholly removed and taken away in quantities not less than ten gallons, or, in case of ale or beer, not less than eight gallons at a time:

As to sales by vine-growing companies.

6. Provided also, that any incorporated company authorised by law to carry on the business of cultivating and growing vines, and of making and selling wine and other liquors produced from grapes, having their manufactory within such county or city, may thereat expose and keep for sale such liquor as they shall

shall have manufactured thereat, and no other; and may sell the same thereat, but only in quantities not less than 10 gallons at any one time, and only to druggists and others, licensed as aforesaid, or to such persons as they have good reason to believe will forthwith carry the same beyond the limits of the county or city, and of any adjoining county or city in which the second part of this Act is then in force, and to be wholly removed and taken away in quantities not less than 10 gallons at a time:

As to sales by manufacturers of pure native wines.

7. Provided also, that manufacturers of pure native wines made from grapes grown and produced by them in the Dominion of Canada may, when authorised to do so by license from the municipal council, or other authority having jurisdiction where such manufacture is carried on, sell such wines at the place of manufacture in quantities of not less than 10 gallons at one time, except when sold for sacramental or medicinal purposes, when any number of gallons from one to ten may be sold:

Proviso: merchants and traders may sell liquor in wholesale quantities, and to certain persons only.

8. Provided also, that any merchant or trader exclusively in wholesale trade, and duly licensed to sell liquor by wholesale, having his store or place for sale of goods within such county or city, may thereat keep for sale and sell intoxicating liquor, but only in quantities not less than 10 gallons at any one time, and only to druggists and others licensed as aforesaid, or to such persons as he has good reason to believe will forthwith carry the same beyond the limits of the county or city, and of any adjoining county or city in which the second part of this Act is then in force, to be wholly removed and taken away in quantities not less than 10 gallons at a time.

Burthen of proof of reasons of belief.

9. In any prosecution against a producer, distiller, brewer, manufacturer, merchant or trader under this section, it shall be incumbent on the defendant to furnish satisfactory evidence of having good reason for believing that such liquor would be forthwith removed beyond the limits of the county or city, and of any adjoining county or city in which the second part of this Act is then in force, for consumption outside the same.

THIRD PART.

Penalties and Prosecutions for Offences against the Second Part.

Punishment of sale, &c., in violation of second part of this Act.

100. Whoever, by himself, his clerk, servant, or agent, exposes or keeps for sale, or directly or indirectly, on any pretence or by any device, sells or barters, or in consideration of the purchase of any other property, gives to any other person, any spirituous or other intoxicating liquor, or any mixed liquor capable of being used as a beverage and a part of which is spirituous or otherwise intoxicating, in violation of the second part of this Act, shall be liable, on summary conviction, to a penalty of not less than 50 dollars for the first offence, and not less than 100 dollars for the second offence, and to be imprisoned for a term not exceeding two months for the third and for every subsequent offence; and whoever, in the employment, or on the premises of another, so exposes or keeps for sale, or sells, or barters, or gives in violation of the said second part of this Act, shall be held equally guilty with the principal, and shall be liable on summary conviction to the same penalty or punishment. And all intoxicating liquors in respect to which any such offence has been committed, and all kegs, barrels, cases, bottles, packages, or receptacles of any kind whatever in which the same are contained shall be forfeited.

Forfeiture.

By whom penalties may be sued for.

101. Any prosecution for any such penalty or punishment may be brought by or in the name of the collector of Inland Revenue within whose official division the offence was committed, or by or in the name of any person.

Excise officer bound to prosecute.

102. It shall be the duty of such collector of Inland Revenue to bring such prosecution, whenever he shall have reason to believe that any such offence has been committed, and that a prosecution therefor can be sustained, and would not subject him to any undue measure of responsibility in the premises.

Before whom such prosecutions may be brought.

103. Such prosecution may be brought:—

In Quebec.

In the Province of Quebec, if the offence was committed in the city of Montreal, or in the city of Quebec, then before the recorder or judge of the sessions

of the peace at Montreal or Quebec, as may be, or, if the offence was committed in any other part of the province, then before a stipendiary magistrate, or before any two other justices of the peace for the district wherein the offence was committed, or, if the district is other than that of Quebec or that of Montreal, before the sheriff of such district.

In Ontario. In the Province of Ontario before any stipendiary magistrate, or before any two other justices of the peace for the county, city, or district wherein the offence was committed; or, if the offence was committed in any county, city, or town having a police magistrate, then before such police magistrate, or in his absence, then before the mayor or any two justices of the peace; or if the offence was committed in any city or town not having a police magistrate, then before the mayor thereof, or before any two justices of the peace.

In Nova Scotia. In the Province of Nova Scotia before a stipendiary magistrate, or before any two other justices of the peace of the county in which the offence was committed.

In New Brunswick. In the Province of New Brunswick before any police, stipendiary, or sitting magistrate or commissioner of a parish court, or before any two other justices of the peace in and for the county in which the offence was committed.

In Manitoba. In the Province of Manitoba before the police magistrate within whose territorial jurisdiction the offence was committed, or before any two justices of the peace in and for the county in which the offence was committed.

In British Columbia. In the Province of British Columbia before any stipendiary magistrate or before any two other justices of the peace for the territorial division or jurisdiction within the limits of which the offence was committed.

In Prince Edward Island. In the Province of Prince Edward Island before the stipendiary magistrate for the city or town, or before any two other justices of the peace of or for the county in which the offence was committed.

If before a magistrate, no other justice to sit. **104.** If such prosecution is brought before any such stipendiary magistrate, recorder, judge of the sessions of the peace, sheriff, police magistrate, sitting magistrate, commissioner or mayor, no other justice shall sit or take part therein.

If prosecution before two justices, summons shall be signed by one of them. **105.** If such prosecution is brought before any two other justices of the peace, the summons shall be signed by one of them; and no other justice shall sit or take part therein, unless by reason of their absence, or the absence of one of them, nor yet in the latter case unless with the assent of the other of them.

Limitation of prosecution. **106.** Every such prosecution shall be commenced within three months after the alleged offence, and shall be heard and determined in a summary manner, either upon the confession of the defendant or upon the evidence of a witness or witnesses.

Provisions of 32 & 33 Vict. c. 31, to be applicable to such prosecutions. **107.** Every offence against the second part of this Act may be prosecuted in the manner directed by the "Act respecting the duties of Justices of the peace out of Sessions in relation to summary convictions and orders," so far as no provision is hereby made for any matter or thing which may be required to be done with respect to such prosecution; and all the provisions contained in the said Act shall be applicable to such prosecutions and to the judicial and other officers before whom the same are hereby authorised to be brought, in the same manner as if they were incorporated in this Act, and as if all such judicial and other officers were named in the said Act.

Magistrate, &c., may grant a warrant to search for liquor, on receiving certain information on oath. **108.** In case a credible witness proves upon oath before the stipendiary, police or sitting magistrate, commissioner of a parish court, recorder, judge of the sessions of the peace, justices of the peace, sheriff or mayor, or before one of the justices of the peace before whom any prosecution for an offence against the provisions of the second part of this Act is brought, that there is reasonable cause to suspect that any intoxicating liquor, in respect to which such offence has been committed, is in any dwelling-house, store, shop, warehouse, outhouse, garden, yard, croft or other place or places, such stipendiary, police

police or sitting magistrate, commissioner of a parish court, recorder, judge of the sessions of the peace, justices of the peace, sheriff or mayor, may grant a warrant to search such dwelling-house, store, shop, warehouse, outhouse, garden, yard, croft, or other place or places, for such intoxicating liquor, and if the same, or any part thereof, be then found, to bring the same before him; and any information to obtain a warrant under this section may be in the form of Schedule M. to this Act; and any search-warrant under this section may be in the form of Schedule N. to this Act.

Convicting magistrate, &c., may order that liquor seized on a search warrant be destroyed.

109. When any person is convicted of any offence against the provisions of the second part of this Act, the stipendiary, police or sitting magistrate, commissioner of a parish court, recorder, judge of the sessions of the peace, justices of the peace, sheriff or mayor, before whom such person is convicted, may adjudge and order, in addition to any other penalty or punishment, that the intoxicating liquor in respect to which the offence was committed, and which has been brought before him in virtue of a search-warrant as aforesaid (whether the same be or be not the property of such person), or not more than 20 gallons thereof, if there be more of it than 20 gallons, be forfeited, and that any and all kegs, barrels, cases, boxes, bottles, packages and other receptacles of any kind whatever found containing the same, or not more than 20 gallons thereof if there be more of it than 20 gallons, be broken up and utterly destroyed, and the said intoxicating liquor, or not more than 20 gallons thereof, if there be more of it than 20 gallons, poured out, spilled, wasted and utterly destroyed; and thereupon such barrels, kegs, cases, boxes, bottles, packages and other receptacles of any kind whatever, to the extent aforesaid, may be forthwith broken up and utterly destroyed, and the said intoxicating liquor, or not more than 20 gallons thereof if there be more of it than 20 gallons, poured out, spilled, wasted, and utterly destroyed by the constable or peace officer who executed the search-warrant under which the same was found, or in whose custody the same was afterwards placed by the convicting magistrate, commissioner, recorder, judge, justices, sheriff or mayor.

Penalty for tampering with witnesses.

110. Any person who, either before or after the summons of any witness in any such case, tampers with such witness, or by any offer of money, or by threat or otherwise, directly or indirectly, induces or attempts to induce any such person to absent himself or herself, or to swear falsely, shall be liable to a penalty of 50 dollars for each such offence.

Certiorari and appeal taken away in certain cases.

111. No conviction, judgment, or order in any such case shall be removed by *certiorari* or otherwise into any of Her Majesty's Superior Courts of Record; nor shall any appeal whatever be allowed from any such conviction, judgment or order, to any court of general quarter sessions, or other court whatever when the conviction has been made by a stipendiary magistrate, recorder, judge of the sessions of the peace, sheriff, police magistrate, sitting magistrate, or commissioner of a parish court.

Compounding offence and penalty therefor.

112. Any person who, having violated any of the provisions of this Act or of any provincial Act which is now or may be from time to time in force in any province respecting the issue of licenses for the sale of fermented or spirituous liquors, or of "The Temperance Act of 1864," compromises, compounds or settles, or offers or attempts to compromise, compound or settle, the offence with any person or persons with the view of preventing any complaint being made in respect thereof, or if a complaint has been made with the view of getting rid of such complaint, or of stopping or having the same dismissed for want of prosecution or otherwise, shall be guilty of an offence under this Act, and on conviction thereof, shall be imprisoned at hard labour in the common gaol of the county or district in which the offence was committed, for any period not exceeding three months.

Punishment of parties to compromise.

113. Every person who is concerned in, or is a party to, the compromise, composition, or settlement mentioned in the next preceding section, shall be guilty of an offence under this Act, and, on conviction thereof, shall be imprisoned in the common gaol of the county or district in which the offence was committed, for any period not exceeding three calendar months.

Penalty for tampering with witnesses.

114. Any person who, on any prosecution under any of the said Acts, tampers with a witness, either before or after he is summoned or appears as such witness

witness on any trial or proceeding under any such Act, or by the offer of money, or by threats, or in any other way, either directly or indirectly, induces or attempts to induce any such person to absent himself or to swear falsely, shall be liable to a penalty of 50 dollars for each offence.

What it shall suffice to state in describing offences.

115. In describing offences respecting the sale or other unlawful disposal of spirituous, fermented or other intoxicating liquor, or the keeping thereof for sale, in any information, summons, conviction, warrant, or proceeding under the said Temperance Act or under this Act, it shall be sufficient to state the unlawful sale, barter, disposal or keeping of intoxicating liquor simply, without stating the name or kind of such liquor, or the price thereof, or any person to whom it was sold, bartered or disposed of; and it shall not be necessary to state the quantity of liquor so sold, bartered, disposed of, or kept, except in the case of offences where the quantity is essential, and then it shall be sufficient to allege the sale or disposal of more or less than such quantity, and it shall not be necessary, in any such summons, conviction, warrant or proceeding, to negative the circumstances, the existence of which would make the act complained of lawful, but upon any such circumstances being proved in evidence, the defendant shall be acquitted; and this provision shall apply whether such circumstances are stated by way of exception in the section under which the offence is laid or in a substantive section or otherwise.

Certain facts need not be alleged.

Amendment of information and adjournment.

116. In the event of any variance between the information and evidence adduced in support thereof, the justices or magistrate or other officer may amend or alter such information, and may substitute for the offence charged therein any other offence against the provisions of the said "Temperance Act of 1864," or of this Act; but if it appears that the defendant has been materially misled by such variance, the said justices or magistrate or other officer shall thereupon adjourn the hearing of the case to some future day, unless the defendant waives such adjournment.

Variance or defect of form not to affect conviction.

117. No conviction or warrant enforcing the same or other process or proceeding under either of the said Acts shall be held insufficient or invalid by reason of any variance between the information or conviction, or by reason of any other defect in form or substance, provided it can be understood from such conviction, warrant, process or proceeding that the same was made for an offence against some provision of such Act, within the jurisdiction of the justices or magistrate, or other officer who made or signed the same, and provided there is evidence to prove such offence, and no greater penalty is imposed than is authorised by such Act.

Application to quash conviction to be decided upon the merits.

118. Upon any application to quash such conviction or warrant enforcing the same, or other process or proceeding, or to discharge any person in custody under such warrant, whether such application is made in appeal or upon *habeas corpus*, or by way of *certiorari*, or otherwise, the court to which or judge to whom such appeal is made, or to which or to whom such application has been made upon *habeas corpus* or by way of *certiorari* or otherwise, shall dispose of such appeal or application upon the merits, notwithstanding any such variance or defect, as aforesaid, and such court or judge may in any case amend the same if necessary; and in all cases where it appears that the merits have been tried, and that the conviction, warrant, process or proceeding is sufficient and valid under this section or otherwise, such conviction, warrant, process or proceeding shall be affirmed, or shall not be quashed (as the case may be), and any conviction, warrant, process or proceeding so affirmed, or affirmed and amended, may be enforced in the same manner as convictions affirmed on appeal, and the costs thereof shall be recoverable as if originally awarded.

The keeping of liquor for sale shall be inferred under certain circumstances.

119. When, in any house, shop, room or other place in any municipality in which any prohibitory by-law passed under the provisions of "The Temperance Act of 1864," or of this Act, is in force, a bar, counter, beer pumps, kegs, or any other appliances or preparations similar to those usually found in taverns and shops where spirituous or fermented liquors are accustomed to be sold or trafficked in, are found, and spirituous, fermented or other intoxicating liquor is also found in such house, shop, room or place, such liquor shall be deemed to have been kept for sale contrary to the provisions of such Act, unless the contrary is proved by the defendant in any prosecution; and the occupant of such house,

house, shop, room or other place shall be taken conclusively to be the person who keeps therein such liquor for sale.

Passing of money need not be proved.

120. In proving the sale or barter, or other unlawful disposal of liquor for the purpose of any proceeding relative to any offence under the said "Temperance Act of 1864," or under this Act, it shall not be necessary to show that any money actually passed, or any liquor was actually consumed, if the justices, magistrate, or other officer or court hearing the case is or are satisfied that a transaction in the nature of a sale or barter or other unlawful disposal actually took place.

What evidence shall be necessary for a conviction.

121. In any prosecution under the said Temperance Act, or under this Act, for the sale or barter, or other unlawful disposal of intoxicating liquor, it shall not be necessary that any witness should depose directly to the precise description of the liquor sold or bartered, or the precise consideration therefor, or to the fact of the sale or other disposal having taken place with his participation, or to his own personal and certain knowledge, but the justices or magistrate, or other officer trying the case, so soon as it appears to them or him that the circumstances in evidence sufficiently establish the infraction of law complained of, shall put the defendant on his defence, and in default of his rebuttal of such evidence, shall convict him accordingly.

Proceedings upon information for second or subsequent offence.

122. The proceedings upon any information for committing an offence against any of the provisions of this Act, in case of a previous conviction or convictions being charged, shall be as follows:—

Subsequent offence to be first inquired into, and then previous convictions.

1. The justices or magistrate or other officer shall, in the first instance, inquire concerning such subsequent offence only, and if the accused be found guilty thereof, he shall then, and not before, be asked whether he was so previously convicted, as alleged in the information, and if he answers that he was so previously convicted, he may be sentenced accordingly; but if he denies that he was so previously convicted, or stands mute of malice, or does not answer directly to such question, the justices or police magistrate, or other officer, shall then inquire concerning such previous conviction or convictions;

Proof of previous convictions.

2. The number of such previous convictions shall be provable by the production of a certiffcate under the hand of the convicting justices or magistrate, or officer, or of the clerk of the peace, without proof of his signature or official character, or by other satisfactory evidence;

Conviction may be for first offence only.

3. A conviction may in any case be had as for a first offence, notwithstanding that there may have been a prior conviction or convictions for the same or any other offence;

Conviction for several offences on same day.

4. Convictions for several offences may be made under this Act, although such offences may have been committed on the same day, but the increased penalty or punishment hereinbefore imposed shall only be recoverable in the case of offences committed on different days, and after information laid for a first offence;

Amendment of second conviction, in event of first being set aside.

5. In the event of any conviction for any second or subsequent offence becoming void or defective, after the making thereof, by reason of any previous conviction being set aside, quashed, or otherwise rendered void, the justices or magistrate, or other officer, by whom such second or subsequent conviction was made, may, by summons under his or their hand, require the person convicted to appear at a time and place to be named in such summons, and may thereupon, upon proof of the due service of such summons, if such person fails to appear, or on his appearance amend such second or subsequent conviction, and adjudge such penalty or punishment as might have been adjudged had such previous conviction never existed, and such amended conviction shall thereupon be held valid to all intents and purposes as if it had been made in the first instance;

What shall be deemed a conviction for a second or subsequent offence.

6. In case any person who has been convicted of a contravention of any provision of the second part of this Act is afterwards convicted of an offence against such provision, or against any other provision of the said part, such conviction shall be deemed a conviction for a second offence within the meaning of Section 100 of this Act, and may be dealt with and punished accordingly, although the two convictions may be for acts of different descriptions; and in

case any such person is afterwards again convicted of a contravention of any provision of the said part, whether similar or not to the previous offences, such conviction shall in like manner be deemed a conviction for a third offence, within the meaning of Section 100 of this Act, and may be dealt with and punished accordingly.

Wife or husband competent witnesses.

123. On the trial of any proceeding, matter, or question under any of the Acts in the 112th section of this Act mentioned, or under this Act, the person opposing or defending, or the wife or husband of such person opposing or defending, shall be competent and compellable to give evidence in such proceeding, matter, or question.

Sect. 34 of 27 & 28 Vict. c. 18, repealed; new section.

124. Section 34 of the said Temperance Act is hereby repealed, and the following substituted therefor:

Application of penalty in Ontario.

"**34**. In Ontario all the said penalties, or any portion of them which may be recovered, shall be paid to the convicting justice, justices, or magistrate in the case, and shall by him or them, in case the inspector of licenses, or any officer appointed under the authority of the Lieutenant Governor, is the prosecutor or complainant, be paid to the inspector, and by him applied as the Lieutenant Governor may direct; and in case such inspector or officer is not the prosecutor or complainant, then the same shall be paid to the treasurer of the municipality wherein the offence was committed.

Formation of fund to enforce this Act.

"(2.) The council of every municipality shall set apart not less than one-third part of such fines or penalties received by the said municipality for a fund to secure the prosecution for infractions of this Act."

SCHEDULES.

(A.)

Forms of Notice and Petition for the bringing of the Second Part of this Act into force.

To the Honourable the Secretary of State for Canada.

Sir,—We, the undersigned electors of the county (*or* city) of , request you to take notice that we propose presenting the following Petition to His Excellency the Governor General, namely:

To His Excellency the Governor General of Canada in Council.

The Petition of the electors of the county (*or* city) of , qualified and competent to vote at the election of a member of the House of Commons in the said county (*or* city).

Respectfully showeth, that your Petitioners are desirous that the second part of "The Canada Temperance Act, 1878," should be in force and take effect in the said county (*or* city).

Wherefore your Petitioners humbly pray that Your Excellency will be pleased by an Order in Council under the 96th section of the said Act to declare that the second part of the said Act shall be in force and take effect in the said county (*or* city).

And your Petitioners will ever pray, &c.

And that we desire that the votes of all the electors of the said county (*or* city) be taken for and against the adoption of the said Petition.

(B.)

Oath of the Returning Officer.

I, the undersigned, *A. B.*, returning officer, under "The Canada Temperance Act, 1878," for the county (*or* city) of , solemnly swear (*or if he be one of the persons permitted by law to affirm in civil cases*, solemnly affirm) that I will act faithfully in that capacity, without partiality, fear, favour, or affection: so help me, God.

(signature) *A. B.*,
Returning Officer.

Certificate of Returning Officer, having taken Oath of Office.

I, the undersigned, hereby certify that on the day of the month of 18 , *A. B.*, the returning officer, under "The Canada Temperance Act, 1878," for the county (*or* city) of , took and subscribed before me, the oath (*or* affirmation) of office, in such case required of a returning officer, by Section 11 of "The Canada Temperance Act, 1878."

In testimony whereof, I have delivered to him this certificate.

(signature) *C. D.*,
Justice of the Peace.

(C.)

Commission of a Deputy Returning Officer.

To G. H. (*insert his legal addition and residence.*)

Know you, that in my capacity of returning officer, under "The Canada Temperance Act, 1878," for the county (*or* city) of , I have appointed, and do hereby appoint you to be deputy returning officer for the polling district number , of the said county (*or* city) of , there to take the votes of the electors by ballot, according to law, at the polling station, to be by you opened and kept for that purpose, and you are hereby authorised and required to open and hold the poll, under the said Act, for the said polling district on the day of , at nine o'clock in the forenoon, at (*here describe particularly the place in which the poll is to be held*), and there to keep the said poll open during the hours prescribed by law, and to take at the said polling place, by ballot, in the manner by law provided, the votes of the electors voting at the said polling place, and after counting the votes given and performing the other duties required of you by law, to return to me forthwith the ballot box sealed with your seal, and enclosing the ballots, voters' list, and other documents required by law, together with this commission.

Given under my hand, at this day of , in the year 18 .

(signature) *A. B.*,
Returning Officer.

(D.)

Oath of Deputy Returning Officer.

I, the undersigned, *G. H.*, appointed deputy returning officer for the polling district, No. , of the county (*or* city) of , solemnly swear (*or, being one of the persons permitted by law to affirm in civil cases,* solemnly affirm) that I will act faithfully in my said capacity of deputy returning officer, without partiality, fear, favour, or affection: so help me, God.

(signature) *G. H.*,
Deputy Returning Officer.

Certificate of a Deputy Returning Officer, having taken the Oath of Office.

I, the undersigned, hereby certify that on the day of the month of , *G. H.*, deputy returning officer for the polling district No. , of the county (*or* city of , took and subscribed the oath (*or* affirmation) of office, required in such case of a deputy returning officer, by section 14 of "The Canada Temperance Act, 1878."

In testimony whereof, I have delivered to him this certificate under my hand.

(signature) *A. B.*,
Returning Officer,
or *C. D.*,
Justice of the Peace.

(E.)

Form of Ballot Paper.

18 .

Voting on the Petition to the Governor General for the bringing into force of the second part of "The Canada Temperance Act, 1878."

N.B.—The crosses are for illustration.

For the Petition. +

Against the Petition. +

N.B.—The crosses are for illustration.

The dotted line will be a line of perforation for easily detaching the counterfoil.

(F.)

Directions for the Guidance of Electors in Voting.

The voter will go into one of the compartments, and, with a pencil there provided, place a cross, thus ×, in the upper space if he votes for the adoption of the petition, and in the lower space if he votes against the adoption of the petition.

The voter will then fold the ballot, so as to show a portion of the back only, with the number and the initials of the deputy returning officer, and deliver it to the deputy returning officer, who will place it in the ballot box. The voter will then forthwith quit the polling station.

If a voter inadvertently spoils a ballot paper he can return it to the proper officer, who, on being satisfied of the fact, will give him another.

If the voter places on the ballot paper more than one mark, or places any mark on it by which he can afterwards be identified, his vote will be void, and will not be counted.

If the voter takes a ballot paper out of the polling station, or fraudulently puts any other paper into the ballot box than the ballot paper given him by the deputy returning officer, he will be subject to be punished by fine or by imprisonment for a term not exceeding six months, with or without hard labour.

(G.)

Form of Declaration of Agent.

I, the undersigned *E. F.*, solemnly declare that I am desirous of promoting (*or* opposing) the adoption of a petition to the Governor General for the bringing into force in the said county (*or* city) of the second part of "The Canada Temperance Act, 1878."

(signature) *A. B.*

Made and declared at this day of *A. D.*, , before me.

C. D.,
Returning Officer.

(H.)

Form of Oath of Secrecy.

I, the undersigned *E. F.*, agent for the electors of the county (*or* city) of , interested in promoting (*or* opposing) the adoption of a petition to the Governor General for the bringing into force in the said county (*or* city) of the second part of "The Canada Temperance Act, 1878," solemnly swear (*or, if he be one of the persons permitted by law to affirm in civil cases,* solemnly affirm, promise and declare), that I will keep secret the way in which any of the voters at the polling station in the polling district No. . may have marked his ballot in my presence, at this polling of votes for or against such petition: so help me, God.

(signature) *E. F.*

Sworn (*or* affirmed) at this day of *A. D.*, , before me.

A. B.,
Returning Officer.
(*or*) *C. D.*

(I.)

Form of Voters' List.

Number of the Voters.	Names of the Voters.	Their Legal Addition.	Their Place of Residence.	Owners.	Tenants or Occupants.	Residence or other Qualification.	Objections.	Sworn or Affirmed.	Voters refusing to be Sworn or Affirmed.	Voters voting after Others voted in their Names.

Note.—The qualification need not be inserted except where there are no provincial lists of voters.

(J.)

Oath of Identity by Voter receiving a Ballot Paper after another has voted in his Name.

I solemnly swear (or, *if he be one of the persons permitted to by law to affirm in civil cases,* solemnly affirm), that I am *A. B.*, of (*as on the voters' list*) whose name is entered on the voters' list now shown me: so help me, God.

(K.)

Oath of Messenger sent to Collect the Ballot Boxes,

I, *A. B.*, of , messenger appointed by *C. D.*, returning officer for the county (*or* city) of , in the province of , do solemnly swear that the several boxes to the number of now delivered by me to the said returning officer, have been handed to me by the several deputy returning officers at the present polling of votes in the said county (*or* city, *or* by—*here insert the names of the deputy returning officers who have delivered said boxes*)—that they have not been opened by me, nor any other person, and that they are in the same state as they were when they came into

into my possession. (*Should any change have taken place, the deponent shall vary his deposition by fully stating the circumstances.*)

(signature) *A. B.*

Sworn (*or* affirmed) and subscribed before me, at this day of , in the year 18 .

(signature) *X. Y.*,
Justice of the Peace.

or A. B.,
Returning Officer.

or G. H.,
Deputy Returning Officer.

(L.)

Oath of the Deputy Returning Officer after the Closing of the Poll.

I, the undersigned, deputy returning officer for the polling district, No. , of the county (*or* city) of , do solemnly swear (*or, if he be one of the persons permitted by law to affirm in civil cases,* do solemnly affirm) that to the best of my knowledge and belief, the voters' list kept for the said polling district under my direction, hath been so kept correctly ; and that the total number of votes polled in the said list is , and that, to the best of my knowledge and belief, it contains a true and exact record of the votes given at the polling station, in the said polling district, as the said votes were taken thereat; that I have faithfully counted the votes given for each interest, in the manner by law provided, and performed all duties required of me by law, and that the report, packets of ballot papers, and other documents required by law to be returned by me to the returning officer, have been faithfully and truly prepared and placed within the ballot box, as this oath (*or* affirmation) will be, to the end that the said ballot box, being first carefully sealed with my seal, may be transmitted to the returning officer according to law.

(signature) *G. H.*,
Deputy Returning Officer

Sworn before me at , in the county of , this day of , 18 .

(signature) *X. Y.*,
Justice of the Peace.

or A. B.,
Returning Officer.

(M.)

Information to obtain a Search Warrant.

Canada,
Province of
District (*or* county, *or, as the case may be*) of

The information of *K. L.*, of the of in the said district (*or*, county, &c., *yeoman*), taken this day of in the year of Our Lord , before me, *W. S.*, Esq., one of Her Majesty's justices of the peace, in and for the district (*or*, county, *or*, united counties, *or, as the case may be*) of , who saith that he hath just and reasonable cause to suspect, and doth suspect, that intoxicating liquor in respect to which an offence against the second part of "The Canada Temperance Act, 1878," hath been committed, is concealed in the (*dwelling house, &c.*) of *P. Q.*, of in the said district (*or* county, &c.) (*here add the causes of suspicion and the particulars of the offence, whatever they may be.*)

Wherefore he prays that a search warrant may be granted him to search the (*dwelling house, &c.*) of the said *P. Q.*, as aforesaid, for the said intoxicating liquor.

Sworn (*or* affirmed) on the day and year first above mentioned, at in the said district (*or*, county, &c.) of , before me

(signature) *W. S.*,
J. P.

(N.)

Form of Search Warrant.

Canada,
Province of
District (*or*, county, *or*, *as the case may be*) of

To all or any of the constables, or other peace officers, in the district (*or*, county, *or*, *as the case may be*) of

Whereas, *K. L.*, of the of in the said district (*or*, county, &c.) hath this day made oath before me, the undersigned, one of Her Majesty's justices of the peace, in and for the said district (*or*, county, &c.) of that he hath just and reasonable cause to suspect, and doth suspect, that intoxicating liquor, in respect to which an offence against the second part of "The Canada Temperance Act, 1878," hath been committed, to wit, in respect to which (*here describe the offence, in the words of the information*) is concealed in the (*dwelling house, &c.*) of one *P. Q.*, of in the said district (*or*, county, &c.) of . These are, therefore, in the name of our Sovereign Lady the Queen, to authorise and require you, and each and every of you, with necessary and proper assistance, to enter in the day time into the said (*dwelling house, &c.*) of the said *P. Q.*, and there diligently search for the said intoxicating liquor; and if the same, or any part thereof, shall be found upon such search, that you bring the intoxicating liquor so found, or gallons thereof, if there be more than 20 gallons so found, and also all barrels, kegs, cases, boxes, packages, and other receptacles of any kind whatever containing the same, before me to be disposed of and dealt with according to law.

Given under my hand and seal at in the said district (*or* county, &c.) this day of in the year of Our Lord

(seal) *W. S.*,
J. P.

CANADA (TEMPERANCE ACT, 1878).

COPY of the ACT of the CANADIAN PARLIAMENT usually known as "THE SCOTT TEMPERANCE ACT, 1878."

(Sir Alexander Gordon.)

Ordered, by The House of Commons, *to be Printed,*
23 *August* 1880.

367—Sess. 2.

Under 3 *oz.*

726

UNITED STATES. No. 1 (1880).

FURTHER CORRESPONDENCE

RESPECTING THE

OCCURRENCES

AT

FORTUNE BAY, NEWFOUNDLAND,

IN

JANUARY 1878.

[In continuation of "North America No. 3 (1878)."]

Presented to both Houses of Parliament by Command of Her Majesty.
1880.

LONDON:
PRINTED BY HARRISON AND SONS.

[C.—2717.] *Price* 7½*d.*

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Further Correspondence respecting the Occurrences at Fortune Bay, Newfoundland, in January 1878.

[In continuation of "North America No. 3 (1878)."]

No. 1.

Mr. Welsh to the Marquis of Salisbury.—(*Received August* 13.)

My Lord, *Legation of the United States, London, August* 13, 1879.

I HAVE just received a very important despatch from Mr. Evarts stating the claims for damages, amounting to 105,305 $\frac{2}{10}$ dollars, sustained by certain citizens of the United States, owners of twenty-two vessels in Fortune Bay, Newfoundland, in the month of January 1878, which claims have already formed the subject of a previous correspondence with your Lordship.

As the argument for the payment of these claims by Her Majesty's Government is presented by Mr. Evarts in a very full, clear, and forcible manner, I have thought it proper to submit his instruction to me in its original form to your Lordship, asking for it an early and favourable consideration.

I have, &c.
(Signed) JOHN WELSH.

Inclosure in No. 1.

Mr. Evarts to Mr. Welsh.

Sir, *Department of State, Washington, August* 1, 1879.

YOU will readily understand that the pressure of current business, especially during the regular and special sessions of Congress, has prevented so immediate attention to the claims of the Fortune Bay fishermen, as definitely laid before me in their proofs completed during the session, as would enable me to give in reply a full consideration to the despatch of Lord Salisbury of the date of the 7th November, 1878, in reply to mine to you of the 28th September, 1878.

But other and stronger reasons have also induced me to postpone until now any discussion of the questions arising out of the occurrences to which those despatches referred.

It so happened that the transactions of which certain citizens of the United States complain were brought fully to the attention of the Government about the same time at which it became my duty to lay before Her Britannic Majesty's Government the views of the United States' Government as to the award then recently made by the Commission on the Fisheries which had just closed its sittings at Halifax. While the character of the complaint and the interests of the citizens of the United States rendered it necessary that the subject should be submitted to the consideration of Her Britannic Majesty's Government at the earliest possible moment, in order to the prevention of any further and graver misunderstanding, and the avoidance of any

serious interruption to an important industry, I was exceedingly unwilling that the questions arising under the award and those provoked by the occurrences in Newfoundland should be confused with each other, and least of all would I have been willing that the simultaneous presentment of the views of this Government should be construed as indicating any desire on our part to connect the settlement of these complaints with the satisfaction or abrogation of the Halifax award.

I also deemed it not unadvisable in the interests of such a solution as I am sure is desired by the good sense and good temper of both Governments that time should be allowed for the extinguishment of the local irritation, both here and in Newfoundland, which these transactions seem to have excited, and that another fishing season should more clearly indicate whether the rights to which the citizens of the United States were entitled under the Treaty were denied or diminished by the pretensions and acts of the Colonial authorities, or whether their infraction was accidental and temporary.

As soon as the violence to which citizens of the United States had been subjected in Newfoundland was brought to the attention of this Department, I instructed you, on the 2nd March, 1878, to represent the matter to Her Britannic Majesty's Government, and upon such representation you were informed that a prompt investigation would be ordered for the information of that Government. On the 23rd August, 1878, Lord Salisbury conveyed to you, to be transmitted to your Government, the result of that investigation in the shape of a Report from Captain Sulivan, of Her Majesty's ship "Sirius." In furnishing you with this Report, Lord Salisbury, on behalf of Her Britannic Majesty's Government, said: "You will perceive that the Report in question appears to demonstrate conclusively that the United States' fishermen on this occasion had committed three distinct breaches of the law, and that no violence was used by the Newfoundland fishermen, except in the case of one vessel whose master refused to comply with the request which was made to him that he should desist from fishing on Sunday, in violation of the law of the Colony and of the local custom, and who threatened the Newfoundland fishermen with a revolver, as detailed in paragraphs 5 and 6 of Captain Sulivan's Report."

The three breaches of the law thus reported by Captain Sulivan, and assumed by Lord Salisbury as conclusively established, were:—

1. The use of seines, and the use of them also at a time prohibited by a Colonial Statute.
2. Fishing upon a day, Sunday, forbidden by the same local law; and,
3. Barring fish, in violation of the same local legislation.

In addition, Captain Sulivan reported that the United States' fishermen were, contrary to the terms of the Treaty of Washington, "fishing illegally, interfering with the rights of British fishermen and their peaceable use of that part of the coast then occupied by them, and of which they were actually in possession; their seines and boats, their huts and gardens, and land granted by Government, being situated thereon."

Yours containing this despatch and the accompanying Report was received on the 4th September, 1878, and on the 28th of the same month you were instructed that it was impossible for this Government duly to appreciate the value of Captain Sulivan's Report until it was permitted to see the testimony upon which the conclusions of that Report professed to rest. And you were further directed to say that, putting aside for after examination the variations of fact, it seemed to this Government that the assumption of the Report was that the United States' fishermen were fishing illegally, because their fishing was being conducted at a time and by methods forbidden by certain Colonial statutes; that the language of Lord Salisbury in communicating the Report with his approval indicated the intention of Her Britannic Majesty's Government to maintain the position that the Treaty privileges secured to United States' fishermen by the Treaty of 1871 were held subject to such limitations as might be imposed upon their exercise by Colonial legislation; and "that so grave a question, in its bearing upon the obligations of this Government under the Treaty, makes it necessary that the President should ask from Her Majesty's Government a frank avowal or disavowal of the paramount authority of provincial legislation to regulate the enjoyment by our people of the inshore fishery which seems to be intimated, if not asserted, in Lord Salisbury's note."

In reply to this communication Lord Salisbury, on the 7th November, 1878, transmitted to you the depositions which accompanied Captain Sulivan's Report, and said: "In pointing out that the American fishermen had broken the law within the territorial limits of Her Majesty's domains, I had no intention of inferentially laying

down any principles of international law, and no advantage would, I think, be gained by doing so to a greater extent than the facts in question absolutely require. . . . . Her Majesty's Government will readily admit what is, indeed, self-evident—that British sovereignty, as regards those waters, is limited in its scope by the engagements of the Treaty of Washington, which cannot be modified or affected by any municipal legislation." It is with the greatest pleasure that the United States' Government receives this language as "the frank disavowal," which it asked, "of the paramount authority of provincial legislation to regulate the enjoyment by our people of the inshore fishery." Removing, as this explicit language does, the only serious difficulty which threatened to embarrass this discussion, I am now at liberty to resume the consideration of these differences in the same spirit and with the same hopes so fully and properly expressed in the concluding paragraph of Lord Salisbury's despatch. He says: "It is not explicitly stated in Mr. Evarts' despatch that he considers any recent Acts of the Colonial Legislature to be inconsistent with the rights acquired by the United States under the Treaty of Washington. But, if that is the case, Her Majesty's Government will, in a friendly spirit, consider any representations he may think it right to make upon the subject, with the hope of coming to a satisfactory understanding."

It is the purpose, therefore, of the present despatch to convey to you, in order that they may be submitted to Her Britannic Majesty's Government, the conclusions which have been reached by the Government of the United States as to the rights secured to its citizens under the Treaty of 1871 in the herring fishery upon the Newfoundland coast, and the extent to which those rights have been infringed by the transactions in Fortune Bay on the 6th January, 1878.

Before doing so, however, I deem it proper, in order to clear the argument of all unnecessary issues, to correct what I consider certain misapprehensions of the views of this Government contained in Lord Salisbury's despatch of the 7th November, 1878. The Secretary for Foreign Affairs of Her Britannic Majesty says:—

"If, however, it be admitted that the Newfoundland Legislature have the right of binding Americans who fish within their waters by any laws which do not contravene existing Treaties, it must be further conceded that the duty of determining the existence of such contravention must be undertaken by the Governments, and cannot be remitted to the discretion of each individual fisherman. For such discretion, if exercised on one side, can hardly be refused on the other. If any American fisherman may violently break a law which he believes to be contrary to Treaty, a Newfoundland fisherman may violently maintain it if he believes it to be in accordance with Treaty." His Lordship can scarcely have intended this last proposition to be taken in its literal significance. An infraction of law may be accompanied by violence which affects the person or property of an individual, and that individual may be warranted in resisting such illegal violence, so far as it directly affects him, without reference to the relation of the act of violence to the law which it infringes, but simply as a forcible invasion of his rights of person or property. But that the infraction of a general municipal law, with or without violence, can be corrected and punished by a mob, without official character or direction, and who assume both to interpret and administer the law in controversy, is a proposition whith does not require the reply of elaborate argument between two Governments whose daily life depends upon the steady application of the sound and safe principles of English jurisprudence. However this may be, the Government of the United States cannot for a moment admit that the conduct of the United States' fishermen in Fortune Bay was in any—the remotest—degree a violent breach of law. Granting any and all the force which may be claimed for the Colonial Legislature, the action of the United States' fishermen was the peaceable prosecution of an innocent industry, to which they thought they were entitled. Its pursuit invaded no man's rights, committed violence upon no man's person, and if trespassing beyond its lawful limits could have been promptly and quietly stopped by the interference and representation of the lawfully-constituted authorities. They were acting under the provisions of the very statute which they are alleged to have violated, for it seems to have escaped the attention of Lord Salisbury that section 28 of the title of the Consolidated Acts referred to contains the provision that "Nothing in this chapter shall affect the rights and privileges granted by Treaty to the subjects of any State or Power in amity with Her Majesty." They were engaged, as I shall hereafter demonstrate, in a lawful industry, guaranteed by the Treaty of 1871, in a method which was recognized as legitimate by the award of the Halifax Commission, the privilege to exercise which their Government had agreed to pay for. They were forcibly stopped, not by legal authority, but by mob violence. They made no resistance, withdrew from

the fishing grounds, and represented the outrage to their Government, thus acting in entire conformity with the principle so justly stated by Lord Salisbury himself, that "if it be admitted, however, that the Newfoundland Legislature have the right of binding Americans who fish within their waters by any laws which do not contravene existing Treaties, it must be further conceded that the duty of determining the existence of such contravention must be undertaken by the Governments, and cannot be remitted to the judgment of each individual fisherman." There is another passage of Lord Salisbury's despatch to which I should call your attention. Lord Salisbury says: "I hardly believe, however, that Mr. Evarts would, in discussion, adhere to the broad doctrine which some portion of his language would appear to convey, that no British authority has a right to pass any kind of laws binding Americans who are fishing in British waters; for if that contention be just, the same disability applies, *a fortiori*, to any other Powers, and the waters must be delivered over to anarchy." I certainly cannot recall any language of mine in this correspondence which is capable of so extraordinary a construction. I have nowhere taken any position larger or broader than that which Lord Salisbury says: "Her Majesty's Government will readily admit what is, indeed, self-evident—that British sovereignty, as regards those waters, is limited in its scope by the engagements of the Treaty of Washington, which cannot be affected or modified by any municipal legislation." I have never denied the full authority and jurisdiction either of the Imperial or Colonial Governments over their territorial waters, except so far as by Treaty that authority and jurisdiction have been deliberately limited by these Governments themselves. Under no claim or authority suggested or advocated by me could any other Government demand exemption from the provisions of British or Colonial law, unless that exemption was secured by Treaty; and if these "waters must be delivered over to anarchy," it will not be in consequence of any pretensions of the United States' Government, but because the British Government has, by its own Treaties, to use Lord Salisbury's phrase, limited the scope of British sovereignty. I am not aware of any such Treaty engagements with other Powers, but if there are, it would be neither my privilege nor duty to consider or criticize their consequences where the interests of the United States are not concerned.

After a careful comparison of all the depositions furnished to both Governments, the United States' Government is of opinion that the following facts will not be disputed:—

1. That twenty-two vessels belonging to citizens of the United States, viz., "Fred. P. Frye," "Mary and M.," "Lizzie and Namari," "Edward E. Webster," "W. E. McDonald," "Crest of the Wave," "F. A. Smith," "Hereward," "Moses Adams," "Charles E. Warren," "Moro Castle," "Wildfire," "Maud and Effie," "Isaac Rich," "Bunker Hill," "Bonanza," "H. M. Rogers," "Moses Knowlton," "John W. Bray," "Maud B. Wetherell," "New England," and "Ontario," went from Gloucester, a town in Massachusetts, United States, to Fortune Bay, in Newfoundland, in the winter of 1877-78, for the purpose of procuring herring.

2. That these vessels waited at Fortune Bay for several weeks (from about December 15th, 1877, to January 6th, 1878), for the expected arrival of schools of herring in that harbour.

3. That on Sunday, January 6th, 1878, the herring entered the Bay in great numbers, and that four of the vessels sent their boats with seines to commence fishing operations, and the others were proceeding to follow.

4. That the parties thus seining were compelled by a large and violent mob of the inhabitants of Newfoundland to take up their seines, discharge the fish already inclosed, and abandon their fishery, and that in one case at least the seine was absolutely destroyed.

5. That these seines were being used in the interest of all the United States' vessels waiting for cargoes in the harbour, and that the catch undisturbed would have been sufficient to load all of them with profitable cargoes. The great quantity of fish in the harbour, and the fact that the United States' vessels, if permitted to fish, would all have obtained full cargoes, is admitted in the British depositions.

"If the Americans had been allowed to secure all the herrings in the Bay for themselves, which they could have done that day, they would have filled all their vessels, and the neighbouring fishermen would have lost all chance on the following week-days." (Deposition of James Searwell.)

"The Americans, by hauling herring that day, when the Englishmen could not, were robbing them of their lawful and just chance of securing their share in them; and, further, had they secured all they had barred, they would, I believe, have filled every vessel of theirs in the Bay." (Deposition of John Cluett.)

See also affidavits of the United States' Captains.

6. That, in consequence of this violence, all the vessels abandoned the fishing grounds, some without cargoes, some with very small cargoes, purchased from the natives, and their voyages were a loss to their owners.

7. That the seining was conducted at a distance from any land or fishing privilege, or the occupation of any British subject. (See affidavits of Willard G. Rode, Charles Doyle, and Michael B. Murray.)

8. That none of the United States' vessels made any further attempts to fish, but three or four, which were delayed in the neighbourhood, purchased small supplies of herring. (See British depositions of John Saunders and Silas Fudge, wherein is stated that the United States' vessels only remained a few days, and that after January 6th no fish came into the harbour.) All the United States' affidavits show that the United States' vessels were afraid to use their seines after this, and that they left almost immediately, most of them coming home in ballast.

The provisions of the Treaty of Washington (1871), by which the right to prosecute this fishery was secured to the citizens of the United States, are very simple and very explicit.

The language of the Treaty is as follows:—

"XVIII. It is agreed by the High Contracting Parties that in addition to the liberties secured to the United States' fishermen by the Convention between the United States and Great Britain, signed at London on the 20th day of October, 1818, of taking, curing, and drying fish on certain coasts of the British North American Colonies, therein defined, the inhabitants of the United States shall have, in common with the subjects of Her Britannic Majesty, the liberty, for the term of years mentioned in Article XXXIII of this Treaty, to take fish of every kind, except shell-fish, on the sea-coast and shores, and in the bays, harbours, and creeks of the provinces of Quebec, &c."

"XXXII. It is further agreed that the provisions and stipulations of Articles XVIII to XXV of this Treaty, inclusive, shall extend to the Colony of Newfoundland, so far as they are applicable."

Title 27, chapter 102 of the Consolidated Acts of Newfoundland provides:—

Section 1. That no person shall take herring on the coast of Newfoundland, by a seine or other such contrivance, at any time between the 20th day of October and the 12th day of April in any year, or at any time use a seine except by way of shooting and forthwith hauling the same.

Sec. 2. That no person shall, at any time between the 20th day of December and the 1st day of April in any year, catch or take herring with seine of less than $2\frac{3}{8}$ inches mesh, &c.

Sec. 4. No person shall, between the 20th day of April and the 20th day of October in any year, haul, catch, or take herring or other bait, for exportation, within one mile measured by the shore or across the water of any settlement situate between Cape Chapeau Rouge and Point Emajer, near Cape Ray.

The Act of 1876 provides that "no person shall, between the hours of 12 o'clock on Saturday night and 12 o'clock on Sunday night, haul or take any herring, caplin, or squid with net, seine, bunts, or any such contrivance for the purpose of such hauling or taking."

It seems scarcely necessary to do more than place the provisions of the Treaty and the provisions of these laws in contrast, and apply the principle, so precisely and justly announced by Lord Salisbury as self-evident, "That British sovereignty, as regards those waters, is limited in its scope by the engagements of the Treaty of Washington, which cannot be modified or affected by any municipal legislation." For it will not be denied that the Treaty privilege of "taking fish of every kind, except shell-fish, on the sea coast and shores, in the bays, harbours, and creeks" of Newfoundland is both seriously "modified" and injuriously affected by "municipal legislation," which closes such fishery absolutely for seven months of the year, prescribes a special method of exercise, forbids exportation for five months, and, in certain localities, absolutely limits the three-mile area which it was the express purpose of the Treaty to open.

But this is not all. When the Treaty of 1871 was negotiated, the British Government contended that the privilege extended to United States' fishermen of free fishing within the three-mile territorial limit was so much more valuable than the equivalent offered in the Treaty that a money compensation should be added to equalize the exchange. The Halifax Commission was appointed for the special purpose of determining that compensation, and, in order to do so, instituted an exhaustive

examination of the history and value of the Colonial fisheries, including the herring fishery of Newfoundland. Before that Commission the United States' Government contended that the frozen herring fishery in Fortune Bay, Newfoundland, the very fishery now under discussion, was not a fishery but a traffic; that the United States' vessels which went there for herring always took out trading permits from the United States' custom-houses, which no other fishermen did; that the herring were caught by the natives in their nets and sold to the vessels, the captains of which froze the herring after purchase and transported them to market; and that, consequently, this was a trade, a commerce beneficial to the Newfoundlanders, and not to be debited to the United States' account of advantages gained by the Treaty. To this the British Government replied that, whatever the character of the business had been, the Treaty now gave the United States' fishermen the right to catch as well as purchase herring; that the superior character of the United States' vessels, the larger capacity and more efficient instrumentality of the seines used by the United States' fishermen, together with their enterprise and energy, would all induce the United States' fishermen to catch herring for themselves, and thus the Treaty gave certain privileges to the United States' fishermen which inflicted upon the original proprietor a certain amount of loss and damage from this dangerous competition, which, in justice to their interests, required compensation. The exercise of these privileges, therefore, as stated in the British Case, as evidenced in the British testimony, as maintained in the British argument, for which the British Government demanded and received compensation, is the British construction of the extent of the liberty to fish in common, guaranteed by the Treaty.

Mr. Whiteway, then Attorney-General of Newfoundland, and one of the British Counsel before the Commission, said in his argument:—

"And now one word with regard to the winter herring fishery in Fortune Bay. It appears that from forty to fifty United States' vessels proceed there between the months of November and February, taking from thence cargoes of frozen herring of from 500 to 800 or 1,000 barrels. According to the evidence, these herrings have hitherto generally been obtained by purchase. It is hardly possible, then, to conceive that the Americans will continue to buy, possessing, as they now do, the right to catch."

The British Case states the argument as to the Newfoundland fisheries in the following language:—

"It is asserted, on the part of Her Majesty's Government, that the actual use which may be made of this privilege at the present moment is not so much in question as the actual value of it to those who may, if they will, use it. It is possible, and even probable, that the United States' fishermen may at any moment avail themselves of the privilege of fishing in Newfoundland inshore waters to a much larger extent than they do at present; but even if they should not do so, it would not relieve them from the obligation of making the just payment for a right which they have acquired subject to the condition of making that payment. The case may be not inaptly illustrated by the somewhat analogous one of a tenancy of shooting or fishing privileges; it is not because the tenant fails to exercise the rights, which he has acquired by virtue of his lease, that the proprietor should be debarred from the recovery of his rent.

"There is a marked contrast to the advantage of the United States' citizens between the privilege of access to fisheries the most valuable and productive in the world, and the barren right accorded to the inhabitants of Newfoundland of fishing in the exhausted and preoccupied waters of the United States north of the 39th parallel of north latitude, in which there is no field for lucrative operations, even if British subjects desired to resort to them; and there are strong grounds for believing that year by year, as United States' fishermen resort in greater numbers to the coasts of Newfoundland, for the purpose of procuring bait and supplies, they will become more intimately acquainted with the resources of the inshore fisheries, and their unlimited capacity for extension and development. As a matter of fact, United States' vessels have, since the Washington Treaty came into operation, been successfully engaged in these fisheries; and it is but reasonable to anticipate that, as the advantages to be derived from them become more widely known, larger numbers of United States' fishermen will engage in them.

"A participation by fishermen of the United States in the freedom of these waters must, notwithstanding their wonderfully reproductive capacity, tell materially on the local catch, and while affording to the United States' fishermen a profitable employment, must seriously interfere with local success. The extra amount of bait,

also, which is required for the supply of the United States' demand for bank fishery, must have the effect of diminishing the supply of cod for the inshores, as it is well known that the presence of that fish is caused by the attraction offered by a large quantity of bait fishes, and as this quantity diminishes the cod will resort in fewer number to the coast.

"The effect of this diminution may not in all probability be apparent for some years to come, and whilst United States' fishermen will have the liberty of enjoying the fisheries for several years in their present teeming and remunerative state, the effects of over fishing may, after their right to participate in them has lapsed, become seriously prejudicial to the interests of the local fishermen.

"II. *The privilege of procuring bait and supplies, refitting, drying, transhipping, &c.*

"Apart from the immense value to United States' fishermen of participation in the Newfoundland inshore fisheries must be estimated the important privilege of procuring bait for the prosecution of the bank and deep-sea fisheries, which are capable of unlimited expansion. With Newfoundland as a basis of operations, the right of procuring bait, refitting their vessels, drying and curing fish, procuring ice in abundance for the preservation of bait, liberty of transhipping their cargoes, &c., an almost continuous prosecution of the bank fishery is secured to them. By means of these advantages United States' fishermen have acquired, by the Treaty of Washington, all the requisite facilities for increasing their fishing operations to such an extent as to enable them to supply the demand for fish food in the United States' markets, and largely to furnish the other fish markets of the world, and thereby exercise a competition which must inevitably prejudice Newfoundland exporters. It must be remembered, in contrast with the foregoing, that United States' fishing craft, before the conclusion of the Treaty of Washington, could only avail themselves of the Coast of Newfoundland for obtaining a supply of wood and water, for shelter, and for necessary repairs in case of accident, and for no other purpose whatever; they therefore prosecuted the bank fishery under great disadvantages, notwithstanding which, owing to the failure of United States' local fisheries, and the consequent necessity of providing new fishing grounds, the bank fisheries have developed into a lucrative source of employment to the fishermen of the United States. That this position is appreciated by those actively engaged in the bank fishery is attested by the statements of competent witnesses, whose evidence will be laid before the Commission."

And in the reply of the British Government, referring to the same Newfoundland fisheries, is the following declaration:—

"As regards the herring fishery on the Coast of Newfoundland, it is availed of, to a considerable extent, by the United States' fishermen, and evidence will be adduced of large exportations by them in American vessels, particularly from Fortune Bay and the neighbourhood, both to European and their own markets.

"The presence of United States' fishermen upon the Coast of Newfoundland, so far from being an advantage, as is assumed in the answer, operates most prejudicially to Newfoundland fishermen. Bait is not thrown overboard to attract the fish, as asserted; but the United States' bank fishing vessels, visiting the coast in such large numbers as they do, for the purpose of obtaining bait, sweep the coast, creeks, and inlets, thereby diminishing the supply of bait for local catch, and scaring it from the grounds, where it would otherwise be an attraction for cod."

In support of these views, the most abundant testimony was produced by the British Government, showing the extent of the United States' herring fishery, the character and construction of the seines used, the time when the vessels came and left, and the employment of the native fishermen by the United States' vessels; and it follows unanswerably that upon the existence of that fishery between the months of October and April (the very time prohibited by the Colonial law), and upon the use of just such seines as were used by the complainants in this case (the very seines forbidden by the Colonial law), and because the increasing direct fishery of the United States' vessels was interfering with native methods and native profits, the British Government demanded and received compensation for the damages thus alleged to proceed from "the liberty to take fish of every kind" secured by the Treaty. This Government cannot anticipate that the British Government will now contend that the time and the method for which it asked and received compensation are forbidden by the terms of the very Treaty under which it made the claim and received the payment. Indeed, the language of Lord Salisbury justifies the Government of the United States in drawing the conclusion that between itself and Her Britannic Majesty's Govern-

ment there is no substantial difference in the construction of the privilege of the Treaty of 1871, and that, in the future, the Colonial regulation of the fisheries, with which, as far as their own interests are concerned, we have neither right nor desire to intermeddle, will not be allowed to modify or affect the rights which have been guaranteed to citizens of the United States.

You will therefore say to Lord Salisbury that the Government of the United States considers that the engagements of the Treaty of 1871 contravened by the local legislation of Newfoundland, by the prohibition of the use of seines, by the closing of the fishery with seines between October and April, by the forbidding of fishing for the purpose of exportation between December and April, by the prohibition to fish on Sunday, by the allowance of nets of only a specified mesh, and by the limitation of the area of fishing between Cape Ray and Cape Chapeau Rouge. Of course, this is only upon the supposition that such laws are considered as applying to United States' fishermen. As local regulations for native fishermen, we have no concern with them. The contravention consists in excluding United States' fishermen during the very times in which they have been used to pursue this industry, and forbidding the methods by which alone it can profitably be carried on. The exclusion of the time from October to April covers the only season in which frozen herring can be procured, while the prohibition of the seines would interfere with the vessels, who, occupied in cod fishing during the summer, go to Fortune Bay in the winter, and would consequently have to make a complete change in their fishing gear, or depend entirely upon purchase from the natives for their supply. The prohibition of work on Sunday is impossible under the conditions of the fishery. The vessels must be at Fortune Bay at a certain time, and leave for market at a certain time. The entrance of the schools of herring is uncertain, and the time they stay equally so. Whenever they come they must be caught, and the evidence in this very case shows that after Sunday, the 6th of January, there was no other influx of these fish, and that prohibition on that day would have been equivalent to shutting out the fishermen for the season.

If I am correct in the views hitherto expressed, it follows that the United States' Government must consider the United States' fishermen as engaged in a lawful industry, from which they were driven by lawless violence, at great loss and damage to them, and that as this was in violation of rights guaranteed by the Treaty of Washington between Great Britain and the United States, they have reasonable ground to expect, at the hands of Her Britannic Majesty's Government, proper compensation for the loss they have sustained. The United States' Government, of course, desires to avoid an exaggerated estimate of the loss, which has actually sustained, but thinks you will find the elements for a fair calculation in the sworn statement of the owners, copies of which are herewith sent.

You will find in the printed pamphlet which accompanies this, and which is the statement submitted to this Department on behalf of twenty of the vessels, the expense of each vessel in preparation for the fishery and her estimated loss and damage. The same statement with regard to the two vessels "New England" and "Ontario," not included in this list of twenty, you will find attached hereto, thus making a complete statement for the twenty-two vessels which were in Fortune Bay on the 6th January, 1878, and the Government of the United States sees no reason to doubt the accuracy of these estimates. I find upon examining the testimony of one of the most intelligent of the Newfoundland witnesses called before the Halifax Commission by the British Government, Judge Bennett, formerly Speaker of the Colonial House, and himself largely interested in the business, that he estimates the Fortune Bay business in frozen herring, in the former years of purchase, at 20,000 to 25,000 barrels for the season, and that it was increasing, and this is confirmed by others. The evidence in this case shows that the catch which the United States' fishing fleet had on this occasion actually realized was exceptionally large, and would have supplied profitable cargoes for all of them. When to this is added the fact that the whole winter was lost, and these vessels compelled to return home in ballast, that this violence had such an effect upon this special fishery that in the winter of 1878-79 it has been almost entirely abandoned, and the former fleet of twenty-six vessels has been reduced to eight, none of whom went provided with seines, but were compelled to purchase their fish of the inhabitants of Newfoundland, the United States' Government is of opinion that 105,305.02 dollars may be presented as an estimate of the loss as claimed, and you will consider that amount as being what this Government will regard as adequate compensation for loss and damage.

In conclusion, I would not be doing justice to the wishes and opinions of the

United States' Government if I did not express its profound regret at the apparent conflict of interests which the exercise of its Treaty privileges appears to have developed. There is no intention on the part of this Government that these privileges should be abused, and no desire that their full and free enjoyment should harm the Colonial fishermen. While the differing interests and methods of the shore fishery and the vessel fishery make it impossible that the regulation of the one should be entirely given to the other, yet if the mutual obligations of the Treaty of 1871 are to be maintained, the United States' Government would gladly co-operate with the Government of Her Britannic Majesty in any effort to make those regulations a matter of reciprocal convenience and right, a means of preserving the fisheries at their highest point of production, and of conciliating a community of interest by a just proportion of advantages and profits.

I am, &c.
(Signed) WM. M. EVARTS.

No. 2.

Mr. Welsh to the Marquis of Salisbury.—(Received August 13.)

My Lord, *Legation of the United States, London, August* 13, 1879.

REFERRING to my note of this day's date, transmitting a copy of Mr. Evarts' instruction to me on the subject of the claims of the Fortune Bay fishermen, I have the honour to inclose herewith, for your Lordship's information, the detailed statements of loss and damage incurred by these fishermen in respect to twenty-two vessels, and mentioned in Mr. Evarts' despatch.

I beg at the same time that your Lordship, at your entire convenience and after making such use of them as you may think proper, will kindly return these documents, as no duplicates of them are at hand, and to have them copied before asking your Lordship's attention to this subject would occasion a delay which I desire to avoid.

I have, &c.
(Signed) JOHN WELSH.

Inclosure 1 in No. 2.

Statement of Expenses and Claims on behalf of Twenty Vessels.

(A.)—*List of Vessels.*

Vessels.	Owners.
1. Fred. P. Frye	Brown, Seavey, and Co.
2. Mary M.	Brown, Seavey, and Co.
3. Lizzie and Namari	John F. Wonson and Co.
4. Edward E. Webster ..	Dennis and Ayer.
5. William E. MacDonald ..	William Parsons (2nd) and Co.
6. Crest of the Wave	William B. Coombs.
7. F. A. Smith	Plummer and Friend.
8. Hereward..	James Mansfield's Sons.
9. Moses Adams	Samuel Lane and Bro.
10. Charles E. Warren	Peter Smith.
11. Moro Castle	Hardy and Allen.
12. Wildfire	Andrew Leighton.
13. Maud and Effie	W. H. Gardner and S. G. Bole.
14. Isaac Rich	Walen and Allen.
15. Bunker Hill	Walen and Allen.
16. Bonanza	H. C. Allen.
17. Moses Knowlton	John Low.
18. H. M. Rogers	Rowe and Jordan.
19. John W. Bray	J. F. Wonson and Co.
20. Maud B. Wetherell.. ..	Geo. Dennis and Co.

(B.)—*Expenses and Claims.*

	Expenses.	Claims.
	Dols. c.	Dols. c.
1. Fred. P. Frye	1,700 00	3,700 00
2. Mary M.	2,180 53	5,680 50
3. Lizzie and Namari	3,133 65	5,564 40
4. Edward E. Webster	1,754 50	4,654 50
5. W. E. MacDonald	2,153 95	4,953 95
6. Crest of the Wave	2,619 04	4,619 04
7. F. A. Smith	2,495 50	4,895 50
8. Hereward	3,800 00	5,748 05
9. Moses Adams	1,586 05	4,586 05
This vessel also makes an additional claim for value herring in her net, besides her full cargo..	..	4,000 00
10. Charles E. Warren	2,180 00	4,680 00
11. Moro Castle	2,153 18	4,134 19
12. Wildfire	1,530 97	6,309 82
13. Maud and Effie	2,379 13	4,379 13
14. Isaac Rich	1,150 09	2,491 09
15. Bunker Hill..	1,217 50	2,677 00
16. Bonanza	2,855 94	3,022 17
17. Moses Knowlton	2,661 60	5,356 60
18. H. M. Rogers	1,946 13	5,876 30
19. John W. Bray	2,714 52	3,589 07
20. Maud B. Wetherell	2,618 64	2,521 34
	44,830 92	93,438 70

(C.)—*Statement of Loss.*

Schooner "Fred. P. Frye."

This vessel was chartered by Brown, Seavey, and Co., for a trip to Fortune Bay, for herring, in January 1878. They paid the owners of the schooner—

	Dols. c.
For the charter	800 00
Expenses of the voyage, crew's wages, provisions, &c., amounted to ..	1,350 00
Making the amount actually paid out in cash	2,150 00
Credit partial cargo of herring sold..	450 00
	1,700 00
Add probable profit, calculated from preceding trips	2,000 00
Total	3,700 00

(Signed) BROWN, SEAVEY AND Co.,
By Wm. Seavey.

Commonwealth of Massachusetts, Suffolk, ss. *December* 28, 1878.

Then personally appeared the above-named William Seavey, and made oath that the foregoing statement by him subscribed was true.

Before me,

(Signed) ALFRED D. FOSTER, *Notary Public.*

Schooner "Mary M."

Bill of expense on a voyage to Newfoundland for herring from the 6th December, 1877, to the 26th February, 1878 :—

	Dr.	Dols. c.
Ship stores		295 35
Lumber at Lahave		85 25
Custom-house fees		58 75
Ballast		58 50
Officers' and crew's wages		677 68
Insurance		525 00
Cargo for trade		400 00
Riggers' and blacksmith bill		80 00
		2,180 53

	Dols. c.
Average profits of Newfoundland voyages made by schooner "Mary M.," Captain Murray, for ten seasons (except the year 1876)	3,500 00
	5,680 50
Cr.	
By return cargo	200 00
Total	5,480 50

(Signed) MICHAEL B. MURRAY.

Massachusetts, Essex, ss. *Gloucester, December* 23, 1878.

Personally appeared M. B. Murray, and made oath to the truth of the statement signed by him.

Before me,

(Seal) AARON PARSONS, *Notary Public.*

Schooner "Lizzie and Namari."

Actual expense of voyage to Fortune Bay, Newfoundland, January 1878:—

	Dols c.
Port charges	44 26
Store account	273 01
Outfits for voyage	1,245 48
Charter of vessel	683 33
Wood and coal	22 30
Crew's wages	526 34
Captain's wages	273 06
Insurance on outfits	65 87
	3,133 65
Profit compared with previous years	3,000 00
	6,133 65
Deduct merchandize and cash returned	569 25
Total	5,564 40

This vessel was hired by us, and we actually paid in cash the amount placed in the above account as charter.

(Signed) JOHN F. WONSON AND Co.

Gloucester, December 23, 1878.

Massachusetts, Essex, ss. *Gloucester, December* 23, 1878.

Personally appeared Frank A. Wonson, a member of the firm of J. F. Wonson and Co., and made oath to the truth of the statement signed by him.

Before me,

(L.S.) AARON PARSONS, *Notary Public.*

Schooner "Edward E. Webster."

Expenses, actual money paid out in voyage to Fortune Bay, January 1878:—

	Dols. c.
Captain, mate, and crew's wages	720 00
Insurance	560 00
Ballast	60 00
Lumber for platform and stage	62 50
Provisions	250 00
Refitting in Newfoundland	100 00
	1,754 50
A preceding trip of this vessel to Fortune Bay for herring in the year 1875 netted	5,400 00
The expenses were	2,500 00
Leaving a profit of	2,900 00

This vessel was driven off without obtaining any herring, and her voyage resulted in a loss of—

	Dols. c.
1. The actual expenses	1,754 50
2. Profit on voyage, provided the vessel did no better than the previous year	2,900 00
Total	4,654 50

(Signed) DENNIS AND SON.
(Per J. G. Dennis.)

Commonwealth of Massachusetts, Essex, ss.

Gloucester, December 20, 1878.

Then personally appeared the above-named George Dennis, and made oath to the truth of the foregoing statement.

Before me,
(Signed) ALFRED D. FOSTER, *Notary Public.*

Schooner "Wm. E. MacDonald."

Actual expenses, money paid out for trip to Fortune Bay, January 1878:—

	Dols. c.
Store bill	297 83
Railway and carpenter	34 86
Sail-maker	465 50
Painting	34 76
Blacksmith	4 45
Captain's bill	159 98
Wages	670 50
Insurance	412 00
Sundry bills	74 07
Total actual expenses	2,153 95
Probable profit, calculated on an average of preceding years	2,800 00
Total loss	4,953 95

(Signed) WM. PARSONS, 2nd, &c.

Massachusetts, Essex, ss. *Gloucester, December* 23, 1878.

Personally appeared William Parsons, 2nd, and made oath that the statement made and signed by him is true.

Before me,
(L.S.) AARON PARSONS, *Notary Public.*

Schooner "Crest of the Wave."

Actual expenses of the trip to Fortune Bay, for herring, in the month of January 1878:—

	Dols. c.
Store bill	575 19
Crew's wages	674 00
Insurance	350 00
Outfit for vessel, &c.	944 85
Ballast	75 00
	2,619 04
The probable profit on a trip for herring to Newfoundland, calculated from preceding years	2,000 00
Add actual expenses	2,619 04
Total	4,619 04

(Signed) WILLIAM B. COOMBS.

Commonwealth of Massachusetts, Essex, ss.

Gloucester, December 20, 1878.

Then personally appeared the above-named William B. Coombs, and made oath that the foregoing statement by him subscribed was true.

Before me,
(Signed) ALFRED D. FOSTER, *Notary Public.*

Schooner "F. A. Smith."

Actual expenses of voyage to Fortune Bay, for herring, in January 1878. Money paid out:—

	Dols. c.
Captain and crew's wages	710 00
Insurance	470 00
Ballast	55 00
Lumber	60 50
Provisions	260 00
Refitting at Newfoundland	90 00
	1,645 50
This vessel was hired for the trip, and 850 dols. was actually paid for the charter	850 00
	2,495 50
Profit of a fair average voyage, calculated on previous voyages	2,400 00
Total	4,895 50

(Signed) JOSEPH FRIEND.
GEORGE W. PLUMMER.
B. T. FRIEND.

Commonwealth of Massachusetts, Essex, ss.

Gloucester, December 20, 1878.

Then personally appeared the above-named Joseph Friend, and made oath that the foregoing statement by him subscribed was true.

Before me,

(Signed) ALFRED D. FOSTER, *Notary Public.*

Schooner "Hereward."

The actual expenses of this vessel in the voyage to Fortune Bay, in January 1878, were:—

	Dols. c.
Outfit for voyage..	1,900 00
Wages, four months	1,000 00
Provisions	400 00
Outfit for vessel, fitting out, &c.	400 00
Insurance	600 00
	4,300 00
Less part of outfit returned	500 00
	3,800 00
If this vessel had made a fairly prosperous voyage her profit would have been	2,000 00
	5,800 00
Less small amount of herring brought back	62 00
	5,748 00
This vessel having been prevented from obtaining a cargo in Newfoundland, her loss was	5,748 00

A seine was carried down by this vessel, which was destroyed by the natives, who were hired to set it.

(Signed) JAMES MANSFIELD AND SONS.
(By Alfred Mansfield.)

Commonwealth of Massachusetts, Essex, ss.

Gloucester, December 20, 1878.

Then personally appeared the above-named Alfred Mansfield, and made oath that the foregoing statement by him subscribed was true.

Before me,

(Signed) ALFRED D. FOSTER, *Notary Public.*

ACCOUNT of the Schooner "Moses Adams'" Herring Voyage to Newfoundland in 1877.

	Dols. c.	Dols. c.
Outfits for voyage	1,003 83	
Cash paid out in British provinces for sundries	110 00	
Cash paid for herring..	199 00	
Insurance	549 60	
Wages paid captain and crew	744 87	
		2,607 30
Cash received for herring sold		1,021 25
		1,586 05
Probable profit if arrive home with a full cargo		3,000 00
		4,586 05
Value of herring lost by mob tripping the seine, which would have been sold to other vessels waiting to purchase ..		4,000 00
Total loss to schooner caused by mob ..		8,586 05

Memorandum.

This schooner's seine was filled with herring when the mob tripped it, and they then endeavoured to destroy the seine, but were prevented by the captain and crew, at the peril of their lives.

We had this schooner built for mackerel fishing in summer and Newfoundland herring fishing in winter. She is all furnished with herring seines and boats for such business; but having been deprived the privilege of seining herring in Newfoundland, and by mobs, we have been obliged to abandon the enterprise, causing a great loss to us.

(Signed) SAMUEL LANE AND BRO.

Massachusetts, Essex, ss. *January* 3, 1879.

Sworn to before me this 3rd day of January, A.D. 1879.

(Seal) AARON PARSONS, *Notary Public.*

Expenses of the schooner "Chas. C. Warren" on a voyage to Newfoundland in the winter of 1877 and 1878:—

Outfits.

	Dols. c.
160 hogsheads salt	270 00
900 barrels	700 00
Outfits for voyage	1,400 00
Crew's wages	1,400 00
Insurance	250 00
Port charges	30 00
	4,050 00
400 barrels herring (cash paid)	560 00
	4,610 00
Deduct return cargo—	
800 barrels herring	2,400 00
30 hogsheads salt	30 00
	2,430 00
Expense, loss	2,180 00
500 barrels herring	2,500 00
Net loss	4,680 00

(Signed) PETER SMITH.

State of Massachusetts, Essex, ss. *Gloucester, December* 14, 1878.

Personally appeared Peter Smith, and made oath to the truth of the foregoing account signed by him.

Before me,

(Seal) AARON PARSONS, *Notary Public.*

Schooner "Moro Castle."

	Dols. c.
Store bill, &c.	191 46
Crew's wages	521 72
Ballast	30 00
Insurance	420 00
Cargo or outfits	990 00
	2,153 18
Profit 1874 and 1875	1,981 01
	4,134 19

Schooner "Moro Castle," Newfoundland voyage, 1877 and 1878.

(Signed) McKENZIE, HARDY AND Co.

Massachusetts, Essex, ss. *December* 12, 1878.

Personally appeared S. N. Hardy, and made oath to the truth of above statement.

Before me,

(Seal) AARON PARSONS, *Notary Public.*

Account of Newfoundland voyage, schooner "Moro Castle," 1874 and 1875 :—

	Dols. c.
Store bill	183 01
Outfits	1,080 55
Custom fees, &c.	14 50
Oakes V. Stevens' bill	2 97
Baskets	6 80
Bill of ballast	11 20
Bill of lumber	5 65
Shovels	2 50
J. G. Tarr and Bro's bill	20 17
Wood and coal	21 50
Telegraphing	3 36
Insurance	420 00
Crew's wages	479 65
Captain's wages	315 00
Captain Nass' bill	174 68
Expenses to New York	14 00
Use of chain	15 00
Commission on sales	550 00
	3,320 54
CR.	
For sales of herring, &c.	5,301 55
Total	1,981 01

Schooner "Wildfire."

Actual expenses in Fortune Bay in January 1878 :—

	Dols. c.
Wages of captain and crew	628 27
Insurance	570 00
Ballast	58 00
Lumber and cost of erecting platform and stage	70 37
Provisions	204 33
	1,530 97
The last preceding voyage of this vessel to Fortune Bay, January 1875, she brought back a cargo of herring which sold for	6,414 70
The expenses of that trip were	1,535 85
Leaving a profit of	4,878 85

As this vessel was driven away by the people of Newfoundland without obtaining a load of herring, the voyage resulted in a loss of—

	Dols. c.
1. Money actually paid as expenses	1,530 97
2. Estimated profit, if the vessel did no better than last year	4,878 85
Total	6,309 82

(Signed) ANDREW LEIGHTON.

Commonwealth of Massachusetts, Essex, ss.

Gloucester, December 20, 1878.

Then personally appeared the above-named Andrew Leighton, and made oath that the foregoing statement by him subscribed was true.

Before me,

(Signed) ALFRED D. FOSTER, *Notary Public.*

Schooner "Maud and Effie."

Actual expenses as paid out on account of voyage to Fortune Bay, January 1878:—

	Dols. c.
Port charges, Newfoundland	20 40
Store account	253 16
Outfits for voyage	1,405 02
Lumber for scaffold	15 00
Ballast	40 00
Crew's wages	650 00
Captain's wages	375 00
Pilotage, Halifax	10 00
Insurance	375 00
Wood and coal	20 00
Railway	19 55
Loss on seine and gear	150 00
	3,333 13
Deduct merchandize and cash returned	954 00
Loss on voyage	2,379 13

On account of the disturbance made by the British fishermen of Fortune Bay, in January 1878, resulted in a loss as follows:—

	Dols. c.
Loss on voyage as expenses	3,379 13
Profit on voyage as should have been, as compared with previous years	2,000 00
Making an actual loss of	5,379 13

(Gloucester Fish Company),

(Signed) WILLIAM H. GARDNER.
SAMUEL G. POOL.

Commonwealth of Massachusetts, Essex, ss.

Gloucester, December 2, 1878.

Then personally appeared the above-named W. H. Gardner and Samuel Pool, and made oath that the foregoing statement by them subscribed was true.

Before me,

(Signed) ALFRED D. FOSTER, *Notary Public.*

Schooner "Bunker Hill."

Newfoundland Trip, January 1878.

	Dols. c.
Wages	797 25
Insurance	450 00
Salt	375 00
Cash	413 00
Cargo for trade	954 20
Store bill	190 05
	3,179 50
Sale of 981 barrels herring, at 2 dols.	1,962 00
	1,217 50
The cargo of the vessel had been contracted for at the rate of 3 dols. per barrel, but, on account of the delay, they only brought 2 dols. per barrel, leaving a loss of	981 00
Full cargo would have been 1,300 barrels, but, on account of disturbance, did not obtain but 981 barrels, leaving a deficiency of 319, which would have cost 478 dols. 50 c., were sold for 957 dols., leaving a loss of	478 50
Total	2,677 00

(Signed) WALEN AND ALLEN.

Schooner "Isaac Rich."

Newfoundland Trip, January 1878.

	Dols.	c.
Wages	795	80
Insurance	400	00
Store bill	213	71
Salt	322	88
Cash	103	23
Bill of herring	120	22
Cargo of trade	1,030	25
	2,986	09
Sale of herring, 918 barrels, at 2 dollars	1,836	00
	1,150	09
The cargo of the vessel had been contracted for at 3 dollars per barrel, but on account of the delay they only brought 2 dollars per barrel, leaving a loss of	918	00
Full cargo would have been 1,200 barrels, but on account of the disturbance did not obtain but 918 barrels, leaving a deficiency of 282 barrels, which would have cost 423 dollars, were sold for 846 dollars, a loss of ..	428	00
	2,491	09

(Signed) MICHAEL WALEN.

Massachusetts, Essex. *Gloucester, December* 23, 1878.

Personally appeared Michael Walen, and made oath to the truth of the two foregoing statements signed by him.

Before me,

(L.S.) AARON PARSONS, *Notary Public.*

Schooner "Bonanza."

The actual expenses of this vessel, including cash paid for wages on the voyage to Fortune Bay, Newfoundland, for herring, in 1878, were 2,855 dols. 94 c.

	Dols.	c.
The last preceding trip of this vessel to Fortune Bay netted by sales of herring	4,606	25
The expenses of the trip were	3,465	02
Leaving a profit of	1,141	23

This vessel was driven off in 1878, and only obtained a partial cargo—

	Dols.	c.
1. Actual expense, 1878	2,855	94
2. Profit on voyage, provided the vessel did no better than on her previous voyage	1,141	23
	3,997	17
Deduct value of partial cargo	975	00
Leaving a loss of	3,022	17

(Signed) JOSEPH O. PROCTOR.
(For self and other owners.)

Massachusetts, Essex, ss. *Gloucester, December* 21, 1878.

Personally appeared Joseph O. Proctor, and made oath to the truth of the above statement.

Before me,

(Seal) AARON PARSONS, *Notary Public.*

Schooner "Moses Knowlton."

Actual expenses of the trip to Fortune Bay, for herring, in the year 1877 and 1878:—

	Dols. c.
Wages of crew	834 60
Ballast	100 00
Light money	27 00
Store bill, provisions for crew, &c.	350 00
Lumber for stage and fitting vessel	350 00
	1,661 60
I am not the owner of this vessel, but hired her for this trip, paying for the charter	1,000 00
Actual expenses	2,661 60
Add probable profit, calculated average of previous years	3,000 00
Loss on trip	5,661 60
Credit, 180 barrels, purchased of the inhabitants of Newfoundland ..	305 00
Spoilt by the delay	5,356 60

(Signed) JOHN LOW.

Massachusetts, Essex, ss.

Gloucester, Massachusetts, December 23, 1878.

Personally appeared said John Low, and made oath to the truth of the foregoing statement signed by him.

Before me,

(Seal) AARON PARSONS, *Notary Public.*

Schooner "Herbert M. Rogers."

Actual expenses, money paid out on account of voyage to Fortune Bay, January 1878:—

	Dols. c.
Customs	4 10
Store account	222 80
Outfit for voyage..	1,278 03
Lumber for platform	6 00
Crew's wages	613 65
Captain's wages	360 00
Insurance	362 60
Wood and coal	17 50
Railway	18 50
Main-mast and setting up rigging	168 00
Use of chronometer	15 00
	3,066 18
Deduct proceeds of the few barrels of herring brought back	1,120 00
Actual loss of voyage	1,946 18
In the last voyage to Fortune Bay the same vessel netted	6,285 70
The actual expenses were	2,355 53
Leaving a profit on the voyage of	3,930 17

The trip of January 1878 to Fortune Bay, on account of the disturbance made by the British fishermen, resulted in a loss of—

	Dols. c.
1. Actual expenses	1,946 13
2. Profit on the voyage, provided the vessel did no better than in the previous year	3,930 17
	5,876 30

(Signed) ROWE AND JORDAN, *Owners and Agents,*
By Wm. H. Jordan.

Commonwealth of Massachusetts, Essex, ss.

Gloucester, December 2, 1878.

Then personally appeared the aforesaid William H. Jordan, and made oath that the foregoing statement by him subscribed was true.

Before me,

(Signed) ALFRED D. FOSTER, *Notary Public.*

Schooner "John W. Bray."

Statement of trip to Fortune Bay, Newfoundland, January 1878:—

Expense.

	Dols. c.
Port charges	46 32
Store account	227 18
Outfits for voyage	1,013 07
Wood and coal	20 14
Insurance	350 00
Crew's wages	581 14
Captain's wages	301 67
Loss on two lines and gear	175 00
	2,714 52
Profit compared with previous years	2,400 00
	5,114 52
Proceeds from part cargo of herring brought home	1,525 45
Balance	3,589 07

(Signed) JOHN F. WONSON AND Co.

Gloucester, December 23, 1878.

Massachusetts, Essex, ss. *Gloucester, December* 23, 1878.

Personally appeared F. A. Wonson, a member of the firm of J. F. Wonson and Co., and made oath to the truth of the statement signed by him.

Before me,

(L.S.) AARON PARSONS, *Notary Public.*

Schooner "Maud B. Wetherell."

Actual expenses of trip to Newfoundland, for herring, in January 1878:—

	Dols. c.
Store bill	205 00
Crew's wages	821 72
Ballast	60 00
Insurance	475 00
Salt	325 48
800 barrels	600 00
Duties on barrels, Newfoundland	60 00
Labour	45 76
Harbour dues	25 68
	2,618 64

Total Expenses.

By the attack made by the inhabitants upon the seines the captain was forced to purchase his herring for 1,179 dols. 20 c.

This vessel was fitted out for 1,200 barrels; she was able to obtain 800 barrels in all.

	Dols c.
Actual expenses	2,618 64
Money paid for fish	1,179 20
Loss of profit on 400 barrels, at 2 dols.	800 00
	4,597 84
Credit—By proceeds of herring sold	2,067 50
Making total loss of	2,521 34

(Signed) GEORGE DENNIS AND Co.

Massachusetts, Essex, ss. *Gloucester, December* 23, 1878.

Personally appeared George Dennis, and made oath to the truth of the above statement signed by him.

Before me,

(Seal) AARON PARSONS, *Notary Public.*

(D.)—*Affidavits in Reply.*

Gloucester, December 10, 1878.

I, Charles Dagle, master of the American schooner "Lizzie and Namari," of Rockport, district of Gloucester, do, on oath, depose and say, that I know Mr. Bolt, who resided in a hut or shanty near Tickle Beach, Newfoundland; that I was there on the 6th January, 1878, and saw the hostile acts of the British fishermen. Mr. Bolt's hut is about 150 yards back from the beach. I have been to Newfoundland fourteen successive years, and never heard of any persons claiming any rights on the beach, everybody using it in common. The three huts there are in the nature of squatter property, used only in the winter. Mr. Bolt never made any claim that I knew of; and the American seines were not used within 300 yards of Bolt's place, except where the seines were hauled on the beach by British fishermen and destroyed. The seines that were obliged to be taken up were 500 yards or more from Bolt's place. The seine of the "F. A. Smith," Captain McDonald, was one-fourth of a mile away. Mr. Hickey, a resident of Fortune Bay, had his seine nearest to Bolt's house. Mr. Hickey's seine was the first seine set on the 6th January, 1878, and the British fishermen attacked him as well as the Americans.

(Signed) CHARLES DAGLE.

Massachusetts, Essex, ss. *Gloucester, December* 12, 1878.

Personally appeared Charles Dagle, and made oath to the truth of the above statement.

Before me,

(Seal) AARON PARSONS, *Notary Public.*

Gloucester, December 10, 1878.

I, Willard G. Poole, master of the American schooner "Maud and Effie," of Gloucester, do on oath depose and say that I know Mr. Bolt, and also the location of his hut at Tickle Beach, Newfoundland; that I was there on the 6th January, 1878, and saw and know of the operations of the American seines; that the hut of Mr. Bolt is fully 150 yards back from high-water mark from the beach; that I never heard or knew of any individual or body of men claiming any peculiar or particular rights on this beach, nor was anyone ever hindered from fishing, except on the occasion of the 6th January, 1878, to my knowledge; there was no seine used by the Americans at any time on the beach or within 400 yards of Mr. Bolt's hut, except the seines captured by the British fishermen, which were hauled on to the beach by them (the British fishermen), and cut to pieces and destroyed.

(Signed) WILLARD G. POOLE.

Essex, ss. *Gloucester, December* 11, 1878.

Personally appeared before me the within-named Willard G. Poole, who subscribed and made oath that the within statement is true.

(Signed) ADDISON CENTER, *Justice of the Peace.*

I, Michael B. Murray, master of the American schooner "Mary M.," of Gloucester, do on oath depose and say that I know Matthew Bolt, at Tickle Beach, Newfoundland; have known him to have a shanty there, and lives there winters, for the past four years. I never heard or knew of Mr. Bolt, or any other person, claiming any peculiar or particular rights on this beach, nor exercising any authority there, except the action of the mob on the 6th January, 1878. Mr. Bolt's shanty is about 150 yards

from high-water mark. The American seines were operated more than 400 feet and due south along the beach from Bolt's hut.

(Signed) MICHAEL B. MURRAY.

Massachusetts, Essex, ss. *Gloucester, December* 23, 1878.

Sworn to this 23rd day of December, A.D. 1878.

Before me,

(L.S.) AARON PARSONS, *Notary Public.*

I, Michael B. Murray, of Gloucester, master of the American schooner "Mary M," do hereby on oath depose and say that I have invariably made good voyages to Newfoundland, and, with the exception of 1876, have made a clear profit, over and above all expenses, of at least 3,500 dollars for each voyage.

In the year 1875 I made 5,300 dollars, clear of all expense, on my voyage to Newfoundland for herring. In 1874 I made 5,500 dollars, clear of all expense.

In the year 1876 I had a cargo of 1,445 barrels of salted herring, was very late in the season, and cleared only 2,000 dollars.

(Signed) MICHAEL B. MURRAY.

Massachusetts, Essex, ss. *Gloucester, December* 23, 1878.

Personally appeared M. B. Murray, and made oath to the truth of the above statement.

Before me,

(Seal) AARON PARSONS, *Notary Public.*

Gloucester, February 5, 1878.

I, Peter Smith, of Gloucester, master of the American schooner "Charles C. Warren," of Gloucester, do on oath depose and say that I was at Tickle Beach, Fortune Bay, Newfoundland, on the 6th January, 1878. That I had been to Labrador, from thence to Bay of Islands, and thence to Fortune Bay for a load of herring. On the morning of the 6th January, 1878, herring made their appearance in close proximity to the shore in great abundance. I was provided with two seines with which to take herring, and should have loaded my vessel and others on that day. I had my seine in the boat, and was preparing to use it when the attack was made on the other American seines, and I saw them destroyed, and I found that the mob of 200 or 300 of the British fishermen were determined to destroy every seine, and I did not dare put my seine in the water. After this time I bought of the British fishermen about 400 barrels of herring, paying 1 dol. 40 c. per barrel. My vessel would carry 1,300 barrels, all of which I could have taken on the 6th January at little or no cost to myself. I was about a fortnight buying 400 barrels of herring. I consider that my loss was at least 3,000 dollars, in addition to the expense of the voyage, by the hostile acts of the British fishermen.

(Signed) PETER SMITH.

State of Massachusetts, Essex, ss. *Gloucester, December* 14, 1878.

Personally appeared Peter Smith, and made oath to the truth of the above statement signed by him.

Before me,

(L.S.) AARON PARSONS, *Notary Public.*

(E.)—*Official Statement of Newfoundland Herring Fishery.*

I, Fitz J. Babson, Collector of Customs for the District of Gloucester, do certify that the following-named schooners were employed in the Newfoundland herring fishery during season of 1877 and 1878:—

Schooners—	Tons.
Herbert M. Rogers	78
Moses Adams	100
John W. Bray	83
Wildfire	109
Edward E. Webster	99

Schooners—	Tons.
Hereward	90
Bunker Hill	101
Landseer	99
Isaac Rich	92
Ontario	91
New England	86
Frank A. Smith	77
Wm E. MacDonald	98
Moro Castle	89
Bonanza	137
Jennie A. Stubbs	198
Lizzie and Namari	94
Crest of the Wave	71
Moses Knowlton	111
Maud and Effie	85
Fred. P. Frye	85
Mary M.	102
Maud B. Wetherell	108
Cunard	75
Charles C. Warren	109
Bellerophon	86
Total — 26 vessels.	

VESSELS employed during Season of 1878 and 1879 in Newfoundland Fisheries.

Schooners—	Tons.
John S. McQuinn	82
Falcon	72
New England	86
Rattler	83
Wildfire	109
Bunker Hill	101
Isaac Rich	92
Centennial	116
Total — 8 vessels.	

Witness my hand and seal this 10th day of January, A.D. 1879.

(Seal) F. J. BABSON, *Collector.*

Inclosure 2 in No. 2.

Statement of Loss to the Schooners "New England" and "Ontario," occasioned by Mob Violence of the People of Newfoundland, January 6, 1878.

Schooner "New England."

	Dols. c.	Dols. c.
Outfits for the voyage	735 81	
„ „ vessel	144 97	
Ballast	35 00	
Cash to buy cargo	763 12	
Interest, 3 months	11 45	
Insurance on 7,290 dols. 57 c.	364 50	
Wages, officers and men	679 69	
Seine (destroyed by the mob)	750 00	
		3,484 54
CR.:—		
Cash returned and proceeds of goods sold		1,167 79
		2,316 75
Add damages		2,500 00
Value of 2,000 lbs. herring in the seine when destroyed, 2,000 dollars (half value to schooner "Ontario")		1,000 00
Net loss		5,816 75

(Signed) JOHN PEW AND SON.
By John J. Pew.

Massachusetts, Essex, ss. *February* 4, 1879.

Then personally appeared John J. Pew, and made oath that the above statement by him subscribed was true.

Before me,

(Seal) AARON PARSONS, *Notary Public.*

Schooner "Ontario."

	Dols. c.	Dols. c
Outfits for the voyage	653 27	
„ „ vessels	530 33	
Ballast	54 38	
Cash to buy cargo	748 56	
Insurance, 6,375 dols. 57 c.	318 75	
Wages	660 21	
Seine	750 00	
Interest on cash, 3 months	11 22	
		3,726 72
Cr.:—		
Less cash returned and proceeds of goods sold		1,177 15
		2,549 57
Add damages		2,500 00
Value of 2,000 lbs. herring in the seines when destroyed, 2,000 dollars (half value to schooner "New England")..		1,000 00
Net loss		6,049 57

(Signed) JOHN PEW AND SON.
By John J. Pew.

Massachusetts, Essex, ss. *February* 4, 1879.

Then personally appeared John J. Pew, and made oath that the above statement by him subscribed was true.

Before me,

(Seal) AARON PARSONS, *Notary Public.*

No. 3.

The Marquis of Salisbury to Mr. Hoppin.

Sir, *Foreign Office, August* 16, 1879.

I HAVE the honour to acknowledge the receipt of Mr. Welsh's two letters of the 13th instant forwarding copy of a despatch from Mr. Evarts setting forth the claims for damages sustained by certain United States' citizens, owners of vessels in Fortune Bay, Newfoundland, together with statements of the loss and damage incurred; and I beg leave to acquaint you that the letters in question shall receive the early attention of Her Majesty's Government.

I am, &c.
(Signed) SALISBURY.

No. 4.

The Marquis of Salisbury to Sir E. Thornton.

Sir, *Foreign Office, August* 22, 1879.

I TRANSMIT to you herewith, for your information, copies of correspondence, as marked in the margin,* in regard to the Fortune Bay affair.

I am, &c.
(Signed) SALISBURY.

No. 5.

Sir J. Pauncefote to Mr. Herbert.

Sir, *Foreign Office, August* 22, 1879.

I AM directed by the Marquis of Salisbury to transmit to you, to be laid before Sir Michael Hicks Beach, copies of correspondence, as marked in the margin,* in regard to the Fortune Bay affair.

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

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* Nos. 1, 2, and 3.

No. 6.

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

My Lord, *Legation of the United States, London, November* 21, 1879.

I RECEIVED last evening a cable despatch from Mr. Evarts, requesting me to ask your Lordship when he might expect an answer to Mr. Welsh's notes of the 13th August last in relation to the damages sustained by citizens of the United States in Fortune Bay in January 1878.

As I am instructed to reply by telegraph, I venture to solicit your Lordship to give an early answer to Mr. Evarts' inquiry.

I have, &c.
(Signed) W. J. HOPPIN.

No. 7.

The Marquis of Salisbury to Mr. Hoppin.

Sir, *Foreign Office, November* 24, 1879.

I HAVE the honour to acknowledge the receipt of your letter, marked Immediate, of the 21st instant, informing me that you had received on the previous evening a cable despatch from Mr. Evarts, requesting you to inquire of me when an answer might be expected to Mr. Welsh's notes of the 13th August last in relation to the damages sustained by citizens of the United States in Fortune Bay in January 1878, and I have to state to you, in reply, that some delay has arisen owing to the necessity of a reference to Newfoundland, but that a communication will be addressed to you in answer to the notes in question at as early a date as possible.

I have, &c.
(Signed) SALISBURY.

No. 8.

*The Marquis of Salisbury to Mr. Hoppin.**

Sir, *Foreign Office, April* 3, 1880.

IN the note which I had the honour to address to you on the 12th February last I explained the reason why a certain time has unavoidably elapsed before Her Majesty's Government were in a position to reply to Mr. Welsh's notes of the 13th August last, in which he preferred, on the part of your Government, a claim for 105,305 dols. 2 c. as compensation to some United States' fishermen on account of losses stated to have been sustained by them through certain occurrences which took place at Fortune Bay, Newfoundland, on the 6th January, 1878. The delay which has arisen has been occasioned by the necessity of instituting a very careful inquiry into the circumstances of the case, to which, in all its bearings, Her Majesty's Government were anxious to give the fullest consideration before coming to a decision. Her Majesty's Government having now completed that inquiry so far as lies within their power, I beg leave to request you to be so good as to communicate to your Government the following observations on the case.

In considering whether compensation can properly be demanded and paid in this case, regard must be had to the facts as established, and to the intent and effect of the Articles of the Treaty of Washington and the Convention of 1818 which are applicable to those facts.

The facts, so far as they are known to Her Majesty's Government, are disclosed by the affidavits contained in the inclosed printed paper, which, for convenience of reference, have been numbered in consecutive order. Nos. 1 and 2 were received by Her Majesty's Government from his Excellency the Governor of Newfoundland; Nos. 3 to 10, inclusive, were attached to the Report made by Captain Sulivan, of Her Majesty's ship "Sirius," who was instructed to make an inquiry into the case. These were communicated to Mr. Welsh with my note of the 7th November, 1878. Nos. 11 to 16, inclusive, are the affidavits of United States' fishermen, printed in the "New

* Copies of this letter were sent to Sir E. Thornton and to the Colonial Office.

York Herald" of the 28th January, 1878, and were received from Her Majesty's Minister at Washington. They have not been received officially from the Government of the United States, but Her Majesty's Government see no reason to doubt their authenticity. Nos. 17 to 22 were annexed to Mr. Welsh's note of the 13th August last.

A careful examination of the above evidence shows that on the day in question a large number of the crews of the United States' fishing vessels came on shore, and from the beach barred the herrings, the ends of their seines being secured to the shore. That the fishermen of the locality remonstrated against these proceedings, and upon their remonstrance proving unavailing, removed the nets by force.

Such being the facts, the following two questions arise:—

1. Have United States' fishermen the right to use the strand for purposes of actual fishing?

2. Have they the right to take herrings with a seine at the season of the year in question, or to use a seine at any season of the year for the purpose of barring herrings on the coast of Newfoundland?

The answers to the above questions depend on the interpretation of the Treaties.

With regard to the first question, namely, the right to the strand-fishery, I would observe that Article I of the Convention between Great Britain and the United States of the 20th October, 1818, secured to citizens of the United States the right, *in common with British subjects*, to take fish of every kind on certain specified portions of the coast of Newfoundland, and to use the shore *for the purposes of purchasing wood and obtaining water, and for no other purpose whatever.*

Articles XVIII and XXXII of the Treaty of Washington superadded to the above-mentioned privileges the right for United States' fishermen to take fish of every kind (with certain exceptions not relevant to the present case) on all portions of the coast of that island, and permission to land *for the purpose of drying their nets and curing their fish*, "provided that in so doing they do not interfere with the rights of private property or with British fishermen in the peaceable use of any part of the said coast in their occupancy for the same purpose."

Thus, whilst absolute freedom in the matter of fishing in territorial waters is granted, the right to use the shore for four specified purposes alone is mentioned in the Treaty Articles from which United States' fishermen derive their privileges, viz., to purchase wood, to obtain water, to dry nets, and cure fish.

The citizens of the United States are thus by clear implication absolutely precluded from the use of the shore in the direct act of catching fish. This view was maintained in the strongest manner before the Halifax Commission by the United States' Agent, who, with reference to the proper interpretation to be placed on the Treaty stipulations, used the following language: "No rights to do anything upon the land are conferred upon the citizens of the United States under this Treaty, with the single exception of the right to dry nets and cure fish on the shores of the Magdalen Islands, if we did not possess that before. No right to land for the purpose of seining from the shore; no right to the 'strand fishery' as it has been called; no right to do anything except, water-borne on our vessels, to go within the limits which had been previously forbidden."

"So far as the herring trade goes, we could not, if we were disposed to, carry it on successfully under the provisions of the Treaty; for this herring trade is substantially a seining from the shore—a strand fishing, as it is called—and we have no right anywhere conferred by this Treaty to go ashore and seine herring any more than we have to establish fish-traps."

Her Majesty's Government, therefore, cannot anticipate that any difference of opinion will be found to exist between the two Governments on this point.

The incident now under discussion occurred on that part of the shore of Fortune Bay which is called Tickle Beach, Long Harbour. On this Beach is situated the fishing settlement of Mark Bolt, a British fisherman, who, in his evidence taken upon oath, deposed as follows: "The ground I occupy was granted me for life by Government, and for which I have to pay a fee. There are two families on the Beach; there were three in winter. Our living is dependent on our fishing off this settlement. If these large American seines are allowed to be hauled it forces me away from the place."

John Saunders, another British fisherman of Tickle Beach, deposed that the United States' fishermen hauled their seine on the beach immediately in front of his property.

The United States' fishermen, therefore, on the occasion in question, not only

exceeded the limits of their Treaty privileges by fishing from the shore, but they "interfered with the rights of private property and with British fishermen in the peaceable use of that part of the coast in their occupancy for the same purpose," contrary to the express provisions of Articles XVIII and XXXII of the Treaty of Washington. Further, they used seines for the purpose of in-barring herrings, and this leads me to the consideration of the second question, viz.: whether United States' fishermen have the right to take herrings with a seine at the season of the year in question, or to use a seine at any season of the year for the purpose of barring herrings on the coast of Newfoundland.

The in-barring of herrings is a practice most injurious, and, if continued, calculated in time to destroy the fishery; consequently it has been prohibited by Statute since 1862.

In my note to Mr. Welsh of the 7th November, 1878, I stated "that British sovereignty as regards these waters is limited in its scope by the engagements of the Treaty of Washington, which cannot be modified or affected by any municipal legislation;" and Her Majesty's Government fully admit that United States' fishermen have the right of participation on the Newfoundland inshore fisheries, *in common* with British subjects, as specified in Article XVIII of that Treaty. But it cannot be claimed, consistently with this right of participation in common with the British fishermen, that the United States' fishermen have any other, and still less that they have greater, rights than the British fishermen had at the date of the Treaty.

If, then, at the date of the signature of the Treaty of Washington certain restraints were by the municipal law imposed upon the British fishermen, the United States' fishermen were, by the express terms of the Treaty, equally subjected to those restraints; and the obligation to observe, in common with the British, the then existing local laws and regulations which is implied by the words "in common," attached to the United States' citizens as soon as they claimed the benefit of the Treaty.

That such was the view entertained by the Government of the United States during the existence of the Reciprocity Treaty, under which United States' fishermen enjoyed precisely the same rights of fishing as they do now under the Treaty of Washington, is proved conclusively by the Circular issued on the 28th March, 1856, to the Collector of Customs at Boston, which so thoroughly expressed the views of Her Majesty's Government on this point that I quote it here *in extenso*:—

"*Mr. Marcy to Mr. Peaslee.*

"(Circular.)

"Sir, "*Department of State, Washington, March* 28, 1856.

"It is understood that there are certain Acts of the British North American Colonial Legislatures, and also, perhaps, executive regulations intended to prevent the wanton destruction of the fish which frequent the coasts of the Colonies, and injuries to the fishing thereon. It is deemed reasonable and desirable that both United States' and British fishermen should pay a like respect to such laws and regulations, which are designed to preserve and increase the productiveness of the fisheries on those coasts. Such being the object of these laws and regulations, the observance of them is enforced upon the citizens of the United States in the like manner as they are observed by British subjects. By granting the mutual use of the inshore fisheries, neither party has yielded its right to civic jurisdiction over a marine league along its coasts.

"Its laws are as obligatory upon the citizens or subjects of the other as upon its own. The laws of the British provinces, not in conflict with the provisions of the Reciprocity Treaty, would be as binding upon the citizens of the United States within that jurisdiction as upon British subjects. Should they be so framed or executed as to make any discrimination in favour of British fishermen, or to impair the rights secured to American fishermen by that Treaty, those injuriously affected by them will appeal to this Government for redress. In presenting complaints of this kind, should there be cause for doing so, they are requested to furnish the Department of State with a copy of the law or regulation which is alleged injuriously to affect their rights, or to make an unfair discrimination between the fishermen of the respective countries, or with a statement of any supposed grievance in the execution of such law or regulation, in order that the matter may be arranged by the two Governments.

"You will make this direction known to the masters of such fishing-vessels as belong to your port in such manner as you may deem most advisable.

(Signed) "W. L. Marcy."

I have the honour to inclose a copy of an Act passed by the Colonial Legislature of Newfoundland, on the 27th March, 1862, for the protection of the herring and salmon fisheries on the coast, and a copy of Cap. 102 of the Consolidated Statutes of Newfoundland, passed in 1872. The first section of the Act of 1862 prohibited the taking of herrings with a seine between the 20th day of October and the 12th day of April, and further prohibited the use of seines at any time for the purpose of barring herrings. These Regulations, which were in force at the date of the Treaty of Washington, were not abolished, but confirmed by the subsequent Statutes, and are binding under the Treaty upon the citizens of the United States in common with British subjects.

The United States' fishermen, therefore, in landing for the purpose of fishing at Tickle Beach, in using a seine at a prohibited time, and in barring herrings with seines from the shore, exceeded their Treaty privileges and were engaged in unlawful acts.

Her Majesty's Government have no wish to insist on any illiberal construction of the language of the Treaty, and would not consider it necessary to make any formal complaint on the subject of a casual infringement of the letter of its stipulations which did not involve any substantial detriment to British interests, and to the fishery in general.

An excess on the part of the United States' fishermen of the precise limits of the rights secured to them might proceed as much from ignorance as from wilfulness; but the present claim for compensation is based on losses resulting from a collision which was the direct consequence of such excess, and Her Majesty's Government feel bound to point to the fact that the United States' fishermen were the first and real cause of the mischief by overstepping the limits of the privileges secured to them, in a manner gravely prejudicial to the rights of other fishermen.

For the reasons above stated Her Majesty's Government are of opinion that, under the circumstances of the case as at present within their knowledge, the claim advanced by the United States' fishermen for compensation on account of the losses stated to have been sustained by them on the occasion in question is one which should not be entertained.

Mr. Evarts will not require to be assured that Her Majesty's Government, while unable to admit the contention of the United States' Government on the present occasion, are fully sensible of the evils arising from any difference of opinion between the two Governments in regard to the fishery rights of their respective subjects. They have always admitted the incompetence of the Colonial or the Imperial Legislature to limit by subsequent legislation the advantages secured by Treaty to the subjects of another Power. If it should be the opinion of the Government of the United States that any Act of the Colonial Legislature subsequent in date to the Treaty of Washington has trenched upon the rights enjoyed by the citizens of the United States in virtue of that instrument, Her Majesty's Government will consider any communication addressed to them in that view with a cordial and anxious desire to remove all just grounds of complaint.

I am, &c.
(Signed) SALISBURY.

APPENDIX (A).

(1.)

Deposition of Alfred Noel.

Newfoundland, Central District, St. John's, to wit.

THE examination of Alfred Noel, of St. John's aforesaid, master mariner, taken upon oath, and who saith:—

I am master of the schooner "Nautilus" of this port, and on the 19th day of December last I was at Long Harbour, in Fortune Bay, in the "Nautilus," which was anchored off Woody Island. I had a crew of seven men, and I was there engaged in the herring fishery. There were several American schooners; seven of them were lying off Woody Island, and two French vessels. This island forms the harbour within half-a-mile of the narrows of Long Harbour; and other American schooners and Newfoundland fishing craft were inside Woody Island, which is the inside part of Long Harbour. All the craft there, English and American, were hauling herrings in seines and nets, and the Americans were purchasing herring from the English. Everything went off quietly, and the greatest harmony prevailed until Sunday, the 6th day of January, when about half-past

2 o'clock in the afternoon five seines, belonging to the American schooners, were put into the water by their crews at the beach on the north-east side of Long Harbour. I know two of the captains by name, Dago and Jacobs, belonging to Gloster, United States, but do not know the names of their schooners. The whole five seines were barred full of herrings, when the English crews of the crafts belonging to Fortune Bay ordered them to take their seines up or they would take them up for them; and the Fortune Bay men, finding they would not do as they were requested, then hauled up two of the American seines, but without any damage or injury, and two were at the same time taken up by the Americans; and at the same time a seine belonging to Captain Dago was taken up by the Fortune Bay men, the herrings thrown out, and the seine was torn up and destroyed. Before this occurrence on the said Sunday, one of the American schooners had a seine barred with herrings on the beach at Long Harbour for seven days, and it was not at any time meddled with by the Fortune Bay men or any one. Some of the Fortune Bay men had nets out in the water on that Sunday, and the same had been there during the week, but none of the Newfoundland fishermen attempted to haul herrings on Sunday at any time while I was at Long Harbour. The Americans' practice had been until lately to purchase herring from the Newfoundland fishermen in Fortune Bay, but this year and last year the Americans have brought their own seines to haul herring for themselves. The American seines are 30 fathoms deep and 200 fathoms long, whilst those used by our fishermen are 12 or 13 fathoms deep and 120 fathoms long. These American seines are used for barring herring in deep water, such as the Fortune Bay Harbours, viz., Long Harbour, Bay de Nord, and Rencontre. Our fishermen never bar herrings, and herrings have never been barred in Fortune Bay, to my knowledge, until the Americans brought the large seines I have alluded to into Fortune Bay and used them there to the disadvantage of our fishermen. This mode of barring herrings in such harbours as I have mentioned is most destructive and ruinous to the herring fishery in those localities. I do not know the names of the persons who destroyed the seine; there were about eighty vessels from different harbours of Fortune Bay at Long Harbour at the time, and the seine was destroyed by a great lot of people. I left Long Harbour for St. John's on the 31st day of January and arrived here on the 4th instant.

(Signed) ALFRED NOEL.

Sworn before me at St. John's aforesaid, this 8th day of February A.D. 1878.
(Signed) D. H. PROWSE, *J.P. for Newfoundland.*

(2.)

Deposition of John Rumsey.

Central District, St. John's, to wit.

The examination of John Rumsey, of St. John's, master mariner, taken upon oath, who saith:—

On or about the 14th November last I sailed from St. John's to Fortune Bay for a cargo of herring. I arrived in Long Harbour, Fortune Bay, about Christmas last. I found about 200 schooners there looking for herring; twelve of the schooners were Americans; my schooner was called the "Briton," six hands all told. I got most of my herring between Christmas and the 8th January. Most all the schooners in Long Harbour lay inside of Woody Island. Woody Island is about three miles from the entrance of Long Harbour. On the northern side, rather above the island, there is a fine beach about a mile long. This is the best hauling place in Long Harbour, and most all the herrings were taken there. It is only this year and last year that the American schooners have brought down very large seines for catching herring. I have been informed that some of these seines were 250 fathoms long and 35 fathoms deep. The seines which our Newfoundland fishermen use are about 120 fathoms long and from 8 to 13 fathoms deep. In the first week in January there were four or five American schooners who had the beach above mentioned barred for herring. The mode of inbarring for herring is as follows: when a place is selected, generally a smooth beach with deep water outside free from rocks, a party is sent ashore with a long line from one end of the seine; the seine-boat then goes off with the seine, makes a long sweep, and the other end of the seine is then brought into the beach also; then the crew begin to haul together on both ends of the seine with long seine lines running fore and aft up and down the beach, four or five seines thus barring herring would cover all the hauling ground on this long beach I have spoken of, and would occupy all the best ground for hauling herring in Long Harbour. On the first Sunday in January the beach was barred by four or five large American seines. On that day, after dinner, a large number of people belonging to the crews of the Fortune Bay schooners then in Long Harbour went over to the beach, and I was informed there were 600 or 700 Newfoundland fishermen there. The Americans had barred the herring, and were hauling on their seines on the Sunday morning. The Newfoundland fishermen told the American captains to take up their seines or they would take them up for them. All the American seines were then taken up which were set on a Sunday except one: this one the American captain who owned it refused to take up. The Newfoundland

fishermen then hauled it ashore, took the herrings out of the seine, and according as they hauled the seine out of the water they tore it up. I saw the seine the next day, Monday, on the beach, and it was completely destroyed; it was an old second-hand seine, and very rotten. I have been for thirteen or fourteen years carrying on the herring fishery in Fortune Bay, and during that time I have never known our Newfoundland fishermen to haul herrings on Sunday. If the American fishermen were permitted to bar herrings in the way that they were doing at Long Harbour Beach, all the rest of the craft would be deprived of the best place in the harbour to haul herrings; and such a mode of fishing for herrings is most injurious to the fishery, and must in time ruin the herring fishery there. The Americans in hauling their long seines often removed the Newfoundland fishermen's nets when they came in their way. I have known the Americans last year to have herrings barred in for a fortnight. Barring kills a great many herring, and makes those who are barred in very poor. I have seen the bottom covered with dead herring after the seine had been barred for a week. The American schooners heave out their ballast in the channel between Woody Island and the shore, and if not prevented, will soon destroy the anchorage there.

(Signed) JOHN RUMSEY, his ⋈ mark.

Sworn before me at St. John's, this 9th day of February, A.D. 1878, having first been read over and explained

(Signed) D. H. PROWSE, *J.P. for Newfoundland.*

(3.)

Deposition of John Saunders.

The examination of John Saunders, of Tickle Beach, Long Harbour, taken upon oath, and who saith:—

In January last there were a great number, close on 100, schooners and boats fishing for herring, both American and Newfoundlanders. The Americans were employing the English to haul their seines for them. There were some English schooners who had seines also. One Sunday, I do not know the date, John Hickey laid out a seine, and was told by the English or Newfoundlanders to take it up, as it was Sunday, which he did. The Americans laid out their seines, assisted by the English employed by them. The Newfoundlanders told them to take them up, as it was not legal their fishing on that day, being Sunday; J. McDonald took his up. Jacobs upset his net into Farrel's seine, who was employed by him. Farrel was barring for the Americans, and was not allowed by Jacobs to haul his seine until the hard weather came. After Jacobs had upset his seine into Farrel's he took it up to shoot again, and threatened with the revolver any one who interfered. Then they told McCauley to take his up, but he didn't, so the people hauled it in and tore it up.

I don't know any man concerned in the destruction of the net that I could swear to but one, John Pitman, a servant to Samuel Pardy, who was at "Jack Fountain."

There was no other reason that I know for destroying nets but for fishing on Sunday, and because they would not take them up when they were told. The Americans never hauled a seine before that day; they always employed the English to use their seines, and bought fish from the English. The only reason that the Americans laid their seines out that day was because there were plenty of herrings, and no Englishman would haul them, being Sunday, excepting Hickey, who had been compelled to take his seine up.

Q. Where does Philip Farrel live?—*A.* In Bay-de-North, and so does Thomas Farrel.

Q. Was any obstruction or hindrance placed in the way of the Americans before or after that Sunday?—*A.* No.

Q. Did they remain in the harbour until the close of the season; until the herrings slacked away were any Americans compelled to leave the coast after this circumstance?—*A.* No; there was nothing to prevent their remaining, and they remained for some days, until the weather became soft, and there were no more herrings in the bay. Most of them left, but one American schooner remained about three weeks after that, when another lot of herrings came into the bay, and he filled up and went away the next fair wind. Jim Boy was the captain's name.

Q. Do you know any American of the name of Dago?—*A.* Yes; he has part in this seine. The Americans hauled their seine on the beach immediately in front of my property.

Q. Do you know the names of the schooners?—*A.* No.

Q. Do you know the names of the owners of the seine?—*A.* Yes; Captain Dago and McCauley.

Q. Do you know anything the Americans did by way of revenge?—*A.* The Americans, in revenge for the destruction of the net, afterwards drifted their vessels all about the bay or river with their anchors hanging, and so hooked and destroyed many nets, about fifty or sixty, I should think. The name of one of these captains was Smith—but I don't know the name of his vessel—and the other was Pool. We all believe that this was done in revenge. They were pretending to be at anchor, where there was about 50 fathoms of water, but were drifting all over the bay and hooking the nets; there was no weather to cause

them to drift. Our small boats were anchored off the beach. We had never any difficulty with the Americans before this, but were always on good terms with them.

(Signed) JOHN SAUNDERS, his ⋈ mark.

Sworn before me at Tickle Beach, Long Harbour, this 13th day of June, A.D. 1878.
(Signed) GEO. L. SULIVAN,
Captain and Senior Officer on the Coast of Newfoundland.

(4.)

Deposition of Mark Bolt.

The examination of Mark Bolt, of Tickle Beach, Long Harbour, taken upon oath, and who saith:—

I am a native of Dorsetshire, England. I have been in this country twenty-one years, and have been fishing all that time. I have lived in this neighbourhood fourteen or fifteen years, and at Tickle Beach since last fall. The ground I occupy (150 feet) was granted me for life by Government, and for which I have to pay a fee. There are two families on the beach; there were three in the winter. Our living is dependent on our fishing off this Settlement. If these large American seines are allowed to be hauled, it forces me away from the place.

One Sunday in January last, John Hickey, Newfoundlander, came first, and hove his seine out. Five Newfoundlanders came and told him to take it up, and he did not; then others came and insisted upon it, then he took it up. If he had then refused to take it up it would have been torn up.

Then Jacobs, an American, came and laid his seine out and hauled about 100 barrels of herring in the big American seine, and capsized into Tom Farrel's seine—a Newfoundland fisherman employed by Jacobs, and fishing for him.

Philip Farrel was also fishing for the Americans, being master of McCauley's seine. The Newfoundlanders then capsized Tom Farrel's seine of fish, who was only fishing for the Americans. After this Jim Macdonald, another American, threw out his seine. Then the people went and told Macdonald that he was not allowed to fish on Sundays, and he must take his seine up; and he took up his seine, and carried it on board his vessel. Jacobs would not allow his seine to be touched, but drew a revolver. They then went to McCauley, an American, who had laid his seine out for barring herring; this American also employed a Newfoundlander to lay his seine out. The Newfoundlanders said it should not be done on a Sabbath-day, and they resolved to tear up all the seines they could get hold of. They managed to seize McCauley's, and tore it up. They would have torn up any they could have got at if laid out, whether English or American, because it was Sunday. The Americans do not bar fish. This was the first time I ever knew them to do so; they usually buy the fish from the Newfoundlanders, and also barter flour and pork for them, and I have never known anything to complain of against them previous to this.

Q. Did the American schooners continue to fish after the destruction of McCauley's seine?—*A.* Yes.

They (the Americans) continued to fish, and left about the usual time, the 10th March. I do not know any reason for the conduct towards the Americans except that they were fishing on Sunday. I do not know what became of the nets that were torn up; it was left on the beach for some days, and then taken away. I do not know who took it away; the Americans, perhaps, but I don't know.

The Americans were often set afterwards, but not on Sunday; the Americans did not leave off catching herring after this on other days. The English did not prevent the Americans hauling their seines, but the Americans usually employed the English to haul them, as their crews were not sufficient in number, and are not acquainted with the work. The American crews are employed salting and freezing the fish, while the English employed by them with the American seines are catching them. The seine torn up was being worked by an Englishman for McCauley, the American, namely, Philip Farrel.

Jacobs' seine was in the water a night and a day. I was not aware that it was illegal to haul or catch herring by or in a seine at that time of the year, nor that barring is prohibited at all seasons, nor that the seine must be shot and forthwith hauled, but have heard some reports to that effect.

The nearest magistrate is at St. Jacques, about 25 or 30 miles from this, and there is no means of communicating with him excepting by a sailing boat.

The seine that was destroyed belonged to men called Dago and McCauley, who, I believe, were each of them captains of schooners, but the names of the vessels I do not know.

(Signed) MARK BOLT.

Sworn before me at Tickle Beach, Long Harbour, this 13th day of June, A.D. 1878.
(Signed) GEO. L. SULIVAN,
Captain and Senior Officer on the Coast of Newfoundland.

(5.)

Deposition of Richard Hendriken.

The examination of Richard Hendriken, of Hope Cove, Long Harbour, taken upon oath, and who saith:—

I have been nine years in Long Harbour. I was here in January last, when the American seine was destroyed. It was destroyed on account of barring herring on Sunday. I was watching their proceedings from the point opposite; they laid their seine out and went to haul it in because the English would not haul it in on Sunday, and the bay was full of fish. The fish would have remained. The Americans generally employ some Englishmen to work with their own crew; they don't generally lay out their own seines. Captain Dago and Samuel Jacobs would persist in hauling, and hauled once and barred them in Farrel's net. Farrel was working for him, and had been barring herrings for several days, perhaps about a fortnight, by the Americans' orders. I believe it is illegal to bar herrings; it destroys the fish, but we have no power to stop it. It is no good telling a magistrate; the Americans take no notice of them. The nearest magistrate to this place is at Harbour Briton, 25 or 30 miles off. The only thing to let people know what is right and what is wrong is to have a notice-board in each harbour, and some heavy fine imposed on aw-breakers.

James Tamel is harbour-master.

I don't know if he is a special constable or not; but Mr. Enburn told me he was to see the Yankees did not heave their ballast over, and that their measures were correct, but they would not listen to him. They hove their ballast overboard, and had tubs 22 inches in depth instead of 16 inches; in these tubs they measured the fish they bought from the Newfoundlanders, and they would not alter them. The fish are sold to the Americans by the barrel; for 100 barrels it is usual to pay for 90, which is considered fair, but a flour barrel cut down to 16 inches in depth is the proper measure; they only cut them to 22 inches or more, and insist on having them filled. The vessels from St. John's and Halifax always take the proper size tubs, but the Americans constantly overreach us, and choose the most ignorant to deal with, or those who are not so sharp as themselves. They generally otherwise behave well, and we have never had any quarrel with them before, but have always been on good terms. If the natives did not see the laws carried out themselves there might as well be no laws, for there is often no one else to enforce it. It is the only way I know, and is pretty well understood by both foreigners and natives.

(Signed) RICHARD HENDRIKEN, his ⋈ mark.

Sworn before me at Tickle Beach, Long Harbour, this 14th day of June, A.D. 1878.

(Signed) GEO. L. SULIVAN,
Captain and Senior Officer on the Coast of Newfoundland

(6.)

Deposition of Ambrose Pope.

The examination of Ambrose Pope, of Stone Cove, Long Harbour, taken upon oath, and who saith:—I was at Tickle Beach on a Sunday in January last. I don't know the date. I saw the Newfoundlanders hauling a seine and leave it on the beach; it was torn in hauling it on shore. It was evening when I saw the seine hauled on the beach, and it was laying there when I left the beach.

I don't know if any was carried away. I don't know anything more about it. The Americans we thought had no right to haul their seines on Sunday.

(Signed) AMBROSE POPE, his ⋈ mark.

Sworn before me at Anderson Cove, this 15th day of June, A.D. 1878.

(Signed) GEO. L. SULIVAN,
Captain and Senior Officer on the Coast of Newfoundland.

(7.)

Deposition of James Tharnell.

The examination of James Tharnell, of Anderson's Cove, Long Harbour, taken upon oath, and who saith:—I am a special constable for this neighbourhood. I did not see anything of the alleged outrage last January, but I heard something about it. I believe some of the men named Pope were on the beach, but which I do not know.

Q. Have you formed any opinion as constable as to the cause of the dispute?—*A.* Mr. Snellgrove, of the Customs, and myself, from what we were informed of the circumstances, were of opinion that the Americans were acting illegally in shooting their seines, but notwithstanding that nothing would have been said to them for that had it not been on the

Sabbath day. The men forbid them hauling seines on the Sabbath day, and told them to take them up or they would take them up for them, and what annoyed them so much was that the Americans drew their revolvers; probably if it had not been for the threat of the revolvers, the seines would only have been taken up and not torn. They asked him three times to take them up before they did so themselves.

The people were not aware that it was illegal to set the seines that time of the year, and were only prompted to their act by the fact that it was Sunday. We all consider it to be the greatest loss to us for the Americans to bring those large seines to catch herring. The seines will hold 2,000 or 3,000 barrels of herring, and, if the soft weather continues, they are obliged to keep them in the seines for sometimes two or three weeks, until the frost comes, and by this means they deprive the poor fishermen of the bay of their chance of catching any with their small nets, and then, when they have secured a sufficient quantity of their own, they refuse to buy of the natives.

If the Americans had been allowed to secure all the herrings in the bay for themselves, which they could have done that day, they would have filled all their vessels, and the neighbouring fishermen would have lost all chance on the following week-days. The people believed that they (the Americans) were acting illegally in thus robbing them of their fish. If the natives had not defended themselves by enforcing the law, there was no one else to do it. I was sworn in as a special constable by Mr. Herbert, the magistrate of Harbour Briton, last October.

On the arrival of the Americans I showed my authority, signed by Mr. Herbert, and they laughed at it, and said it had no stamp, and they didn't, therefore, recognize it.

I told them the lawful size of a tub—sixteen gallons—and they said they required a brand on it. I have no means of branding tubs; there is no means to brand on the coast, and it is not the custom. I don't know if it is the custom at St. John's to brand them. I have cautioned the Americans about throwing ballast out inside Hoodey's Island, where it is very shallow; but they have continually done so notwithstanding up to this. There are now several shallow places there and in the cove, where the Americans have been in the habit of throwing out their ballast, and small vessels now, of twenty-eight to thirty tons, repeatedly ground on this ballast there thrown out by the Americans. I believe there was less thrown out last winter after I spoke to them about it; but I have no power, moral or otherwise, to enforce any Rules, and they don't seem to care much about me.

(Signed) JAMES THARNELL, his ⋈ mark.

Sworn before me at Tickle Beach, Long Harbour, this 14th day of June, A.D. 1878.

(Signed) GEO. L. SULIVAN,
Captain and Senior Officer on the Coast of Newfoundland.

(8.)

Deposition of George Snellgrove

The examination of George Snellgrove, of St. Jacques, Fortune Bay, taken upon oath, and who saith:—I am Sub-Collector of Customs for the district of Fortune Bay. I went to Long Harbour on the 8th January, two days after the dispute between the Americans and Newfoundland fishermen had taken place.

Captains Jacobs and Dago informed me that an American seine had been taken up by the Newfoundland fishermen on the Sunday previous and destroyed; that the seine belonged to Dago and McCauley, and that they had other seines out, but they had taken them up when they found that the other was destroyed. One of these captains said that the fishermen had threatened to take up the seine if they didn't themselves. Captain Jacobs showed me a revolver, and said that he had threatened them with it. I remonstrated with him for doing so, when he replied that I couldn't suppose that he was really going to use it; that he only did it to frighten them; he had taken care there were no charges in it. I said to him, "Do you suppose that you would have got off that beach alive if you had used it?" and he said he never intended to use it.

Captain Warren told me that on the fishermen coming to haul in the seine that Captain Dago hailed them to say that they would take the seine in themselves if they waited; and that he (Warren) said to Dago, "It is too late now; you ought to have done it when they told you first; they are too excited now."

I then communicated with the natives of the place, who related the circumstances, and gave their reasons that the Americans were fishing illegally, and would have secured the whole of the fish which they considered part of their property; and that they would have been distressed for the winter. They told me that they had at first told them to take up their seines, and they refused; that Captain Jacobs had threatened them with a revolver, but, notwithstanding this, they had taken up one and destroyed it.

I saw Captain Jacobs several times afterwards, and in the course of conversation with him I said, "If I had been there you would not have been allowed to shoot your seine." "What!" he said, "could you prevent me?" I said "Yes; I should have seen the law carried out and taken your seine and boat, which you forfeited for breaking the law," and I told him I would take the fine as well of 200 dollars, at which he said, "Do you think I care about paying the fine? I could pay the fine," by which I understood him to

mean that the fine was not worth considering, as the quantity of fish would have more than paid for it.

Q. Was there any one in Long Harbour on the Sunday referred to who could have enforced the law, and protected the interests of the fishermen ?—*A.* No.

Q. Is it not illegal shooting seines at all at that time of the year ?—*A.* There is an Act to that effect, but it has never been carried out in Fortune Bay, nor are the natives aware of its illegality at that time of the year, nor would they have molested the Americans had it not been Sunday, and which they knew it to be not only the law but the infallible custom to desist from fishing on that day.

Q. Has there ever been, to your knowledge before, quarrelsome disputes or ill-feeling between the Americans and native fishermen ?—*A.* No, never; always on the best terms.

Q. How long did you remain in Long Harbour ?—*A.* I remained till the 12th January.

Q. Did you observe during your stay in Long Harbour whether the three American captains remained and continued to fish or not ?—*A.* I did, and I know that they continued to fish; thay were not molested as far as I know.

Q. Was there anything to cause them to leave the harbour, or to cease fishing ?—*A.* No, and they had not left it when I left; there were no further disputes to my knowledge afterwards.

(Signed) GEO. THOS. SNELLGROVE,
Sub-Collector of Her Majesty's Customs.

Sworn before me at St. Jacques, Fortune Bay, the 17th day of June, A.D. 1878.
(Signed) GEO. L. SULIVAN,
Captain and Senior Officer on the Coast of Newfoundland.

(9.)

Deposition of Silas Fudge.

The examination of Silas Fudge, of Bellaram, Fortune Bay, taken upon oath, and who saith:—

I am mate of my father's schooner. I witnessed the disturbance at Long Harbour on Sunday, the 6th January last. I am certain that it was on the 6th January it happened.

I saw the seines in the water; two of them American and one English. We told them to take them up.

John Hickey, the Englishman, took his up; McCauley, the American, who owned the other, refused to take his up. There was another seine, which I did not see, in the water, belonging to Captain Jacobs. He had his in the boat at the time. He had shot once and discharged his seine into Thomas Farrel's, who was working for him, and was going to shoot his seine out again. I saw it in the boat ready for shooting when the crowd came over. They first spoke to McDonald, and asked him if he would take his seine up, and he said, "Yes, if I am forced;" and they then went to Hickey, and told him to take his up, and he took it up; then they went to McCauley and asked him to take his up, and he said he would not. They then told him that if he didn't they would take it up for him. They then went to Jacobs, and told him they would let go the herring out of the seine of Tom Farrel, who was an Englishman. Jacobs then drew a revolver, and threatened to shoot any man who touched his property. The crowd were very excited. I saw them haul McCauley's seine in, and tear it up. That was the end of the row that day. Farrel had, during the previous week, secured herring in the American seine, and then had placed his own round them, and taken up the American's. This was done before Sunday. It was in this seine of Farrel's that Jacobs emptied his own seine.

Q. You knew that the American fish were in the Englishman's seine; why was Farrel's seine allowed to remain ?—*A.* Because he had not shot it on the Sunday, but on the week-day.

Q. Are you aware that it was illegal to use seines to catch herrings that time of the year ?—*A.* No; I don't know.

Q. Did you believe it to be lawful to use seines for herring that time of the year ?—*A.* Yes, I thought so, as far as I could understand. I suppose the Americans thought, with reference to the destruction of the seine, that we did it in envy of them, but it wasn't; but it was from regard to the Sabbath, on which day we never fish.

Q. How far from the beach were the American seines shot ?—Close to the beach; the hauling lines were on the beach.

The Americans remained in the bay after the occurrence for several days; they were never molested or interfered with afterwards; they continued to fish until they left the harbour; they were not compelled to leave the harbour, but I believe they were unsuccessful on account of the bad weather and for want of frost.

(Signed) SILAS FUDGE.

Sworn before me at St. Jacques, Fortune Bay, the 17th day of June, A.D. 1878.
(Signed) GEO. L. SULIVAN,
Captain and Senior Officer on the Coast of Newfoundland.

(10.)

Deposition of John Cluett.

The examination of John Cluett, of Belloram, Fortune Bay, taken upon oath, and who saith :—

I was in Long Harbour one Sunday in January last.

Q. Did you see anything of the quarrel between the Americans and other fishermen ?—*A.* I did.

Q. Tell me what you know of it.—*A.* They commenced hauling herrings on Sunday, about midday. The first American seine shot was Captain Jacobs'; there were two more American seines shot. There was an Englishman working for the Americans who had a seine moored there for several days, but it was not shot or attempted to be hauled on the Sunday.

The first seine we came to was Captain McDonald's; they asked him if he was going to take his seine up. He said, " If we are forced to take it up we will ; " and we told him if he didn't take it up we would take it up for him.

The next we came to was a man belonging to Fortune Bay, called John Hickey, an Englishman, and we told him to take up the seine, and he said he would take it up and he did. The next we came to was Peter McCauley, and we told him the same as the others, and he refused to take it up. Then we went on to Captain Jacobs, and when we got to him he was in his skiff, a little off the shore; he had just hauled herring and shot them into Farrel's seine, who was working for him; they remonstrated about breaking the law and fishing on Sunday ; there was an altercation between us; he said he would defend his seine if they touched it in a threatening way. I don't know what he said ; there was a great crowd, and he was in an awful rage, and I heard that he drew a revolver, but I didn't see it; he then took his seine on board ; then all the seines were taken up but Farrel's and McCauley's. Farrel's seine was not touched because it was not laid on that day, and they therefore let it alone, although Jacobs' fish were in it; but McCauley's seine was taken up and destroyed, and that is all I know.

Q. Did the American captain remain in the harbour after ?—*A.* Yes ; I think about a fortnight, but perhaps more. They continued to fish and haul herring on week-days but not on Sunday again.

Q. Were they ever molested or interfered with in any way subsequently or not ?—*A.* Not to my knowledge ; they remained there as long as they chose, and there was never any more dispute. I don't know that it is illegal to haul seines that time of the year. I have heard of the law, but I have never seen it carried out; it had nothing to do with this dispute. The only cause of it was on account of its being Sabbath. I never saw herrings hauled on a Sunday before, either by American or Englishman.

The Americans, by hauling herring that day when the Englishmen could not, were robbing them of their lawful and just chance of securing their share in them, and, further, had they secured all they had barred they could have, I believe, filled every vessel of theirs in the bay. They would have probably frightened the rest away, and it would have been useless for the English to stay, for the little left for them to take they could not have sold.

The Americans would have a better chance than the English any day on account of the size of their nets, but the English would have had their fair chance the next day, and they thought they were justified, in the absence of any proper authority or power to enforce the law, to defend their rights themselves. There is no power or authority to enforce the law on all parts of the coast, and none nearer to Long Harbour than about 30 or 40 miles.

If there was not a good feeling and mutual understanding between all fishermen, whether foreigners or Englishmen, there would be no law carried out or upheld at all, but there was always prior to this a very good feeling and a mutual understanding between the Americans and ourselves, and I don't know anything to prevent the same in future. After the destruction of McCauley's seine some of the American schooners, one of which was Peter Smith's, drifted about the harbour among the fishermen's nets when blowing hard, with their anchors hanging to their bows, and destroyed several nets. I don't know if this was done out of revenge or not. I don't think it was done purposely.

(Signed) JOHN CLUETT.

Sworn before me at St. Jacques, Fortune Bay, this 17th day of June, A.D. 1878.

(Signed) GEO. L. SULIVAN,
Captain and Senior Officer on the Coast of Newfoundland.

(11.)

Deposition of Charles Dagle.

Gloucester, February 19, 1878.

I, Charles Dagle, master of the American schooner "Lizzie and Namari," of Rockport, do on oath depose and say :—

That I sailed from Gloucester on the 6th December, 1877, for Fortune Bay, Newfoundland, for a load of herring. The last year (1877) I had sold a seine and boat to parties in Newfoundland, and they were to supply me with herring in payment for the seine and boat. I arrived at Fortune Bay about the 19th December. I was at Long Harbour, Newfoundland, with my vessel on the 6th January. Saw the seines of the American schooners "New England" and "Ontario" destroyed by the fishermen of Newfoundland. There is a decided objection to using netted or gill-net herring for freezing purposes, as these herring die in a short time after being taken in gill-nets. When they are seined they can be kept alive on the radius of the seine and taken out alive when the weather is suitable for freezing, while the netted herring, being dead, must be salted or spoil; consequently the seined herring are the best for our purposes, and are what the American vessels want for our market. Knowing this fact, the Newfoundland fishermen had endeavoured to obstruct in every way the taking of herring with seines, as they use principally gill-nets ; they placed their nets, which are set permanently, so as to hinder the using of seines. On the 6th January, 1878, the herring had come inshore, so that they were inside the gill-nets, thus giving our people an opportunity to seine them without interfering with the gill-nets. On the Americans attempting to put their seines in the water the Newfoundland fishermen threatened to destroy them, and when our fishermen had taken their seines full of herring, the Newfoundlanders came down to the number of 200, seized and destroyed the seines, letting out the fish, and afterwards stole and carried off the remnants of the seines. On account of this violence and the obstructions placed in the way of my men operating the seine, I was unable to procure a cargo, and have returned without a herring. If I had been allowed the privilege guaranteed by the Washington Treaty, I could have loaded my vessel and all the American vessels could have loaded. The Newfoundland people are determined that the American fishermen shall not take herring on their shores. The American seines being very large and superior in every respect to the nets of the Newfoundlanders, they cannot compete with them. These seines are the mackerel seines which are used in summer for mackerel and are setting for herring. When they are plentiful we can take from 2,000 to 5,000 barrels. The seines and boats we use cost 1,200 dollars when new, and are too expensive for the generality of Newfoundland fishermen, and they would have no use for seines only during the herring season, while we can use them both summer and winter, and thus make them pay for their great cost.

My loss by these acts of violence, and being deprived of my rights under the Washington Treaty, is fully 5,000 dollars, which I claim as indemnity. The netted herring are strangled while caught by the head in the net, and the eyes turn red from suffocation. They will not keep so long as seined herring, which are free to swim inside the seine, and are dipped out alive. The netted herring will not sell in the New York market, while the seined herring presevre their bright appearance and sell readily.

(Signed) CHARLES DAGLE,
Master of Schooner "Lizzie and Namari."

Gloucester, February 19, 1878.

Essex, ss.

Personally appeared Charles Dagle, master of schooner "Lizzie and Namari," who subscribed and made oath to the foregoing statement.

Before me,
(Signed) ADDISON CENTER, *Justice of the Peace.*

(12.)

Deposition of William H. McDonald.

Gloucester, February 19, 1878.

I, William H. McDonald, master of the American schooner "William E. McDonald," of Gloucester, do on oath depose and say :—

That I have just returned from Newfoundland, where I have been for a load of herring. I was at Long Harbour, Newfoundland, when the seines of the schooners "New England" and "Ontario" were destroyed. I had gone on shore and was on the beach at the time. The Newfoundlanders were much excited because of our use of the large seines, which for the first time were used last winter there. The Newfoundland fishermen had sunk large rocks off the beach in order to catch the seines and tear them, and had put their gill-nets where they would obstruct the use of the seines. These means failing, as the herring were close in shore, they took to personal violence, and destroyed one seine completely, and made the others take them up and release the fish. I had a seine, but was

not allowed to use it. The nets they placed in the way and kept there only for the purpose of obstructing our operations with seines, as they took no herring there, but let the nets remain till they rotted. I can fully endorse the statement of Captain Dagle in all particulars. My vessel is a first-class vessel, and with the time and expense, and with the loss of herring, I have sustained a loss of fully 5,000 dollars to myself and owners, and I claim that, under the Treaty of Washington, I have a right to the herring fisheries and claim indemnity for this severe loss.

(Signed) WILLIAM H. McDONALD.

Essex, ss.

Personally appeared William H. McDonald and subscribed and made oath to the above statement.

Before me,

(Signed) AARON PARSONS, *Justice of the Peace.*

(13.)

Deposition of James McDonald.

Gloucester, February 19, 1878.

I, James McDonald, master of the American schooner "F. A. Smith," of Gloucester do on oath depose and say:—

That the said schooner was chartered by George W. Plumer and others, of Gloucester, for a voyage to Newfoundland for herring. I sailed from Gloucester on the 29th November, 1877, and arrived at Long Harbour, Newfoundland, on or about the 15th December, 1877. I carried a large purse seine such as is used to take mackerel. The seine will take 4,000 barrels of fish. I employed Newfoundland fishermen to operate the seine. I set my seine twice, but without catching anything, as my seine was torn by rocks that had been left off the beach. On the 6th January the herring made their appearance in great numbers, and the opportunity to take a large haul was improved by my men, and we took at least 1,000 barrels, enough to load my vessel and one other. The Newfoundland fishermen came off in their boats and told me to take my seine up, or they would take it up for me, and that they would cut it up. There were about 200 men engaged in this violence, and my own crew consisting of six men I could not resist, but was obliged to take up my seine. I saw the seines of the schooners "New England" and "Ontario" destroyed, and knew that mine also would be destroyed if I did not take it up. My seine was not attached to the shore when they came off, and the attack on me was made in boats. After destroying the other seines they all made for me, and my only safety was to gather up my seine. I lost all my fish, and the Newfoundland fishermen put all the obstructions they could in the way, to prevent the use of our seines after that. From my knowledge of the facts I do say that the Newfoundland fishermen are determined to prevent American fishermen from using the shore fisheries. I consider that the loss to the vessel and the charter party at not less than 5,000 dollars, and under the Treaty of Washington I have been deprived of my rights as an American citizen, and full indemnity should be allowed for the outrage. I have read the statement of Captain Dagle, and know it to be true in all its particulars. The effect of this treatment will be to destroy the American fishing for herring at Newfoundland. There are annually about 100 voyages by American vessels made for herring to Newfoundland. The Newfoundland fishermen were taking herring on the same day the outrages before stated occurred.

(Signed) JAMES McDONALD.

Essex, ss. *Gloucester, February* 20, 1878.

Personally appeared the above-named James McDonald, master of the schooner "F. A. Smith," who subscribed and made oath that the foregoing statement is true.

Before me,

(Signed) ADDISON CENTER, *Justice of the Peace.*

(14.)

Deposition of Charles H. Nute.

Gloucester, February 19, 1878.

I, Charles H. Nute, master of the American schooner "Edward E. Webster," of Gloucester, do on oath depose and say:—

That I have just returned from Newfoundland, where I have been for a load of herring. I went for the purpose of co-operating with other American vessels in the use of their seines in taking herring. I was at Long Harbour and saw the destruction of the seines of the American schooners "New England" and "Ontario." I have seen the statement of Captain Dagle, of the American schooner "Lizzie and Namari," and substantiate all he has stated. I have returned without a herring for the same reasons. My actual loss in time of vessel and crew, with herring I should have bought had I not been prevented by he inhabitants of Newfoundland, is fully 5,000 dollars; and, owing to being deprived of

my rights under the Washington Treaty, I hereby claim that amount as indemnity for the wrong done me and the owners of the vessel.

(Signed) CHARLES H. NUTE,
Master schooner "Edward B. Webster.

Essex, ss. *Gloucester, February* 20, 1878.

Personally appeared Charles H. Nute, master of schooner "Edward E. Webster," who subscribed and made oath that the foregoing statement is true.

Before me,

(Signed) ADDISON CENTER, *Justice of the Peace.*

(15.)

Deposition of David Malanson.

Gloucester, February 20, 1878.

I, David Malanson, master of the American schooner "Crest of the Wave," of Gloucester, Massachusetts, do on oath depose and say:—

That I sailed from Gloucester on the 8th December, 1877, on a voyage to Newfoundland for herring. I arrived at Long Harbour, Newfoundland, on the 23rd December, 1877. I was interested in a seine carried by the schooners "New England" and "Ontario." I was at Long Harbour on the 6th January, 1878, and was on the beach when the Newfoundland fishermen destroyed the seine belonging to these vessels. The herring did not strike inshore until that day, and as it is very uncertain how long they will remain, it is imperative, for successful prosecution of the business, to take them when they are inshore. By means of our large purse seines we can inclose the herring and keep them alive a month, if necessary, as we need to have freezing weather when we take them out to freeze them, to keep them fresh until we get them to market. On this occasion the herring were entirely inshore of the Newfoundland gill-nets, and, as the sequel proved, if we did not take them then and there we should lose the season catch. The seines were set in no way interfering or injuring the gill-net fishing, and inclosed and held certainly 2,000 barrels of herring, enough to load four vessels. Over 200 men came down to the beach, seized the seine, let out the fish, pulled the seine on shore, tearing and cutting it to pieces with knives. The crews operating the seines were powerless against so many; and after they had destroyed this seine they went for the other American seines, shouting and gesticulating, saying: "Tear up the damned American seines." All of the vessels would have been loaded with herring if the Americans could have used their seines.

My loss by this outrage is not less than 5,000 dollars, which has been taken from me despite the provisions of the Washington Treaty, and which I claim as indemnity.

The Newfoundland fishermen have for years been in the habit of selling all the herring to American vessels. I have been there eight years, and I have always bought my herring, or engaged the Newfoundlanders to take them for me, paying them in cash. This has been the universal practice of American vessels. This year we carried the large mackerel seines, which we use in summer for taking mackerel. These seines will take from 2,000 to 5,000 barrels at a haul, and the herring are better taken in this way. As most of the Newfoundlanders fish with gill-nets, our manner of seining would take away from them the monopoly of the herring trade, and hence the feeling which produced the outrage on our vessels. It is apparent that they will obstruct any American fishery on their shores, and are not men who would know much about rights or privileges under a Treaty. I should say that there are at least 100 cargoes of herring taken from Newfoundland yearly by American vessels, and as things are now it would be useless for American vessels to go there for herring unless they bought the herring from the inhabitants at whatever price they may see fit to ask. This American trade has been a great benefit to Newfoundland, and the change in the manner of taking herring will greatly reduce the amount of money paid them for herring. Only three vessels of eighteen that were there got any herring whatever. Captain Jacobs, of the "Moses Adams," held his seine with revolvers, and being a native of Newfoundland was allowed to take in the herring he had taken. The feeling was very intense and bitter against the Americans. The Newfoundland fishermen were catching and taking herring with their nets and boats on the same day.

(Signed) DAVID MALANSON,
Master schooner "Crest of the Wave."

Essex, ss.

Personally appeared before me David Malanson, and subscribed and made oath to the above statement.

(Signed) AARON PARSONS, *Justice of the Peace.*

(16.)

Deposition of Edward Stapleton.

Gloucester, February 21, 1878.

I, Edward Stapleton, master of the American schooner "Hereward," of Gloucester, do on oath, depose and say:—

That I have just arrived from Newfoundland, where I have been for a load of herring. I was at Long Harbour, Newfoundland, when the Newfoundland fishermen destroyed the seines of the American schooners "New England" and "Ontario," and saw the whole transaction. I carried a seine with me, and employed Newfoundland fishermen to operate it for me. The first time they set it for me they put it out in a strong tide-way, and utterly destroyed it, and after that I had to depend on the other American seines. This was the understanding among the American captains, that we were to work together and load all our vessels. The setting of the seines on the 6th January did not interfere in any way with their nets or fishing. I think there is a local regulation that does not allow the Newfoundland fishermen to fish on Sundays; but the first seine (a small one) set on that day was one owned and operated by the natives, and they were picking their nets and boating their herring ashore all day. On the arrival of the American fleet the Newfoundlanders put their nets where they would obstruct our seining, but on this day the herring were away inside of their nets, giving us the first chance and only opportunity we had to seine or get herring. Enough were taken, and could have been taken, that day to have loaded the fleet. After that day there was no opportunity to take any. Newfoundland nets were placed where they never took a fish, and placed only for the purpose of preventing our seining. My loss to vessel and owners is not less than 5,000 dollars, and I claim indemnity to that amount. This loss is owing entirely to the hostile acts of the Newfoundland fishermen.

(Signed) E. STAPLETON.

(17.)

Deposition of Charles Dagle.

Gloucester, December 10, 1878.

I, Charles Dagle, master of the American schooner "Lizzie and Namari," of Rockport, district of Gloucester, do, on oath, depose and say, that I know Mr. Bolt, who resided in a hut or shanty near Tickle Beach, Newfoundland; that I was there on the 6th January, 1878, and saw the hostile acts of the British fishermen. Mr. Bolt's hut is about 150 yards back from the beach. I have been to Newfoundland fourteen successive years, and never heard of any persons claiming any rights on the beach, everybody using it in common. The three huts there are in the nature of squatter property, used only in the winter. Mr. Bolt never made any claim that I knew of; and the American seines were not used within 300 yards of Bolt's place, except where the seines were hauled on the beach by British fishermen and destroyed. The seines that were obliged to be taken up were 500 yards or more from Bolt's place. The seine of the "F. A. Smith," Captain McDonald, was one-fourth of a mile away. Mr. Hickey, a resident of Fortune Bay, had his seine nearest to Bolt's house. Mr. Hickey's seine was the first seine set on the 6th January, 1878, and the British fishermen attacked him as well as the Americans.

(Signed) CHARLES DAGLE.

Massachusetts, Essex, ss. *Gloucester, December* 12, 1878.

Personally appeared Charles Dagle, and made oath to the truth of the above statement.

Before me,

(Seal) AARON PARSONS, *Notary Public.*

(18.)

Deposition of Willard G. Poole.

Gloucester, December 10, 1878.

I, Willard G. Poole, master of the American schooner "Maud and Effie," of Gloucester, do on oath depose and say that I know Mr. Bolt, and also the location of his hut at Tickle Beach, Newfoundland; that I was there on the 6th January, 1878, and saw and know of the operations of the American seines; that the hut of Mr. Bolt is fully 150 yards back from high-water mark from the beach; that I never heard or knew of any individual or body of men claiming any peculiar or particular rights on this beach, nor was any one ever hindered from fishing, except on the occasion of the 6th January, 1878, to my knowledge; there was no seine used by the Americans at any time on the beach or within 400 yards of Mr. Bolt's hut, except the seines captured by the British fishermen,

which were hauled on to the beach by them (the British fishermen), and cut to pieces and destroyed.

(Signed) WILLARD G. POOLE.

Essex, ss. *Gloucester, December* 11, 1878.

Personally appeared before me the within-named Willard G. Poole, who subscribed and made oath that the within statement is true.

(Signed) ADDISON CENTER, *Justice of the Peace.*

(19.)

Deposition of Michael B. Murray.

I, Michael B. Murray, master of the American schooner 'Mary M.," of Gloucester, do on oath depose and say that I know Matthew Bolt, at Tickle Beach, Newfoundland; have known him to have a shanty there, and lives there winters, for the past four years. I never heard or knew of Mr. Bolt, or any other person, claiming any peculiar or particular rights on this beach, nor exercising any authority there, except the action of the mob on the 6th January, 1878. Mr. Bolt's shanty is about 150 yards from high-water mark. The American seines were operated more than 400 feet and due south along the beach from Bolt's hut.

(Signed) MICHAEL B. MURRAY.

Massachusetts, Essex, ss. *Gloucester, December* 23, 1878.

Sworn to this 23rd day of December, A.D. 1878.

Before me,

(L.S.) AARON PARSONS, *Notary Public.*

(20.)

Deposition of Michael B. Murray,

I, Michael B. Murray, of Gloucester, master of the American schooner "Mary M.," do hereby on oath depose and say that I have invariably made good voyages to Newfoundland, and, with the exception of 1876, have made a clear profit, over and above all expenses, of at least 3,500 dollars for each voyage.

In the year 1875 I made 5,300 dollars, clear of all expense, on my voyage to Newfoundland for herring. In 1874 I made 5,500 dollars, clear of all expense.

In the year 1876 I had a cargo of 1,445 barrels of salted herring, was very late in the season, and cleared only 2,000 dollars.

(Signed) MICHAEL B. MURRAY.

Massachusetts, Essex, ss. *Gloucester, December* 23, 1878.

Personally appeared M. B. Murray, and made oath to the truth of the above statement.

Before me,

(Seal) AARON PARSONS, *Notary Public.*

(21.)

Deposition of Peter Smith.

Gloucester, February 5, 1878.

I, Peter Smith, of Gloucester, master of the American schooner "Charles C. Warren," of Gloucester, do on oath depose and say that I was at Tickle Beach, Fortune Bay, Newfoundland, on the 6th January, 1878. That I had been to Labrador, from thence to Bay of Islands, and thence to Fortune Bay for a load of herring. On the morning of the 6th January, 1878, herring made their appearance in close proximity to the shore in great abundance. I was provided with two seines with which to take herring, and should have loaded my vessel and others on that day. I had my seine in the boat, and was preparing to use it when the attack was made on the other American seines, and I saw them destroyed, and I found that the mob of 200 or 300 of the British fishermen were determined to destroy every seine, and I did not dare put my seine in the water. After this time I bought of the British fishermen about 400 barrels of herring, paying 1 dol. 40 c. per barrel. My vessel would carry 1,300 barrels, all of which I could have taken on the 6th January at little or no cost to myself. I was about a fortnight buying 400 barrels of herring. I consider that my loss was at least 3,000 dollars, in addition to the expense of the voyage, by the hostile acts of the British fishermen.

(Signed) PETER SMITH.

State of Massachusetts, Essex, ss. *Gloucester, December* 14, 1878.

Personally appeared Peter Smith, and made oath to the truth of the above statement signed by him.

Before me,

(L.S.) AARON PARSONS, *Notary Public.*

(22.)

Official Statement of Newfoundland Herring Fishery.

I, Fitz J. Babson, Collector of Customs for the district of Gloucester, do certify that the following-named schooners were employed in the Newfoundland herring fishery during season of 1877 and 1878 :—

Schooners—	Tons.
Herbert M. Rogers	78
Moses Adams	100
John W. Bray	83
Wildfire	109
Edward E. Webster	99
Hereward	90
Bunker Hill	101
Landseer	99
Isaac Rich	92
Ontario	91
New England	86
Frank A. Smith	77
Wm. E. MacDonald	98
Moro Castle	89
Bonanza	137
Jennie A. Stubbs	198
Lizzie and Namari	94
Crest of the Wave	71
Moses Knowlton	111
Maud and Effie	85
Fred P. Frye	85
Mary M.	102
Maud B. Wetherell	108
Cunard	75
Charles C. Warren	109
Bellerophon	86
Total	26 vessels.

VESSELS employed during season of 1878 and 1879 in Newfoundland Fisheries.

Schooners—	Tons.
John S. McQuinn	82
Falcon	72
New England	86
Rattler	83
Wildfire	109
Bunker Hill	101
Isaac Rich	92
Centennial	116
Total	8 vessels.

Witness my hand and seal this 10th day of January, A.D. 1879.

(Seal) F. J. BABSON, *Collector.*

APPENDIX (B).

(1.)

ANNO VICESIMO-QUINTO VICTORIÆ REGINÆ.

CAP. II.—*An Act for the Protection of the Herring and Salmon Fisheries on the Coast of this Island, and for other Purposes.*

[Passed, March 27, 1862.]

Preamble.

WHEREAS the breed and fry of herrings frequenting the coast of this island and the Labrador are often found to be greatly injured and destroyed by the using of seines and nets of too small size or mesh, and by other unwarrantable practices; and whereas complaints have been preferred to the local Government of alleged depredations committed by the fishermen frequenting these coasts upon each other: for remedy whereof,

Be it therefore enacted, by the Governor, Legislative Council, and Assembly, in Session convened :—

Herring not to be taken in seines from 20th October until 12th April.

I. That no person shall haul, catch, or take herrings in any seine, on or near any part of the coast of this island, or of its dependencies on the coast of Labrador, or in any of the bays, harbours, or any other places therein, at any time between the 20th day of October

and the 12th day of April in any year; and no person shall, on or near the coast of this island or of its dependencies aforesaid on the coast of Labrador, or in any of the bays, harbours, or other places therein, at any time, use a seine or other contrivance for the catching and taking of herrings, except by way of shooting, and forthwith tucking and hauling the same: Provided that nothing herein contained shall prevent the taking of herrings by nets set in the usual and customary manner, and not used for in-barring or inclosing herrings in any cove, inlet, or other place.

Proviso as to the use of nets.

II. No person shall, at any time between the 20th day of December and the 1st day of April in any year, haul, catch, or take any herring on or near the coast of this island or of its dependencies aforesaid on the Labrador, or in any of the bays, harbours, or any other places therein, in any net having the meshes, mokes, or scales of less than two inches and three-eighths of an inch, at least, from knot to knot, or having any false or double bottom of any description; nor shall any person put any net, though of legal size of mesh, upon or behind any other net not of such size of mesh, for the purpose of catching or taking the fry of such herring passing through any single net of two inches and three-eighths of an inch mesh or scale.

Nets of 2 3-8 inch scale to be used from the 20th December until the 1st April.

Regulation as to nets with double bottom, &c.

III. No person shall wilfully remove, destroy, or injure any lawful net or seine, the property of another, set or floating on or near the coasts of this island or of its dependencies aforesaid on the Labrador, or in any of the bays, harbours, or other places therein, nor remove, let loose, or take any fish from or out of any such lawful net or seine.

No person shall interfere with the nets of others.

IV. No person shall, at any time, between the 20th day of April and the 20th day of October, haul, catch, or take any herring or other bait for exportation within one mile of any settlement situate on that part of the coast between Cape Chapeau Rouge and Point Rosey.

Herring not to be taken from the 20th April until the 20th October between Cape Chapeau Rouge and Point Rosey.

V. Any person who shall violate any of the provisions of this Act shall for every offence forfeit a sum not exceeding ten pounds; and, in addition, all seines, nets, and other contrivances used or employed in, about, or preparatory to the catching, hauling, taking, or in-barring of any herrings, in violation of any of the provisions hereof, shall be liable to forfeiture, and the same may be seized at once by any Justice, Sub-Collector of Customs, Preventive Officer, or Constable, on view or by virtue of a warrant issued by such Justice, Sub-Collector, or Preventive Officer, on oath to be administered by any of them, and detained until the trial of the offender, when they may be declared forfeited and ordered to be sold at public auction.

Penalty for violation of this Act.

VI. And whereas an Act was passed in the twenty-third year of the reign of Her present Majesty, entitled "An Act for the Protection of the Salmon Fishery, and for other purposes," whereby certain nets and seines were forbidden to be used, and certain weirs and other erections and contrivances were prohibited from being erected at certain times and under certain circumstances, in the said Act declared:

Be it further enacted, That it shall be lawful for any Justice, Sub-Collector, Preventive Officer, or Constable aforesaid, on view, and for any Constable or other person by virtue of a warrant to be issued as aforesaid, to seize any net or seine, and to destroy any weir or other erection or contrivance used or erected in contravention of the said recited Act, and all such nets and seines shall be forfeited and disposed of in manner provided by the Vth section of this Act.

Prohibition for using salmon nets at certain times, and against erecting weirs, and penalty.

VII. All forfeitures and penalties imposed by this or the said recited Act shall be recovered with costs, in a summary manner, before any Justice of the Peace, for which purpose such Justice shall have full power to summon or arrest the offender, and to compel all witnesses, either by summons or warrant, to appear before him on such trial; and upon conviction of such offender, such Justice shall issue his warrant to cause such seines, nets, or other contrivances so illegally used, to be sold at public auction, or, where permitted under the preceding section of this Act, destroyed; and in default of payment of such penalty as may be imposed, and costs, by the party convicted, such Justice shall issue his warrant to any constable or other person to arrest and imprison such convicted offender for a period not exceeding twenty days.

Manner of recovering penalties, and in default term of imprisonment.

VIII. All penalties and forfeitures under this or the said recited Act, and all proceeds thereof, when recovered, shall be paid to the party informing against and prosecuting such offender to conviction.

Disposal of penalties, and forfeitures.

IX. No conviction or proceeding by any Justice or other officer under this Act shall be quashed or set aside for want of form, so long as the same shall be substantially in accordance with the true intent and meaning of this Act.

Convictions not to be quashed for want of form, &c.

X. Provided always, That nothing in this Act contained shall in any way affect or interfere with the rights and privileges granted by Treaty to the subjects or citizens of any State or Power in amity with Her Majesty.

This Act not to interfere with rights protected by Treaty.

XI. The ninth section of the said recited "Act for the Protection of the Salmon Fishery" is hereby repealed.

Ninth section of the Salmon Fishery Act repealed.

(2.)

TITLE XXVII. Consolidated Statutes of Newfoundland, 1872.

Cap. CII.—*Of the Coast Fisheries.*

Section.
1. Herring not to be caught between 20th October and 12th April. Seine, how to be used.
2. Time for use of and size of net.
3. Injuries to nets and seines.
4. Herring not to be hauled for bait between 20th April and 20th October.
5. Spearing or sweeping with nets and seines for salmon above tidal waters unlawful.
6. Stake, seine, or weir unlawful.
7. Mill-dams and other obstructions.
8. Mesh of salmon net.
9. Salmon bought or sold in close time forfeited.

Section.
10. Distance between salmon nets.
11. Time for taking salmon.
12. Penalties.
13. Weir, &c., erected contrary to law, may be destroyed.
14. Forfeitures and penalties, how recovered.
15. Appropriation of same.
16. Convictions not to be quashed for want of form.
17. Governor may appoint superintendent of fishery and fishery wardens.
18. Reservation of Treaty rights.

1. No person shall haul, catch, or take herrings by, or in, a seine or other such contrivance on or near any part of the coast of this Colony or of its dependencies, or in any of the bays, harbours, or other places therein, at any time between the 20th day of October and the 12th day of April in any year, or at any time use a seine or other contrivance for the catching and taking of herrings, except by way of shooting and forthwith hauling the same: Provided that nothing herein contained shall prevent the taking of herrings by nets set in the usual and customary manner, and not used for in-barring or inclosing herrings in a cove, inlet, or other place.

2. No person shall, at any time between the 20th day of December and the 1st day of April in any year, use any net to haul, catch, or take herrings on or near the coasts of this Colony or of its dependencies, or in any bays, harbours, or other places therein, having the mokes, meshes, or scales of such net less than two inches and three-eighths of an inch at least, or having any false or double bottom of any description; nor shall any person put any net, though of legal size mesh, upon or behind any other net not of such size mesh, for the purpose of catching or taking such herring or herring fry passing a single net of legal size mesh.

3. No person shall wilfully remove, destroy, or injure any lawful net or seine, the property of another, set or floating on or near the coast of this Colony or its dependencies, or any of the bays, harbours, or other places therein, or remove, let loose, or take any fish from such seine or net.

4. No person shall, between the 20th day of April and the 20th day of October in any year, haul, catch, or take herrings or other bait for exportation, within one mile, measured by the shore or across the water, of any settlement situate between Cape Chapeau Rouge and Point Enragee, near Cape Ray; and any person so hauling, catching, or taking, within the said limits, may be examined on oath by a Justice, officer of Customs, or person commissioned for the purpose, as to whether the herrings or other bait are intended for exportation or otherwise, and on refusal to answer or answering untruly, such person shall, on conviction, be subject to the provisions of the twelfth section of this chapter.

5. No person shall, by spearing or sweeping with nets or seines, take or attempt to take, any salmon, grilse, par, or trout, in any bay, river, stream, cove, or watercourse, above where the tide usually rises and falls, or in any pond or lake.

6. No stake, seine, weir, or other contrivance for taking salmon, except nets set or placed across, shall be set or placed in any river, stream, cove, lake, or watercourse. No net shall extend more than one-third of the distance in a straight line across, and all nets shall be set only on one side of such river, stream, cove, lake, or watercourse.

7. No person shall construct any mill-dam, weir, rack, frame, train-gate, or other erection or barrier in or across any river, stream, cove, lake, or watercourse, so as to obstruct the free passage of salmon, grilse, par, trout, or other fish resorting thereto for the purpose of spawning; and all mill-dams or other erections placed on, over, or across any watercourse, river, or stream, resorted to by fish for the purpose of spawning, shall have a waste gate opening, or slope sufficient to constitute a proper and sufficient fish way, which shall be kept in repair by the owner. No person shall permit any sawdust or mill rubbish to be cast into any such river, stream, cove, lake, or watercourse.

8. No person shall use any net for taking salmon, the mokes, meshes, or scales of which are less than four inches and a half inch.

9. No person shall buy or sell or have in his possession, salmon, knowing the same to have been taken contrary to the provisions of this chapter, and every salmon so taken, bought, or sold, shall be declared forfeited to the complainant by any Justice.

10. No net shall be moored or set in any harbour, cove, creek, or estuary, or on or near any part of the coast of this Colony, or its dependencies, for the purpose of taking salmon, nearer to any other net moored or set for a like purpose than one hundred yards for a single net, and three hundred yards for a double net or fleet of nets.

11. No salmon shall be taken before the 1st day of May or after the 10th day of September in any year: Provided that if the time limited in this section shall be found to operate injuriously in any part of this island, the Governor in Council may appoint any other time or times, and such time or times shall be as binding on all persons as if specially mentioned herein.

12. Any person who shall violate any of the provisions of this chapter shall be subject to a penalty not exceeding fifty dollars, and all seines, nets, and other contrivances used contrary to the provisions of this chapter shall be forfeited, and may be seized and detained until the trial of the offender by any Justice, Sub-Collector of Customs, Preventive Officer, Fishery Warden, or Constable, on view, or by virtue of a warrant issued by such Justice, Sub-Collector, or Preventive Officer, upon complaint made on oath to be administered by either of them, and, upon conviction, the same may be declared forfeited and ordered to be sold at public auction.

13. Any Justice, Sub-Collector, Preventive Officer, Fishery Warden, or Constable, may, on view, destroy any weir, rack, frame, train-gate, or other erection or barrier, used or erected contrary to the provisions of this chapter, or the same may be destroyed by virtue of a warrant issued by any Justice, Sub-Collector, or Preventive Officer, upon complaint made on oath to be administered by either of them.

14. All forfeitures and penalties imposed by this chapter shall be recovered, with costs, in a summary manner before any Justice, for which purpose such Justice may summon or arrest the offender, and compel witnesses, by summons or warrant, to appear before him; and upon conviction of the offender, such Justice shall cause all seines, nets, and other contrivances illegally used, to be sold by public auction, or, where permitted under the provisions of the preceding sections of this chapter, destroyed; and in default of the payment of any penalty imposed, and costs, such Justice shall issue his warrant and cause such offender to be arrested and imprisoned for any period not exceeding twenty days.

15. All penalties and forfeitures imposed by this chapter, and the proceeds thereof, shall be paid to the party informing against and prosecuting the offender to conviction.

16. No proceeding or conviction by any Justice or other officer under this chapter shall be quashed or set aside for any informality, provided the same shall be substantially in accordance with the intent and meaning of this chapter.

17. The Governor in Council may appoint the Collector of Revenue for Labrador, or other person, to be Superintendent of the Fisheries on the coast of this island and its dependencies, and may also appoint Fishery Wardens, and prescribe their duties for the purposes of this chapter. The compensation for the services of such officers to be provided by the Legislature.

18. Nothing in this chapter shall affect the rights and privileges granted by Treaty to the subjects of any State or Power in amity with Her Majesty.

No. 9.

Mr. Hoppin to the Marquis of Salisbury.—(*Received April* 6.)

My Lord, *Legation of the United States, April* 6, 1880.

I HAVE the honour to acknowledge the receipt of your Lordship's letter of the 3rd instant, in reply to Mr. Welsh's communications of the 13th August last, in relation to the claims of United States' fishermen for losses occasioned by certain occurrences at Fortune Bay, Newfoundland, in January 1878; and I have to acquaint your Lordship that I shall send a copy of your letter to the Honourable the Secretary of State at Washington by the earliest post.

I have, &c.

(Signed) W. J. HOPPIN.

No. 10.

Sir E. Thornton to Earl Granville.—(*Received May* 16.)

My Lord, *Washington, May* 3, 1880.

I HAVE the honour to inform your Lordship that, on the 27th ultimo, Mr. Cox, a member from New York, submitted to the House of Representatives a Resolution to the effect that the President should be requested, if not inconsistent with public interest, to transmit to the House copies of all correspondence, not as yet communicated, with the British Government relating to the alleged interference with American fishermen in Fortune Bay on the 6th January, 1878.

The Resolution was adopted without a division.

On the following day, Mr. Blaine, a Senator from Maine, proposed to the Senate a very similar Resolution, which was also agreed to unanimously.

The papers asked for have not yet been transmitted to Congress.

I have, &c.

(Signed) EDWD. THORNTON.

No. 11.

Sir E. Thornton to Earl Granville.—(*Received May* 30.)

My Lord, *Washington, May* 18, 1880.

I HAVE the honour to transmit herewith copies of a Message which was yesterday sent by the President to both Houses of Congress with regard to the Fortune Bay affair, including a Report made to him upon the subject by the Secretary of State.

In this Report Mr. Evarts reviews the correspondence which has passed between the two Governments, and maintains that United States' fishermen are entirely exempt from the operation of local laws, whether anterior or subsequent to the date of the Treaty of Washington.

At the end of his Report Mr. Evarts observes that the only consideration which the United States are now paying for the enjoyment of the fisheries is the remission of the customs duties on the products of those fisheries, and he recommends that Congress should re-enforce those duties, as they existed before the Treaty of Washington, until the two Governments shall have come to an agreement as to the interpretation and execution of the Fishery Articles of that Treaty.

The President, in his Message, concurs in the opinions expressed by Mr. Evarts as to the measures which should be taken by the United States' Government for the maintenance of the rights conceded to American fishermen by the Treaty, and recommends the adoption of those measures.

As soon as the whole of the documents which accompany the President's Message shall have been printed, I shall have the honour to forward copies of them to your Lordship.

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

Inclosure in No. 11.

Extract from "Congressional Record" of May 18, 1880.

OUTRAGE ON AMERICAN FISHERMEN.

Report from Mr. Evarts to the President.

THE Speaker, by unanimous consent, laid before the House the following Message from the President of the United States, together with the accompanying letter of the Secretary of State:—

To the House of Representatives:

In compliance with the Resolution of the House of Representatives of the 27th ultimo, calling for copies of the correspondence with the Government of Great Britain in regard to the alleged outrage upon American fishermen at Fortune Bay, in the Province of Newfoundland, I transmit herewith the correspondence called for and a Report from the Secretary of State on the subject.

In transmitting this correspondence and the Report, I respectfully ask the immediate and careful attention of Congress to the failure of accord between the two Governments as to the interpretation and execution of the Fishery Articles of the Treaty of Washington, as disclosed in this correspondence, and elucidated by the exposition of the subject by the Secretary of State.

I concur in the opinions of this Report as to the measures proper to be taken by this Government in maintenance of the rights accorded to our fishermen by the British concession of the Treaty and in providing for suitable action toward securing an indemnity for the injury these interests have already suffered.

Accordingly I recommend to Congress the adoption of these measures, with such attendant details of legislation as in the wisdom of Congress shall seem expedient.

(Signed) R. B. HAYES.

Washington, May 17, 1880.

List of accompanying Documents.

No. 1. Mr. Evarts to Mr. Welsh, No. 33, March 2, 1878.

No. 2. Mr. F. W. Seward to Mr. Welsh, No. 55, April 6, 1878, with two inclosures printed with document No. 31.

No. 3. Mr. Evarts to Mr. Welsh, No. 67, April 26, 1878, with the following inclosure: Mr. McLaughlin to Mr. Seward, No. 66, St. Pierre, Miquelon, April 2, 1878.

No. 4. Mr. Hoppin to Mr. Evarts, No. 5, May 4, 1878, with three inclosures.

No. 5. Mr. F. W. Seward to Mr. Welsh, No. 125, August 13, 1878.

No. 6. Mr. Welsh to Mr. Evarts, No. 132, August 24, 1878, with an inclosure.

No. 7. Mr. Evarts to Mr. Welsh, No. 150, September 28, 1878.

No. 8. Mr. Evarts to Mr. Welsh, No. 174, November 8, 1878.

No. 9. Mr. Welsh to Mr. Evarts, No. 159, November 9, 1878. One inclosure with eleven Appendices annexed.

[*Note.*—The last seven of these Appendices are printed with document No. 31.]

No. 10. Mr. Evarts to Mr. Welsh, No. 347, August 1, 1879, with two inclosures.

No. 11. Mr. Welsh to Mr. Evarts, No. 347, August 13, 1879, with one inclosure.

No. 12. Mr. F. W. Seward to Mr. Hoppin, No. 361, August 28, 1879.

No. 13. Mr. Evarts to Mr. Hoppin (telegram), November 20, 1879.

No. 14. Mr. Hoppin to Mr. Evarts, No. 111, November 22, 1879, with one inclosure.

No. 15. Mr. Hoppin to Mr. Evarts, No. 112, November 25, 1879, with one inclosure.

No. 16. Same to the same, No. 113, November 28, 1879, with one inclosure.

No. 17. Mr. Evarts to Mr. Hoppin, No. 412, January 15, 1880.

No. 18. Same to the same (telegram), February 5, 1880.

No. 19. Mr. Hoppin to Mr. Evarts, No. 143, February 7, 1880.

No. 20. Same to the same, No. 147, February 10, 1880.

No. 21. Same to the same, No. 150, February 14, 1880, with one inclosure.

No. 22. Same to the same, unofficial letter, February 14, 1880, with one inclosure.

No. 23. Mr. Evarts to Mr. Hoppin (telegram), February 26, 1880.

No. 24. Mr. Hoppin to Mr. Evarts, No. 156, February 27, 1880, with one inclosure.

No. 25. Same to the same, No. 163, March 9, 1880, with one inclosure.

No. 26. Same to the same, with two inclosures, namely: 1. Lord Salisbury to Mr. Hoppin, April 3, 1880, with printed Appendices containing depositions, &c. 2. Mr. Hoppin to Lord Salisbury, April 6, 1880.

No. 27. Mr. Evarts to Collector Babson, August 5, 1879.

No. 28. Mr. Evarts to Sir Edward Thornton, August 5, 1879.

No. 29. Report of Messrs. Babson and Foster, Boston, September 29, 1879, with accompaniments.

To the President, *Department of State, Washington, May* 17, 1880.

The Secretary of State, to whom were referred the Resolution of the House of Representatives of the 27th April ultimo, requesting the President, "If not inconsistent with the public interest, to transmit to this House copies of all correspondence not now communicated with the English Government relating to the alleged interference with American fishermen in Fortune Bay on the 6th January, 1878," and a Resolution of the Senate of the 28th of the same month on the same subject, has the honour to lay before the President the correspondence as called for.

In connection with these papers, and for the better understanding of the subject to which this correspondence relates, I submit, for your consideration, the valuable Report of Collector F. J. Babson and Alfred D. Foster, Esq., of their visit on board the naval steam-ship "Kearsarge" to the provincial inshore fisheries, under the instructions of the Department, during the summer of last year, as well as their instructions under which this cruize of the "Kearsarge" was planned. This correspondence with the British Government, and this intelligent exposition of the attempted exercise by our fishermen of the freedom of the inshore fisheries as secured to them by the Treaty of Washington, whose violent interruption gave occasion to this discussion between the two Governments of the true measure of this Treaty right, will, it is believed, with the record of the proceedings of the Halifax Commission and the correspondence and protest which preceded and attended our payment of the Award, furnish complete

materials upon which the judgment of Congress can be formed and its action determined in the juncture of this fishery contention now demanding its serious consideration.

The very grave occurrence at Fortune Bay in January 1878 was brought by me to the attention of the British Government in March of that year with the view of obtaining redress for our fishermen for the gross violence and serious loss they suffered in their expulsion from this inshore fishery which they were prosecuting under the Treaty of Washington. The reply of the British Government did not reach me until the 4th September of that year. It disclosed possible grounds for the rejection of our claims, which put upon our rights in the inshore fisheries such limitations of subserviency to British provincial or Imperial legislation as seemed to me wholly inadmissible. These grounds were that our fishermen were pursuing their industry on Sunday contrary to a law of Newfoundland passed subsequent to the Treaty of Washington; that they were using seines to take herring contrary to a law of Newfoundland proscribing that method of fishing for the six months of the year between October and April; that they were using such seines in a manner prohibited at any season of the year by a Statute which precluded catching herrings by means of seines "except by way of shooting and forthwith hauling the same."

In communicating the Report of the evidence, which was intended to show the time and manner at and in which our fishermen were pursuing their right, as a justification for their interruption in it, Lord Salisbury observed: "You will perceive that the Report in question appears to demonstrate conclusively that the United States' fishermen on this occasion had committed three distinct breaches of the law." To this intimation, even, that the freedom of the fishery, accorded by an Imperial Treaty, either had been subtracted by past, or could be curtailed by future, provincial legislation, I lost no time in opposing an explicit and unconditional rejection of such an interpretation of the Treaty. In a despatch to Mr. Welsh on the 28th September, I communicated to the British Government the views of this Government, as follows:—

* * * * * * *

"In this observation of Lord Salisbury this Government cannot fail to see a necessary implication that Her Majesty's Government conceives that in the prosecution of the right of fishing accorded to the United States by Article XVIII of the Treaty, our fishermen are subject to the local Regulations which govern the coast population of Newfoundland in their prosecution of their fishing industry, whatever those Regulations may be, and whether enacted before or since the Treaty of Washington.

"The three particulars in which our fishermen are supposed to be constrained by actual legislation of the province cover in principle every degree of regulation of our fishing industry within the three-mile line which can well be conceived. But they are, in themselves, so important and so serious a limitation of the rights secured by the Treaty as practically to exclude our fishermen from any profitable pursuit of the right, which, I need not add, is equivalent to annulling or cancelling by the Provincial Government the privilege accorded by the Treaty with the British Government.

"If our fishing fleet is subject to the Sunday laws of Newfoundland, made for the coast population; if it is excluded from the fishing-grounds for half the year, from October to April; if our 'seines and other contrivances' for catching fish are subject to the Regulations of the Legislature of Newfoundland, it is not easy to see what firm or valuable measure for the privilege of Article XVIII, as conceded to the United States, this Government can promise to its citizens under the guarantee of the Treaty.

"It would not, under any circumstances, be admissible for one Government to subject the persons, the property, and the interests of its fishermen to the unregulated regulation of another Government upon the suggestion that such authority will not be oppressively or capriciously exercised, nor would any Government accept, as an adequate guarantee of the proper exercise of such authority over its citizens by a foreign Government, that, presumptively, regulations would be uniform in their operation upon the subjects of both Governments in a similar case. If there are to be regulations of a common enjoyment they must be authenticated by a common or joint authority.

"But most manifestly the subject of the regulation of the enjoyment of the shore fishery by the resident provincial population, and of the inshore fishery by our fleet of fishing cruizers, does not tolerate the control of so divergent and competing interests by the domestic legislation of the provinces. Protecting and nursing the domestic interest at the expense of the foreign interest, on the ordinary motives

of human conduct, necessarily shape and animate the local legislation. The evidence before the Halifax Commission makes it obvious that, to exclude our fishermen from catching bait, and thus compel them to go without bait, or buy bait at the will and price of the provincial fishermen, is the interest of the local fishermen, and will be the guide and motive of such domestic legislation as is now brought to the notice of this Government.

"You will, therefore, say to Lord Salisbury that this Government cannot but express its entire dissent from the view of the subject that his Lordship's note seems to indicate. This Government conceives that the fishery rights of the United States, conceded by the Treaty of Washington, are to be exercised wholly free from the restraints and regulations of the Statutes of Newfoundland now set up as authority over our fishermen, and from any other regulations of fishing now in force or that may hereafter be enacted by that Government.

"It may be said that a just participation in this common fishery by the two parties entitled thereto may, in the common interest of preserving the fishery and preventing conflicts between the fishermen, require regulation by some competent authority. This may be conceded. But should such occasion present itself to the common appreciation of the two Governments, it need not be said that such competent authority can only be found in a joint Convention that shall receive the approval of Her Majesty's Government and our own. Until this arrangement shall be consummated, this Government must regard the pretension that the legislation of Newfoundland can regulate our fishermen's enjoyment of the Treaty right as striking at the Treaty itself.

"It asserts an authority on one side and a submission on the other which has not been proposed to us by Her Majesty's Government and has not been accepted by this Government. I cannot doubt that Lord Salisbury will agree that the insertion of any such element in the Treaty of Washington would never have been accepted by this Government, if it could reasonably be thought possible that it could have been proposed by Her Majesty's Government. The insertion of any such proposition by construction now is equally at variance with the views of this Government.

"The representations made to this Government by the interests of our citizens affected leave no room to doubt that this assertion of authority is as serious and extensive in practical relations as it is in principle. The rude application made to the twenty vessels in Fortune Bay of this asserted authority, in January last, drove them from the profitable prosecution of their projected cruizes. By the same reason the entire inshore fishery is held by us upon the same tenure of dependence upon the Parliament of the Dominion or the Legislatures of the several provinces.

* * * * * *

"In the opinion of this Government, it is essential that we should at once invit the attention of Lord Salisbury to the question of provincial control over the fishermen of the United States in their prosecution of the privilege secured to them by the Treaty. So grave a question in its bearing upon the obligations of this Government under the Treaty makes it necessary that the President should ask from Her Majesty's Government a frank avowal or disavowal of the paramount authority of provincial legislation to regulate the enjoyment by our people of the inshore fishery which seems to be intimated, if not asserted, in Lord Salisbury's note.

"Before a receipt of a reply from Her Majesty's Government it would be premature to consider what should be the course of this Government should this limitation upon the Treaty privileges of the United State. be insisted upon by the British Government as their construction of the Treaty."

In answer to this unequivocal presentation both of the freedom of the fishery as this Government interpreted the concession of the Treaty, and of the absolute suppression of this Treaty right as a matter of practical value to our fishermen by this actual provincial legislation, Lord Salisbury replied with less distinctness, no doubt, but yet in a sense which I could not but regard as disclaiming any right to qualify the Treaty by municipal legislation previous or subsequent to its date. After intimating a dissent from the doctrine, if I had intended to assert it, "that no British authority has any right to pass any kind of law binding Americans who are fishing in British waters," Lord Salisbury says:

"On the other hand Her Majesty's Government will readily admit, what is indeed self-evident, that British sovereignty as regards these matters is limited in its scope by the engagements of the Treaty of Washington, which cannot be modified or affected by any municipal legislation. I cannot anticipate that with regard to these principles any difference will be found to exist between the views of the two

Governments. If, however, it be admitted that the Newfoundland legislators have the right of binding Americans who fish within their waters, by any laws which do not contravene existing Treaties, it must further be conceded that the duty of determining the existence of any such contravention must be undertaken by the Governments, and cannot be remitted to the discretion of each individual fisherman, for such a discretion, if exercised on one side, can hardly be refused on the other."

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"Her Majesty's Government prefer the view that the law enacted by the Legislature of the country, whatever it may be, ought to be obeyed by natives and foreigners alike who are sojourning within the territorial limits of its jurisdiction, but that if a law has been inadvertently passed which is in any degree or respect at variance with rights conferred on a foreign Power by Treaty, the correction of the mistake as committed, at the earliest period after its existence shall have been ascertained and recognized, is a matter of international obligation."

This despatch was received by me in November, and on the 23rd of the same month the payment of the Award of the Halifax Commission was made at the date provided in the Treaty. The further consideration of the Fortune Bay claims seemed to require only the verification of the facts on the part of our claimants, so far as they were drawn in question by or were at variance with the report made to the British Government by its officers, and the communication to that Government of the results as finally insisted upon by us as the basis and measure of our claims. The correspondence called for by Congress, and now submitted, shows the entire rejection of the claims on the grounds set forth in Lord Salisbury's despatch of the 6th April last.

Before considering the main proposition of the British Government, by which a direct and flat denial of the freedom of the inshore fisheries as claimed by this Government is interposed, I need to bring to attention two subordinate pretensions of Lord Salisbury's despatch intended to fortify his main proposition.

It appeared that in the management of one, at least, of the seines at Fortune Bay, our fishermen had used the strand for a temporary service in the process of inclosing the school of herring within the seine. This incident in the operation, in the original correspondence as in the transaction itself, a mere subordinate feature of the process of seining complained of, is now made prominent in the despatch of Lord Salisbury. There being no allegation that this use of the strand violates any provincial regulation of the fisheries, the point is made that the freedom of the fisheries accorded by the Treaty itself, in terms, excludes our fishermen from this incidental use of the strand in the process of taking fish by seines. A true interpretation of the Treaty concession gives no support to this pretension. The concession of fishing is "to take fish of every kind, except shell-fish, on the *sea-coasts and shores*, and in the bays, harbours, and creeks of the provinces, &c., without being restricted to any distance from the shore." Besides this concession of *fishing*, which manifestly covers the use of the strand in the process of *taking* fish, a further permission to land upon the coasts and shores is conceded to our fishermen for the independent purpose of using the land for "drying their nets and curing their fish." The contention seems to be that, because specific permission to use the land for purposes not included in the process of "taking fish," is given in terms, therefore the use of the strand in the process of "taking fish" is excluded, though, in the nature of the process of taking fish, the temporary use of the strand in managing the seines is a part of inshore fishing. This faulty reasoning is not helped at all by the proviso of the Treaty that our fishermen, in using their right on shore, shall "not interfere with the rights of private property, or with British fishermen, in the peaceable use of any part of the said coasts in their occupancy for the same purpose." If this proviso does not include the use of the strand in taking fish, it does not qualify the fishing concession. If it does include that use of the strand, then it construes such use as within the fishing concession, and qualifies it by the observance of private property on shore, and non-interference with British fishermen using the strand in their fishing.

Lord Salisbury's reference to the *argument* of Mr. Foster before the Halifax Commission on the independent subject of the commercial privileges for which the British case demanded compensation in the awards (and which were rejected by the Commission as not within the purview of the Treaty), for the doctrines of this Government in regard to the use of the strand as an incident of the inshore fishery concession, needs no serious comment here. If the "Case" of either Government could fairly be referred to as maintaining propositions to which it should be held in this contention, the special arguments *pro* and *con* of counsel cannot usefully be resorted to for this purpose. In

this interlocutory argument on the commercial question the British Counsel, in answering Mr. Foster, maintained the opposite construction of the Treaty. Neither view had any important relation to the subject then under discussion.

The second topic of Lord Salisbury's despatch, from which aid is sought for his main proposition, is the presentation of Mr. Marcy's Circular to the Collectors of Customs, while the reciprocity Treaty was in force, for promulgation among our fishermen, the whole text of which Lord Salisbury incorporates in his note.

In the full copy of this Circular, which is appended (No. 5) to the Babson and Foster Report, the fishery regulations of the provinces to which it relates are recited, and a reference to these is sufficient to displace any inference that this Government has assented to any curtailment, past or previous, by provincial legislation of the freedom of the inshore fishery as conceded to our fishermen by the terms of the Reciprocity Treaty or the Treaty of Washington. One of these regulations relates to the demarcation of "gurry grounds," and the other to the reservation of spawning grounds, during the spawning season, from invasion. "Gurry," or the offal of fish, was supposed to infect the waters, and the regulation was not of the right of taking fish, but of poisoning them. The care of the spawning beds in spawning season, in like manner, was a regulation of the breeding of fish, not a regulation of modes of American fishing. Both these regulations met the approval of this Government, and were required by Mr. Marcy to be respected by our fishermen, for this reason and in the sense of being within the reasonable province of local civil jurisdiction, and not encroaching upon the province of freedom of the fishery as imparted by the Reciprocity Treaty. But the right of this Government to inspect all such laws and pass upon them as falling one side or the other of the line thus firmly drawn is explicitly stated by Mr. Marcy. He says:—

"Should they be so framed or executed as to make any discrimination in favour of British fishermen, or to impair the rights secured to American fishermen by that Treaty, those injuriously affected by them will appeal to this Government for redress."

Accordingly, the fishermen are directed to make complaint, upon the case arising, either in respect to any law or its execution, "in order that the matter may be arranged by the two Governments."

The position of this Government, as laid down in my despatch of the 28th September, 1878, is, therefore, unembarrassed by any attitude in this contention heretofore taken in any diplomatic discussion of parallel Treaty engagements. Any particular interpretation of the Treaty as to the right to use the strand in fishing with seines ceases to be of significance in the issue now joined with the British Government, because the provincial laws in question prohibit the use of the seines at all, and the main proposition of the British Government subjects our Treaty rights to such legislation. So, too, the scope of this main proposition can be neither obscured nor confused by the irrelevant consideration of the local jurisdiction within 3 miles of the shore, over persons or property, of the running of civil or criminal process, of health or police regulations, of territorial sovereignty in the abstract. The issue between the two Governments is as to what regulations of the freedom of the fishery, in the very matter of the time and manner of taking fish, remain a part of British sovereignty over the fishery under the colour of sovereignty over the place, when exclusive sovereignty over the fishery has been parted with by Great Britain, and a participation in such fishery has been acquired by the United States, in the terms and on the consideration of the Treaty of Washington.

Upon this issue the position of this Government was notified to the British Government in September, 1878, as follows:—

"This Government conceives that the fishery rights of the United States, conceded by the Treaty of Washington, are to be exercised wholly free from the restraints and regulations of the Statutes of Newfoundland, now set up as authority over our fishermen, and from any other regulations of fishing now in force or that may hereafter be enacted by that Government."

Upon this issue the position of the British Government is now notified to us by the despatch of Lord Salisbury of the 3rd April ultimo as follows. Referring to these Statutes of Newfoundland, Lord Salisbury says:—

"These regulations, which were in force at the date of the Treaty of Washington, were not abolished, but confirmed by the subsequent Statutes, and are binding under the Treaty upon the citizens of the United States in common with British subjects. The United States' fishermen, in landing for the purpose of fishing at Tickle Beach, in

using a seine at a prohibited time, and in barring herrings with seines from the shore, exceeded their Treaty privileges and were engaged in unlawful acts."

Lord Salisbury further states that Her Majesty's Government "have always admitted the incompetence of the Colonial or the Imperial Legislature to limit by subsequent legislation the advantages secured by Treaty to the subjects of another Power."

There are but two grounds upon which the subordination of the United States' freedom of the inshore fisheries to Imperial or provincial legislation, curtailing or burdening that freedom ever has been, or in the nature of the case can be, placed.

The first is that of reserved general sovereignty within the 3-mile limit, under cover of which it is pretended there lurked in the concession of the freedom of this fishery to the United States in common with Great Britain, the power of one party in the privilege of this common fishery to regulate the enjoyment of it by the other. The statement of this proposition confutes it. The United States would have acquired nothing of right if the concession was constantly subject to the will of Great Britain for its exercise and enjoyment. Accordingly Lord Salisbury disclaims this pretension as ever having been held by the British Government as a reserved power, capable of exercise by any regulations subsequent to the date of the Treaty of Washington. But, manifestly, antecedent regulations, as having force subsequent to the Treaty, cannot be sustained upon the ground of sovereignty over the Treaty concession by any better reason than new legislation of that quality and effect. If the Treaty predominates over subsequent provincial legislation, encroaching upon the Treaty concession by stronger reason, it supplants previous provincial legislation, subversive or restrictive, of the Treaty concession. If such previous legislation persists after the Treaty comes into operation, it must be because the Treaty, in terms or by just interpretation, accepts this previous legislation as a part of itself. But this is the predominance of the Treaty, and not of the legislation, which thenceforth owes its vigour to the stipulations of the Treaty by which the United States adopts and confirms the provincial legislation in force at its date. This is, in substance, the British contention, and, in the failure of the doctrine of reserved sovereignty, is the only alternative basis of the present proposition of the British Government.

The subject thus brought into dispute at this late date in the progress of the fishery negotiations between the two countries is, simply, what the fishery in provincial waters, which the British Government had at its disposal, and which we acquired at its hands as a matter of property and beneficial enjoyment, really was.

That the British proprietorship in and dominion over this inshore fishery was perfect, absolute, and without incumbrance or limitations, and that this was the subject concerning which the negotiations were occupied, and by and to which the Treaty equivalents were to be measured and applied, was certainly never doubted by the negotiators of this Treaty on the part of the United States or of Great Britain. Whatever this fishery was in its natural extent and value, in its geographical area, and its multitude and variety of fish products, that was the subject of which Great Britain possessed the *jus disponendi* and that the subject of which the United States proposed to acquire an undivided share. The proportion of this fishery which Great Britain was to part with and the United States was to appropriate does not affect the question of what the entire property was and was understood to be. Whatever the United States would have acquired had Great Britain parted with the whole fishery, the subject partitioned between them was this entirety, no matter what the shares in which it was to be enjoyed might be. It is equally clear that the negotiators on both sides assumed that Great Britain was dealing with this subject as sole owner, and that it had impaired neither its title nor its possession by any previous grant or incumbrance. Whatever right and enjoyment, then, by proprietorship and dominion Great Britain, in its political sovereignty, could impart to "the subjects of Her Britannic Majesty," that right and enjoyment Great Britain could impart "to the inhabitants of the United States."

This being the subject of the grant, and this the title and possession of the grantor, what is the Treaty description of the estate, right, and privilege granted to the United States for the enjoyment of its citizens? The text of the Fishery Articles of the Treaty of Washington shows that there was no limitation whatever upon the grant, except that the estate, right, and privilege granted were to endure but for a term of years, and were to be enjoyed by the United States, not exclusively, but in common with Great Britain. There was, to be sure, a restriction imposed upon both countries which excluded both equally from extending the enjoyment of either's

share of the common fishery beyond "the inhabitants of the United States" on the one side, and "Her Britannic Majesty's subjects" on the other, thus disabling either Government from impairing the share of the other by introducing foreign fishermen into the common fishery. But this feature in the grant has no significance in the measure of the concession as now disputed by Great Britain and contended for by the United States.

The British contention imputes to the phrase of the Treaty, "in common with the subjects of Her Britannic Majesty," not only its manifest effect of excluding any possible conclusion that the privilege conceded to the United States was exclusive, but the further effect of measuring the subject of the grant—that is, the fishery itself—as it was then, at the very date of the Treaty, regulated by the various laws of the maritime provinces.

For this interpolation there seems no justification, either in reason or in the history of the negotiation. There is not the least evidence that it was present to the mind of either of the High Contracting Parties to the Treaty that the subject of the fishery to be partitioned between them was any less than such as it was in its natural dimensions and quality, and such as it was, as a subject of human control, at the unlimited disposal of British sovereignty. What these provincial laws were no one inquired and no one disclosed. That the fishery our sea-going fishermen were to share in was a fishery regulated by and for the local population, fishing from the shore, no one conceived. That the title of Great Britain should be examined, a warranty against adverse title and possession or against incumbrances exacted, would have seemed both foolish and offensive to the High Joint Commission which negotiated this Treaty. To the apprehension of all, the map and statistics of the catch showed what the fishery was in extent and value, and the dominion of Great Britain over the subject measured the security of the right which we were about to acquire.

The proposition of Lord Salisbury reduces the grant of the fishery from the dimensions of the fishery as Great Britain had power to convey it, and by its more natural description would convey it, to the fishery as it had been trimmed and curtailed by local legislation and was to be regulated by local administration. He reduces our enjoyment from a freedom of the fishery such as the plenary political power of Great Britain could impart to its subjects, and could share with the United States to be enjoyed by their inhabitants, to the use of the fishing methods and seasons of the provincial coast population as their faculties and occasions had arranged them. And this interpretation of the subject of the grant by which one parted with, and the other acquired, nothing of value, turns upon the phrase of the Treaty which defines the estate conveyed as not exclusive, but to be held in common.

Fortunately the closing transaction between the two Governments by which the fishery concession to the United States was to be measured and valued, and compensation on our part therefor to be adjusted according to the measure and value of the provincial fishery, not in the abstract, but as opened to our fishermen, furnished an opportunity to take the estimate both of the British and provincial Governments of the extent and comprehension of the subject of the grant. This transaction antedates the present disputation, and brings the two Governments together in a computation before the Halifax Commission of the nature, extent, and benefit of the inshore provincial fishery.

The considerations for the British concession were threefold: first, an equivalent fishery concession on our own coasts; second, exemption of provincial fish products from duties, or the concession of our free market; third, such supplemental money payment as the nature, extent, and value of the British fishery concession, in the judgment of the Halifax Commission, would warrant or require. It would be enough to say that the present pretensions of the British Government in reduction of the grant were not presented in depreciation of the price we were to pay, nor was any subjection of the natural fishery to political or municipal disparagement advanced by us in reduction of the money value with which we were to be charged. But the British and provincial Governments are precluded from the present pretensions not by silence alone as to these latent limitations and incumbrances upon the grant when its price was being adjusted by the Halifax Award. The Case of the British Government presents, in the most open and unequivocal terms, the measure of the grant in the sense both of benefit to the United States and of injury to the provincial fishermen. The conduct of the contention throughout maintained the freedom of the fishery to the methods and occasions of our fishing enterprise and skill, and insisted upon the *right accorded* (which might exhaust and destroy the fisheries so as to

depreciate their benefit to the coast population even beyond the Treaty period), and not its actual exercise by our fishermen as the standard of estimate by which our money payment was to be fixed.

In "the Case of Her Majesty's Government" submitted to the Halifax Commission the following language is used to illustrate and enforce the advantage in the extent and method of fishing secured by the Treaty of 1871 over the restrictions of the Convention of 1818:—

"The Convention of 1818 entitled United States' citizens to fish on the shores of the Magdalen Islands, but denied them the privilege of landing there. *Without such permission the practical use of the inshore fisheries was impossible.* Although such permission has tacitly existed, as a matter of sufferance, it might at any moment have been withdrawn, and the operations of the United States' fishermen in that locality would thus have been rendered ineffectual. The value of these inshore fisheries is great; mackerel, herring, halibut, capelin, and launce abound, and are caught inside of the principal bays and harbours, where they resort to spawn. Between 300 and 400 United States' fishing vessels yearly frequent the waters of this group, and take large quantities of fish, both for curing and bait. A single seine has been known to take at one haul enough of herrings to fill 3,000 barrels. Seining mackerel is similarly productive. During the spring and summer fishery of the year 1875, when the mackerel were closer inshore than usual, *the comparative failure of the American fishermen was owing to their being unprepared with suitable hauling-nets and small boats, their vessels being unable to approach close enough to the beaches.*

"In the case of the remaining portions of the seaboard of Canada, the terms of the Convention of 1818 debarred United States' citizens from landing at any part for the *pursuit of operations* connected with fishing. *This privilege is essential* to the successful prosecution of both the inshore and deep-sea fisheries. By it they would be enabled to prepare their fish in a superior manner, in a salubrious climate, as well as more expeditiously, and they would be relieved of a serious embarrassment as regards the disposition of fish offals, by curing on shore the fish which otherwise would have been dressed on board their vessels and the refuse thrown overboard.

"*All the advantages above detailed have been secured for a period of twelve years to United States' fishermen. Without them, fishing operations on many parts of the coast would be not only unremunerative but impossible; and they may therefore be fairly claimed as an important item in the valuation of the liberties granted to the United States under Article XVIII of the Treaty of Washington.*"—"*Halifax Com.*," vol i, p. 93.

And again:—

"4. *Formation of fishing establishments.*

"*The privilege of establishing permanent fishing stations* on the shores of Canadian bays, creeks, and harbours, akin to that of landing to dry and cure fish, is of material advantage to United States' citizens.

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"There are further advantages derivable from permanent establishments ashore, such as the accumulation of stock and *fresh fish preserved in snow or ice, and others kept in frozen and fresh state by artificial freezing.*"—*Ibid.*, pp. 94, 95.

In that portion of the same "Case" which specially regards the character of the Newfoundland fishery and points out with elaborate precision the rights of United States' fishermen on the shores of that island and the compensation demanded therefor, the British Government says:—

"I. *The entire freedom of the Inshore Fisheries.*

"Newfoundland, from that part of its coast now thrown open to United States' fishermen, yearly extracts, at the lowest estimate, 5,000,000 dollars' worth of fish and fish oil; and when the value of fish used for bait and local consumption for food and agricultural purposes, of which there are no returns, is taken into account, the total may be fairly stated at 6,000,000 dollars annually.

"It may possibly be contended, on the part of the United States, that their fishermen have not in the past availed themselves of the Newfoundland inshore fisheries, with but few exceptions, and that they would and do resort to the coasts of that island only for the purpose of procuring bait for the bank fishery. This may, up to the present time, to some extent, be true as regards codfish, but not as regards herring, turbot, and halibut. *It is not at all probable that, possessing as they now do the right to take herring and capelin for themselves on all perts of the Newfoundland coasts, they will continue to purchase as heretofore, and they will thus prevent the local fishermen,*

especially those of Fortune Bay, from engaging in a very lucrative employment which formerly occupied them during a portion of the winter season for the supply of the United States' market.

"The words of the Treaty of Washington, in dealing with the question of compensation, makes no allusion *to what use* the United States may or do make of the privileges granted them, but simply state that, inasmuch as it is asserted by Her Majesty's Government that the privileges accorded to the citizens of the United States under Article XVIII are of greater value than those accorded under Articles XIX and XXI to the subjects of Her Britannic Majesty, and this is not admitted by the United States, it is further agreed that a Commission shall be appointed, having regard to the privileges accorded by the United States to Her Britannic Majesty's subjects in Articles XIX and XXI, the amount of any compensation to be paid by the Government of the United States to that of Her Majesty in return for the privileges accorded to the United States under Article XVIII.

"It is asserted, on the part of Her Majesty's Government, that the actual use which may be made of this privilege at the present moment is not so much in question as the actual value of it to those who may, if they will, use it. It is possible, and even probable, that United States' fishermen may at any moment avail themselves of the privilege of fishing in Newfoundland inshore waters to a much larger extent than they do at present; but even if they should not do so, it would not relieve them from the obligation of making the just payment for a right which they have acquired subject to the condition of making that payment. The case may be not inaptly illustrated by the somewhat analogous one of a tenancy of shooting or fishing privileges; it is not because the tenant fails to exercise the rights which he has acquired by virtue of his lease that the proprietor should be debarred from the recovery of his rent.

"There is a marked contrast, to the advantage of the United States' citizens, between the privilege of access to fisheries the most valuable and productive in the world, and the barren right accorded to the inhabitants of Newfoundland of fishing in the exhausted and preoccupied waters of the United States north of the thirty-ninth parallel of north latitude, in which there is no field for lucrative operations, even if British subjects desired to resort to them; and *there are strong grounds for believing that year by year, as United States' fishermen resort in greater numbers to the coasts of Newfoundland for the purpose of procuring bait and supplies, they will become more intimately acquainted with the resources of the inshore fisheries and their unlimited capacity for extension and development.* As a matter of fact, United States' vessels have, since the Washington Treaty came into operation, been successfully engaged in these fisheries; and it is but reasonable to anticipate that, as the advantages to be derived from them become more widely known, larger numbers of United States' fishermen will engage in them.

"A participation by fishermen of the United States in the freedom of these waters must, notwithstanding their wonderfully reproductive capacity, tell materially on the local catch, and, while affording to the United States' fishermen a profitable employment, must seriously interfere with local success. The extra amount of bait also which is required for the supply of the United States' demand for the bank fishery must have the effect of diminishing the supply of cod for the inshores, as it is well known that the presence of that fish is caused by the attraction offered by a large quantity of bait fishes, and as this quantity diminishes the cod will resort in fewer numbers to the coast. The effect of this diminution may not in all probability be apparent for some years to come, and while United States' fishermen will have the liberty of enjoying the fisheries for several years in their present teeming and remunerative state, the effects of over-fishing may, after their right to participate in them has lapsed, become seriously prejudicial to the interests of the local fishermen. (*Ibid.*, pp. 103, 104.)

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"It is impossible to offer more convincing testimony as to the value to United States' fishermen of securing the right to use the coast of Newfoundland as a basis of operations for the bank fisheries than is contained in the declaration of one who has been for six years so occupied, sailing the ports of Salem and Gloucester, in Massachusetts, and who declares that it is of the greatest importance to United States' fishermen to procure from Newfoundland the bait necessary for those fisheries, and that such benefits can hardly be over-estimated; that there will be, during the season of 1876, upwards of 200 United States' vessels in Fortune Bay for bait, and that there will be upwards of 300 vessels from the United States engaged in the Grand Bank

fishery; that owing to the great advantage of being able to run into Newfoundland for bait of different kinds, they are enabled to make four trips during the season; that the capelin, which may be considered as a bait peculiar to Newfoundland, is the best which can be used for this fishery, and that a vessel would probably be enabled to make two trips during the capelin season, which extends over a period of about six weeks. The same experienced deponent is of opinion that the bank fisheries are capable of immense expansion and development, and that the privilege of getting bait on the coast of Newfoundland is indispensable for the accomplishment of this object.

"As an instance of the demand for bait supplies derived from the Newfoundland inshore fisheries, it may be useful to state that the average amount of this article consumed by the French fishermen, who only prosecute the bank fisheries during a period of about six months of the year, is from 120,000 to 160,000 dollars annually. *The herring, capelin, and squid amply meet these requirements, and are supplied by the people of Fortune and Placentia Bays*, the produce of the Islands of Saint Pierre and Miquelon being insufficient to meet the demand.

"It is evident from the above considerations that not only are the United States' fishermen almost entirely dependent on the bait supply from Newfoundland, now open to them for the successful prosecution of the bank fisheries, but also that they are enabled, through the privileges conceded to them by the Treaty of Washington, to largely increase the number of their trips, and thus considerably augment the profits of the enterprise. This substantial advantage is secured at the risk, as before mentioned, of hereafter depleting the bait supplies of the Newfoundland inshores, and it is but just that a substantial equivalent should be paid by those who profit thereby.

"We are therefore warranted in submitting to the Commissioners that not only should the present actual advantages derived on this head by United States' fishermen be taken into consideration, but also the probable effect of the concessions made in their favour. The inevitable consequence of these concessions will be to attract a larger amount of United States' capital and enterprise, following the profits already made in this direction, and the effect will be to inflict an injury on the local fishermen, both by the increased demand on their sources of supply and by competition with them in their trade with foreign markets."—*Ibid.*, pp. 105, 106.

"*Conclusion.*

"It has thus been shown that under the Treaty of Washington there has been conceded to the United States—

"First. The privilege of *an equal participation* in a fishery vast in area, teeming with fish, continuously increasing in productiveness, and now yielding to operatives, very limited in number when considered with reference to the field of labour, the large annual return of upwards of 6,000,000 dollars, of which 20 per cent. may be estimated as net profit, or 1,200,000 dollars.

"It is believed that the claim on the part of Newfoundland in respect of this portion of the privileges acquired by United States' citizens under the Treaty of Washington will be confined to the most moderate dimensions when estimated at one-tenth of this amount, namely, 120,000 dollars per annum, or, for the twelve years of the operation of the Treaty, a total sum of 1,440,000 dollars."—*Ibid.*, pp. 107, 108.

To this "Case" the United States' Government filed an answer, and the British Government filed a reply to the answer in which it repeated its contention:—

"The words '*for no other purposes whatever*' are studiously omitted by the framers of the last-named Treaty, and *the privilege, in common with the subjects of Her Britannic Majesty, to take fish and to land for fishing purposes, clearly includes the liberty to purchase bait and supplies, tranship cargoes, &c., for which Her Majesty's Government contend it has a right to claim compensation.*

"It is clear that these privileges were not enjoyed under the Convention of 1818, and it is equally evident that they are enjoyed under the Treaty of Washington."—*Ibid.*, p. 173.

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"As regards the herring fishery on the coast of Newfoundland, it is availed of to a considerable extent by the United States' fishermen, and evidence will be adduced of large exportations by them in American vessels, particularly from Fortune Bay and the neighbourhood, both to European and their own markets.

"The presence of United States' fishermen upon the coast of Newfoundland, so

far from being an advantage, as is assumed in the Answer, operates most prejudicially to Newfoundland fishermen. Bait is not thrown overboard to attract the fish, as asserted, but the United States' bank-fishing vessels, visiting the coast in such large numbers as they do, for the purpose of obtaining bait, sweep the coves, creeks, and inlets, thereby diminishing the supply of bait for local catch, and scaring it from the where it would otherwise be an attraction to the cod."—*Ibid.*, p 186.

It forms no part of my purpose in this Report to adduce in argument or proof the manifold supports to the view now presented which the record of the diplomatic history of the fishery negotiations between the two countries or the documents and proceedings of the Halifax Commission contain. It is very apparent throughout them both that the obliteration of the sea-line of demarcation between the rights of our fishermen and those of British fishermen we regarded of principal value as removing the sources of irritation between them and possible occasions of controversy and estrangements between the two nations. In my despatch to Mr. Welsh of the 27th September, 1878, I laid before the British Government this disposition on our part as furnishing the leading purpose in the framing of the Fishery Articles of the Treaty of Washington. I then said that "politically and in the interest of good neighbourhood this Government did regard, and at all times would regard, the restoration of the relations between the two countries in the common enjoyment of these fisheries to the ancient footing of the Treaty of 1873 as most grateful in sentiment and as a most valuable guarantee against any renewal of strife." In the British "Case" before the Halifax Commission Her Majesty's Government definitely insisted upon this assured position of our public relations in this regard as an element of consideration in the Award they asked from the Commission. Her Majesty's Government drew the attention of the Commissioners "to the great importance attaching to the beneficial consequences to the United States of honourably acquiring for their fishermen full freedom to pursue their adventurous calling without incurring constant risks and exposing themselves and their fellow-countrymen to the inevitable reproach of wilfully trespassing on the rightful domain of friendly neighbours. Paramount, however, to this consideration is the avoidance of irritating disputes, calculated to disquiet the public mind of a spirited and enterprising people, and liable always to become a cause of mutual anxiety and embarrassment. It was repeatedly stated by the American members of the Joint High Commission at Washington, in discussing proposals regarding the Canadian fisheries, "that the United States desired to secure their enjoyment, not for their commercial or intrinsic value, but for the purpose of removing a source of irritation."

The experience of our Fortune Bay fishermen in their first attempt, in the sixth year of the running of the Treaty, to exercise on the coast of Newfoundland the "full freedom to pursue their adventurous calling," which Her Majesty's Government said had been honourably acquired for them by their own Government, is exhibited in the papers now submitted, as is also the treatment of their grievance and this Government's presentation of it accorded by Her Majesty's Government.

The British Government claimed before the Halifax Commission the sum of 120,000 dollars per annum during the twelve years of the Treaty period, or the gross sum of 1,440,000 dollars, for the advantage to the United States of the fishing privilege proper on the Newfoundland coast alone, conceded by the Treaty, over and above the counter-concessions of our inshore fishery and the remission of duty on their fish products.

The Halifax Award of 5,500,000 dollars for the Dominion of Canada and Newfoundland together has been divided between them by the British Government, and the sum of 1,000,000 dollars has been received by Newfoundland as its share of the money payment made by the United States under the Treaty. It will be observed that under the British view of the exposure of our fishermen at Fortune Bay to the penalties of infractions of the provincial laws, while they were enjoying in their own opinion and that of this Government the full freedom of the fishery accorded by the Treaty, there is no pretence that the violence offered them, and the wanton destruction of their fishing property, and spoliation of their draught of fishes, find any warrant in the supremacy of violated law under colour of which the British Government has refused them any indemnity. In this attitude of the British Government, as taken in the correspondence, the violent expulsion of our fishermen from their fishery on the 6th January, 1878, by the coast fishermen of Newfoundland seems to be justified, if not espoused. This position, too, of that Government necessarily carries a warning that any future attempt by our fishermen to exercise their Treaty privileges, except in conformity to the local fishing regulations, will be resisted by the authority of the

British Government as well as exposed to the violence of the coast fishermen. Under this unhappy and unexpected failure of accord between the two Governments as to the measure of the inshore fishing privileges secured to our fisherman by the Treaty of Washington, as developed in this correspondence, it becomes the imperative duty of this Government to consider what measures should be taken to maintain the rights of our people under the Treaty, as we understand them, and to obtain redress for their expulsion from the enjoyment of their rights.

So far as this diminution of these privileges calls for a reconsideration of the Treaty equivalents already parted with by this Government and received by Great Britain, as suitable to the failure of the privileges thus purchased and paid for, by this denial of their exercise so as to be valuable or desirable to our people, that subject necessarily must be remitted to diplomatic correspondence.

The only continuing consideration the United States is paying for the Treaty period, for the expected enjoyment of the Treaty concessions, is the remission of our customs duties upon the fish products of the provincial share in these fisheries. I respectfully advise that it be recommended to Congress to re-enforce the duties upon fish and fish oil, the products of the provincial fisheries, as they existed before the Treaty of Washington came into operation, to so continue until the two Governments shall be in accord as to the interpretation and execution of the Fishery Articles of the Treaty of Washington, and in the adjustment of the grievance of our fishermen from the infraction of their rights under that Treaty.

This measure will give to our fishermen, while excluded from the enjoyment of the inshore fisheries under the continued enforcement of the British interpretation of the Treaty, a restoration of the domestic market for the product of their own fishing industry, as it stood before its freedom was thrown open to the provincial fishermen in exchange for the free fishery opened to our fishermen.

I respectfully advise, also, submitting to the consideration of Congress the propriety of authorizing the examination and auditing of the claims of our fishermen for injuries suffered by the infraction or denial of their Treaty privileges, with the view of some ultimate provision by Convention with Great Britain or by this Government for their indemnity.

(Signed) W. M. Evarts.

Mr. Cox.—I move the letters and accompanying papers be referred to the Committee on Foreign Affairs, and ordered to be printed.

Mr. Loring.—I move, Mr. Speaker, that the Message of the President and the accompanying Report of the Secretary of State be printed in the "Record," and that, together with the accompanying papers, they be referred to the Committee on Foreign Affairs.

Mr. Cox.—Besides being printed in the "Record," that, together with the Message and accompanying letter of the Secretary of State, the correspondence also be printed in the usual form.

There was no objection, and it was ordered accordingly.

No. 12.

Earl Granville to Sir E. Thornton.

Sir, *Foreign Office, June* 9, 1880.

I HAD to-day an interview with the United States' Minister at this Court respecting the Fortune Bay affair.

Mr. Lowell stated that there was a much stronger and deeper feeling on the other side of the Atlantic upon this question than was appreciated here. There was, he said, a feeling that a wrong had been done which ought to be redressed.

We agreed that this was a reason why both Governments should try to settle the question.

I observed that the present Government had not their reputation to make as to a wish to act in a conciliatory manner towards the United States, but that we could make no concession which could not be made with perfect justification.

I then asked Mr. Lowell whether he had any suggestions to make. He replied, "none;" that his instructions were to conform his language to that of Mr. Evarts' note. I inquired whether it would not be possible to separate the two questions of the interpretation of the Treaty and of the attack upon the American fishermen. He

replied that he feared it might be too late to do this, but that, at my request, he would be prepared to ask the question.

Mr. Lowell added, not officially, but only as his personal opinion, that there would be no precipitate action on the part of the United States. The President, he said, had power to act, but the moment for doing so was at his own discretion.

We finally agreed to renew our conversation upon this subject at an early date.

I am, &c.

(Signed) GRANVILLE.

No. 13.

Mr. Lowell to Earl Granville.—(*Received June* 12.)

My Lord, *United States' Legation, London, June* 12, 1880.

REFERRING to my conversation with your Lordship on the 9th instant, I have the honour to acquaint you that I took pleasure in communicating by cable the next day to my Government the friendly sentiments of your Lordship in respect to the differences between the two countries on the Fishery question.

I have this morning received a telegram from Mr. Evarts, by which he desires me to communicate his great gratification at the expression by your Lordship of the friendly disposition of the British Cabinet, a disposition which, he states, he should have been ready to assume from the public character of its members. He adds that the President will be quite ready to entertain any considerations which may be presented to the Secretary of State to relieve the question of the fisheries from its present difficulties, and that the Bill now pending before Congress extends to the President adequate discretionary power to meet an accord between the two Governments respecting the fishery rights of the United States under the Treaty, should such an accord be established during the recess of Congress.

I have, &c.

(Signed) J. R. LOWELL.

UNITED STATES. No. 1 (1880).

FURTHER CORRESPONDENCE respecting the Occurrences at Fortune Bay, Newfoundland, in January 1878.

[In continuation of "North America No. 3 (1878)."]

Presented to both Houses of Parliament by Command of Her Majesty. 1880.

LONDON:
PRINTED BY HARRISON AND SONS.

786

CANADA.

COPY OF A DESPATCH

FROM THE

GOVERNOR-GENERAL OF CANADA.

FORWARDING A REPORT OF A COMMITTEE OF THE PRIVY COUNCIL ON A PROPOSAL FOR THE ORGANISATION OF AN IRISH IMMIGRATION TO MANITOBA AND THE NORTH-WEST.

Presented to both Houses of Parliament by Command of Her Majesty.
March 1881.

LONDON:
PRINTED BY GEORGE EDWARD EYRE AND WILLIAM SPOTTISWOODE,
PRINTERS TO THE QUEEN'S MOST EXCELLENT MAJESTY.
FOR HER MAJESTY'S STATIONERY OFFICE.

1881.

[C.—2835.] *Price* ½*d.*

CANADA.

GOVERNOR-GENERAL THE MARQUIS OF LORNE, K.T., G.C.M.G., to the RIGHT HON. THE EARL OF KIMBERLEY. (Received November 23, 1880.)

Government House, Ottawa,
November 9, 1880.

MY LORD,

I HAVE the honour to transmit herewith for your Lordship's information, a copy of a report of a Committee of the Privy Council adopting a memorandum prepared by the Minister of Agriculture containing a proposal for the organisation of an Irish Immigration to Manitoba and the North-West.

I have, &c.
(Signed) LORNE.

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

Enclosure.

COPY of a REPORT of a COMMITTEE of the HONOURABLE the PRIVY COUNCIL for CANADA, approved by His Excellency the GOVERNOR-GENERAL, on the 5th November 1880.

ON the recommendation of the Honourable the Minister of Agriculture, the Committee advise that the accompanying memorandum be adopted as a proposal for the organisation of an Irish Immigration to Manitoba and the North-West, and that the same should be communicated to the Right Honourable the Secretary of State for the Colonies by your Excellency and through the High Commissioner for Canada in England, should your Excellency see no objection to that course.

Certified, J. O. COTÉ,
Clerk, Privy Council, Canada.

MEMORANDUM.

ON the suggestion made to him by the High Commissioner of Canada in England, Sir A. T. Galt, G.C.M.G., the undersigned has the honour to propose the following as a basis of joint action in promoting Irish Immigration should the Imperial Government entertain the project.

The Canadian Government, sympathising with their fellow subjects of Ireland in their distressed circumstances, would cheerfully co-operate in a well considered measure of relief by means of a systematic immigration from Ireland. If such a system of Irish immigration were established it is evidently a condition precedent to obtaining the cordial co-operation of Canada, that the immigrants should not become a burden upon the existing population.

In the case of single men and women no serious difficulty would arise, as employment can readily be found. But in the present distressed circumstances of Ireland, it is manifest that it is only by the removal of entire families that any sensible relief would be experienced from the pressure of a redundant population.

Provision would have, therefore, to be made, not only for the transport of the families to their place of settlement, but also for their maintenance until a crop can be had from the land.

In the older Provinces of the Dominion where the land is all heavily timbered, the difficulty of managing a large immigration would be very great. But in the vast fertile plains of the North-West, the question becomes comparatively easy of solution.

By very simple pre-arrangement any required number of farm lots could be prepared for occupation, in the season preceding the arrival of the immigrants, a small dwelling erected, a certain extent of the prairie land broken up and prepared for seed, and in the case of late arrival, actually sown, so as to ensure a crop the same season that the immigrants were placed in possession. This work could be done by contract under proper supervision, and would give employment on arrival to the new immigrant while

his crop was growing, thereby greatly reducing the cost of the undertaking and really limiting it ultimately to little more than the cost of his transport, as the repayment of advances by the earlier settlers would soon be sufficient to meet the annual outlay for preparing new lands.

The cost of removing an immigrant family consisting of parents and three children from the port of embarkation to Winnipeg may now be taken at about 40*l.* subject to a certain increase for their transport thence to their farm lot. The dwelling and eight acres of land prepared for crop with seed may be estimated at from 35*l.* to 40*l.* Some provision for the family might be required on arrival but the wages of the man ought to suffice for the support of his family till his crop is harvested, after which the immigrant may be regarded as self-supporting.

The Canadian Government provides each settler with a "free grant" of 160 acres, subject only to a patent fee of 2*l.* The settler can also secure the preemption of 160 acres adjoining at the current price and usual conditions.

For the re-imbursement of the outlay for transport and for establishing the immigrant upon his farm, it is suggested that the Canadian Government would provide that the total cost, as certified to their agent, and acknowledged by the settler, should form a first charge on the land, payable by certain annual instalments with interest.

To obviate the misconstruction to which Her Majesty's Government might be exposed in favouring any Canadian system of immigration, two points seem to be important.

1. Instead of direct action by Her Majesty's Government, it is suggested that the whole movement should be conducted under the auspices of a Commission or of a National Emigration Association, with an adequate organization, both at home and in Canada, and that the pecuniary aid should be given by the Imperial Government in the form of advances to such Association or Commission, at a low rate of interest, secured upon the settlers' land.

2. All immigration should be voluntary and assistance should be equally granted to all who come under the conditions laid down.

Were such a Commission or such an Association established, certain tracts of land would be placed at their disposal for settlement, which, under their officers would be prepared for the incoming families. The Association or Commission would also charge itself with the dissemination of information at home and with the selection and shipment of the immigrants while the Canadian Government would make them participant of any reduction on passages obtained in favour of immigrants, and cause them to be cared for on arrival and forwarded at the expense of the Commission or of the Association to Winnipeg where they would be met by the Government Land Guides and shown by them their respective lots; after which proceedings, the officers of the Commission or of the Association would take them in charge and see them installed on their land, which would have been prepared for occupation during the previous season.

The whole respectfully submitted.

(Signed) J. H. Pope,
Minister of Agriculture.

Department of Agriculture,
Ottawa, October 30, 1880.

PRINCE EDWARD ISLAND.

FURTHER CORRESPONDENCE

RELATIVE TO THE

LAND TENURE QUESTION.

(In continuation of [C.–1487] April, 1876.)

Presented to both Houses of Parliament by Command of Her Majesty.
February 1881.



LONDON:
PRINTED BY GEORGE EDWARD EYRE AND WILLIAM SPOTTISWOODE,
PRINTERS TO THE QUEEN'S MOST EXCELLENT MAJESTY.
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1881.

[C.—2795. *Price* 8*d*.

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Q 4685. G 179. Wt. 17015.

CANADA.

No. 1.

GOVERNOR GENERAL THE EARL OF DUFFERIN, K.P., K.C.B., to the RIGHT HON. THE EARL OF CARNARVON. (Received June 6, 1876).

MY LORD, Government House, Ottawa, May 26, 1876.

I HAVE the honour to enclose for your lordship's information a copy of a letter addressed to the Secretary of State for Canada by the Lieutenant Governor of the Province of Prince Edward Island, submitting for my consideration an attested copy of a reserved Bill passed in the late session of the Legislature of that province, entitled "An Act to amend the Land Purchase Act of 1875," together with a memorandum by the Attorney General assigning reasons for passing the measure.

I have &c.

The Right Honourable the Earl of Carnarvon, &c. &c. &c.

(Signed) DUFFERIN.

Enclosure 1. in No 1.

The LIEUTENANT GOVERNOR, Prince Edward Island, to the SECRETARY of STATE FOR CANADA.

Province of Prince Edward Island, Government House,

SIR, May 12, 1876.

I HAVE the honour to transmit herewith for the consideration and approval of His Excellency the Governor General, an Act passed in the late session of the Legislature of this Province, entitled "An Act to amend the Land Purchase Act of 1875," in triplicate, sealed and certified in the usual manner, and accompanying it, are the reasons, in duplicate, assigned by the Attorney General for its passing.

* * * * * *

The Act amending the Land Purchase Act, 1875, was reserved by me for the signification of His Excellency's pleasure thereon.

* * * * * *

I beg respectfully to call His Excellency's attention to the Attorney General's report, and to his reasons therein stated for the passing of the Act amending the Land Purchase Act, 1875, in which I concur, and which appear to me so pertinent and cogent, and I think so clearly show how necessary its provisions are to the effectual working of the Act alluded to, as to call for no particular observations on my part, beyond expressing my hope that it will receive His Excellency's favourable consideration.

* * * * * *

The Land Commissioners Court, standing adjourned to the 1st day of July next, it is very desirable to know His Excellency's pleasure as regards the Act amending the Land Purchase Act previous to that period.

* * * * * *

I have &c.

The Hon. the Secretary of State, Ottawa.

(Signed) R. HODGSON, Lieut. Governor.

Enclosure 2. in No. 1.

Attorney General's Office, Charlottetown, Prince Edward Island, May 6, 1876.

REPORT of Attorney General setting forth reasons for the passing of the Act to amend "The Land Purchase Act, 1875."

This Act was passed by the Legislature of this Province last session for the purpose of removing doubts as to the meaning and construction of some of the provisions of "the Land Purchase Act, 1875," and to extend its powers.

By the 28th section and subsections of said Act, it is provided that the Commissioners appointed thereunder in estimating the amount of compensation to be paid to a proprietor for his estate should take into consideration the price at which other proprietors had heretofore sold their lands to the Government, the number of acres under lease, the length of leases, the rent reserved, the arrears, the years over which they extend, and the probability of their being recovered, the number of acres unleased, and their value, the gross rental actually paid for the previous six years, with the expenses incident to their collection, the number of acres held adversely, the reasonable probabilities of the proprietor sustaining his claim against squatters, and the expenses attending thereon, the performance or nonperformance of the conditions in the original grants from the Crown, the effect of such nonperformance, and how far the several despatches from the English Colonial Secretaries to the Lieutenant Governor of this Island or other action of the Crown or Government have operated as waivers of any forfeitures, the quitrents reserved in the original grants, and how far the payments of the same have been waived or remitted by the Crown.

Proceedings have been taken in many cases under "the Land Purchase Act, 1875," by the Commissioner of Public Lands for the purchase of the estates of proprietors, and awards have been made by the Commissioners appointed to adjudicate thereon. The awards made in those cases adjudicated upon by the Commissioners, of whom the Right Honourable Hugh C. E. Childers was chairman, were on the face of them silent as to the matters set forth in the section 28 and its subsections, although, in fact, they were as fully investigated and enquired into by the Commissioners as the nature of the several cases would permit of, and were taken into their consideration in estimating the value of the lands. This section was looked upon and construed as merely directory of the matters they were to consider in forming their conclusions as to the value of the proprietors' estates.

It never was contemplated as enacting matters which the Commissioners should be bound specifically to set out on the face of their awards; such a construction as that would operate to defeat the object of the Act entirely, inasmuch as no specific award could be made on some of the points, such, for instance, as the boundaries of the land held by each squatter, without endless trouble and expense.

The awards were drawn in general terms, simply stating the sum awarded to the proprietor, giving no description of the land nor the acreage, and making no reference to the matters mentioned in section 28.

A large majority of the proprietors whose estates were thus awarded for have not appealed from the awards, but the decision of the Supreme Court has thrown doubts upon the validity of these awards, which doubts it is essential should be removed. Applications were made in two cases on behalf of the proprietors (Miss Sulivan and the Honourable Ponsonby Fane) to restrain the public trustee from executing a conveyance of their estates under section 32 of the main Act, and to set aside the awards on the grounds that they did not expressly find and determine on their face the matters mentioned in said section 28 and subsections, and that they were uncertain inasmuch that they did not describe the lands by metes and bounds, nor give the acreage.

The Supreme Court of this Province has decided in favour of these objections, and has quashed the awards in both of the cases argued before them.

The Commissioner of Public Lands has appealed Miss Sulivan's case to the Supreme Court at Ottawa; negotiations for a peaceful settlement of the Fane estate are pending. I have no hesitation in stating that the intention of the Legislature was that the facts and circumstances set forth in the said section 28 and subsections were merely to be taken into consideration by the Commissioners in valuing the land and not that the finding on each fact and circumstance should be specifically set forth in their awards.

Indeed it would seem from the very matters themselves that they were intended more as guides to the Commissioners in making their awards than subjects for any specific finding, such, for instance, as the probabilities of proprietors recovering land from squatters, and the effect of despatches from the Colonial Office relative to the performance and nonperformance of the conditions under which this island was originally granted away by the Crown.

For the purpose of carrying out the intention of the Local Legislature, this Act provides that no awards heretofore made or hereafter to be made shall be void by reason of the said facts and circumstances not being expressly found in such awards, but still retains to the Supreme Court the power of remitting them back to the Commissioners in cases where they do not contain descriptions of the estates, and also power to restrain the public trustee from executing a conveyance of such estates until a description shall be settled by the Court.

It also extinguishes all quitrents and arrears thereof due on all estates adjudicated on, and releases the proprietors from all liability on account thereof.

The Act also makes provision to meet the case of James F. Montgomery, Esquire, who made an application to the Supreme Court to have the award in his case remitted back to the Commissioners to correct an alleged omission. It appears that between the time of making the award and the order to remit it back Mr. Childers, the Commissioner appointed by his Excellency the Governor-General resigned his position and left this Province; doubts were consequently entertained whether the Court, as constituted after that gentleman's vacancy, had been filled up, would be competent to review the matters taken into consideration by the Commissioners who made the award.

The Act gives Mr. Montgomery power to appoint a new Commissioner, and provides for the mode of procedure; it also empowers the Commissioners, if they think fit, to make a new award, and they are not to be tied down to the sum named in the award so remitted to them. These provisions and powers are not to be confined to Mr. Montgomery's case, but are to be general in their application, and are intended to apply to any similar case that may arise in working out the Land Purchase Act.

The Act also makes provisions to meet the case of the estate of John Winsloe, a lunatic. .

The Master of the Rolls declined to appoint a Commissioner to act on behalf of the proprietor, deciding that the provisions of the Land Purchase Act did not provide for such a case.

This Act supplies this defect by declaring that the law shall extend to such cases.

This estate of John Winsloe is the only estate owned by a lunatic proprietor, and as the lands surrounding it have been purchased under the Compulsory Act, it is thought necessary to make the law plain enough to embrace John Winsloe's estate.

There is also provision made that where notices for hearing cases have been given under section 14 of the principal Act, and such hearings from some cause or other have not taken place, that the proceedings are not to abate on that account, but that fresh notices may be given. There is a necessity for this amendment.

The Act also extends the time stipulated in section 2 of the main Act for notifying proprietors of the Government's intention to purchase their estates. There are one or two small estates that will elude the operations of this Act if this amendment is not sanctioned. It is proposed to extend the time for a further period of 60 days from the publication of His Excellency the Governor General's assent to this Act.

Provision is also made to meet the case of a Commissioner who may be disqualified to act on account of relationship to a proprietor by authorising the appointment of a new Commissioner ad hoc. A case has arisen which has rendered this provision necessary.

The deed from the Public Trustee to the Commissioner of Public Lands on its production in any Court of Law or Equity in the Province is to be received as primâ facie evidence that the proceedings taken under the Land Act have been regularly complied with. This provision is in my opinion very necessary, without it, it will be difficult to protect the interests of the Government of this Province, and will not, I think, work injustice to individuals.

Proprietors under this Act will be required, before receiving the amount of their awards, to deposit with the Government, their muniments of title, leases, and plans. Without this provision it will be difficult, if not impossible, for the Commissioner of Public Lands to carry out the sale of the lands to the tenants or occupiers.

The Act extends the definition of the term " proprietor " so as to include tenants in tail, this has become necessary in consequence of the decision come to by the Supreme Court, that the Land Purchase Act, 1875, only extends and applies to owners of land in fee simple. As estates tail in land situate in this Province may at any time be barred by the tenant in tail, who can exercise as full a disposing control over such estates as a tenant in fee, it is not considered that this provision is of an objectionable or exceptional character. Provision is made that nothing in this Act shall in any way affect the case of Miss Sulivan, appealed from the Supreme Court of this Province, to the Supreme Court of the dominion of Canada.

All the provisions of this Act are, in my opinion, absolutely necessary for the satisfactory and speedy winding up of the long vexed land question of this Province. It involves no new principle, quoad the intentions of the framers of the principal Act, and will not work any wrong or injury to any proprietor, and is really an Act to remedy practical defects, many of which were not forseen when the Land Purchase Act, 1875, was passed, and have arisen chiefly from the construction put upon that Act by the Supreme Court of this Province.

As the Land Commissioners Court stands adjourned to the 1st of July next, it is very desirable to obtain His Excellency the Governor General's decision upon the Act in question before that date, if possible.

FREDK. BRECKEN,
Attorney General for Prince
Edward Island.

Enclosure 3. in No. 1.

AN ACT TO AMEND THE "LAND PURCHASE ACT."

Passed April 29, 1876.

Preamble. WHEREAS doubts have arisen as to the meaning and construction of many provisions of "The Land Purchase Act, 1875," and it is highly expedient that all such doubts shall be removed:

Be it therefore enacted by the Lieutenant Governor, Council, and Assembly, as follows:

Award not to be void because matters to be considered by Commissioners under 28th sec. of 38 Vict. c. 32. are not expressly found in such award.

I. No award heretofore made or hereafter to be made by the Commissioners appointed or to be appointed under the provisions of "The Land Purchase Act, 1875," or by any two of them, shall be held or deemed to be invalid or void in any court of law or equity, nor shall any injunction or other order be granted by the Supreme Court, or by any judge thereof, restraining the public trustee from executing a conveyance pursuant to the said Act, of the lands and estates of the proprietor for which such award was or shall be made, by reason of the facts or circumstances or any of them, which the Commissioners are directed to take into their consideration by the twenty-eighth section, and sub-sections of the said Act, in estimating the amount of compensation to be paid to any proprietor not having been found expressly in such award, it having been and being the intention of the legislature that such facts and circumstances should only be taken into the consideration of the Commissioners in estimating the compensation they award, but should not be expressly found by them in their award.

No award to be void for want of discription of lands for which award is made. Public Trustee may be restrained.

II. No award heretofore made or hereafter to be made by the Commissioners appointed or to be appointed under the provisions of the said Act shall be held or deemed to be invalid or void in any court of law or equity by reason of such award not containing any description of the lands of the said proprietor for which such award was or shall be made; but the Supreme Court shall have power in any such case to restrain the public trustee from executing a conveyance of the estate of any such proprietor until the description of the lands of such proprietor has been settled by the said court or a judge thereof.

Quit rents released in all cases where award made.

III. No proceedings either *in personam* or *in rem* shall be commenced, prosecuted, or maintained in any court of law or equity, for the recovery of any quit rents reserved in the original grants or the lands of any proprietor for which any award has been made under "The Land Purchase Act, 1875," and all such quit rents shall be deemed and held to have been and to be absolutely and for ever released by such award, and such award shall and may be pleaded in bar by any person or persons whomsoever of any action brought for the recovery of such quit rent.

Preamble.

IV. And whereas the Supreme Court of this island have remitted back the award made by the Commissioners in the matter of the application of the Commissioner of Public Land for the purchase of the estate of James Frederick Montgomery, to correct an alleged mistake or omission therein, and owing to the resignation of the Right Honourable Hugh C. E. Childers, the Commissioner appointed by the Governor General in Council, and one of the Commissioners by whom the said award was made, and his absence from the Colony, doubts have arisen respecting the Commissioners and the mode of procedure to be adopted so as to make an examination into such alleged mistake or omission, and also so as to make a new final and binding award, and it is expedient to remove such doubts and provide machinery to carry out the order of the said Court effectually:

Estate of James F. Montgomery.

Be it therefore enacted that the existing Commissioners respectively appointed by the Governor General of Canada in Council and the Lieutenant Governor of this island in Council, together with the Commissioner appointed or to be appointed by the said proprietor, James Frederick Montgomery, shall have and are hereby declared to have as full power and jurisdiction with reference to the estate of the said James Frederick Montgomery, and the order of the Supreme Court referring the award therein back, and the revising of such award, and the correcting of any mistake or omission therein, and the making and publication of a new award therein, as the Commissioners who made the

said award so remitted back could or would have; and they shall have full power to hear and rehear all evidence offered before them either by the said James Frederick Montgomery or the Commissioner of Public Lands, and to make a new award which shall be legal and binding on all parties and on the estate and land of James Frederick Montgomery.

Notice of hearing.

V. The said Commissioners or any two of them shall cause the Commissioner of Public Lands and the said proprietor, James Frederick Montgomery, to be served with a notice of a time and place when they shall proceed to hear and determine the matters so remitted as aforesaid; and such notice shall be served at least fourteen days before the day of such hearing, and no other notice or publication shall be necessary or requisite.

Vacancy of proprietor's commissioner how filled up.

VI. In case of the death, absence, or refusal to act of the Commissioner appointed by the said James Frederick Montgomery, he shall be at liberty to appoint a new Commissioner; and in case no such new Commissioner is appointed by the said James Frederick Montgomery, and the Commissiener appointed previously by him is dead, absent, or refuses or declines to act, then, and in each and all of such cases the Commissioners for the time being appointed by the Governor General of Canada in Council and the Lieutenant Governor of this island in Council may hear and determine such case and make as valid and binding an award as fully and effectually as if the proprietor's Commissioner had acted.

Power to Commissioner to remodel award.

VII. In case the said Commissioners, or any two of them, find it necessary to make a new award, they shall not be bound in any way by the sum awarded by the Commissioners whose award was so remitted back as aforesaid, but shall award such sum as they may deem just and right, whether the same is greater or less than that awarded by the Commissioners whose award has been remitted back as aforesaid.

Order remitting back award to contain alleged errors, &c.

VIII. In any case where an application is hereafter made, either by the proprietor or the Commissioner of Public Lands, to the Supreme Court to remit any award back to the Commissioners to correct any error, informality, or omission therein, and any order is made by such Supreme Court remitting such award back, such order shall expressly contain the alleged error, informality, or omission for the correction of which such award is remitted; and in any such case where such order is made the Commissioners appointed respectively by the Governor General of Canada in Council and the Lieutenant Governor of this island in Council, and holding office at the time such order remitting back the award is made, shall have full power and jurisdiction, together with the Commissioner of the proprietor, if he will act, to consider such order and such alleged error, informality, or omission, although they may not be the same Commissioners who made the award; and if they, or any two of them, find any such error, informality, or omission, they shall have full power to make a new award, correcting any such error, informality, or omission, as the case may be; and if they are unable to find or do not find any such error, informality, or omission, as alleged in the order of the Supreme Court, they shall certify the same under their hands to the said Supreme Court, and shall file or cause the same to be filed in the office of the prothonotary: and such new award, when made and published, or when a new award is made, or such award so remitted back where the Commissioners certify that they do not find any such error, informality, or omission as alleged, shall respectively be binding, conclusive, and final on all parties and on the lands of the proprietor for whose lands the award is respectively made.

What Commissioners may consider remitting order and correct award.

Notice by Commissioners of hearing order remitting back award.

IX. In any case where an order is made by the Supreme Court remitting any award back, the said Commissioners, or any two of them, shall cause fourteen days' notice at least to be served on the Commissioner of Public Lands and upon the proprietor or his agent for the time being, of a time and place when they shall proceed to hear and determine the matter so remitted as aforesaid; and no other notice or publication shall in any such case be necessary or requisite.

Vacancy of proprietors commissioner how filled up.

X. In case of the death, absence, or refusal to act of the Commissioner appointed by the proprietor, he shall be at liberty to appoint a new Commissioner, and in case no such new Commissioner is appointed by a proprietor, and the Commissioner previously appointed by him is dead, absent, or refuses or declines to act, then, and in each and all of such cases, the other two Commissioners may hear and determine such case, and make as valid and binding an award as fully and effectually as if the proprietor's Commissioner had acted.

The estate of John Winsloe, a lunatic.

XI. And whereas a notice was served upon Henry Jones Cundall, the committee of John Winsloe, a lunatic, by the Commissioner of Public Lands, under and pursuant to the second section of the said Act, of the intention of the Government of this Province to purchase the township lands of such lunatic under the said Act, and doubts have been expressed whether the provisions of said Act extends to or embraces such a case, and it is expedient to remove such doubts:

Land Purchase Act, 1875, to extend to lunatic proprietors.

Be it enacted that the "Land Purchase Act, 1875," shall be construed to extend to, and is hereby declared to extend to, the cases of lunatic proprietors; all notices heretofore served upon or hereafter served upon the committee of any such lunatic proprietor shall be deemed and held to be good and valid notices and services, and shall bind the estate of such proprietor to the same extent as if such proprietor was *compos mentis* and had been personally served; and every Commissioner appointed or to be appointed by any such committee of a lunatic shall be deemed and held to be properly and legally appointed; and every such committee so notified who may not, by reason of the said recited doubts or from any other reason or cause, have appointed, and any such committee shall, within thirty days after the publication of the Governor General's assent to this Act, appoint a Commissioner on behalf of the proprietor or estate of which he is such committee as aforesaid; and in default of any such appointment the Supreme Court shall, on the application of the Commissioner of Public Lands, appoint a Commissioner on behalf of such committee of such lunatic proprietor.

Commissioner for lunatic proprietor.

Proceedings confirmed.

XII. After the appointment of any such Commissioner as provided in the last preceding section, all such proceedings shall be had and taken as if such Commissioner had been duly appointed under the ninth or eleventh section of "The Land Purchase Act."

Proceedings not to abate because case not heard pursuant to notice under 14th sec. 38 Vict. c. 32. but fresh notice may be given.

XIII. In any case or cases where the Commissioners, or any two of them, under "The Land Purchase Act, 1875," have published, or shall hereafter publish, a notice or notices under the fourteenth section of said Act, of a time and place for hearing and considering the matters referred to them, relating to the lands of any proprietor, whose Commissioner shall have been appointed, and from any reason or cause whatsoever, such hearing has not taken place, or shall not take place, pursuant to such notice, or any mistake has been made in the publication, such case or cases or the proceedings therein shall not abate, but it shall be lawful for such Commissioners, or the Commissioners for the time being, appointed under the said Act, or any two of them, without any fresh petition or other proceedings on the part of the Commissioner of Public Lands or proprietor, to publish fresh notices pursuant to the said fourteenth section, for the hearing and considering the matters referred to them relating to the lands of any such proprietor, and all subsequent proceedings based or taken upon any such fresh notice or notices, shall be, in all and every respect, as legal and binding upon all parties and persons as if such notice or notices was or were the first or original notice or notices.

Preamble.

XIV. Whereas there are several proprietors in this Island who were not notified of the intention of the Government to purchase their estates under the second section of "The Land Purchase Act, 1875," because of the difficulties and impossibilities of ascertaining the proper parties upon whom to serve the notices; and it is expedient to extend the time allowed by the said second section for serving such notices:

Time for giving notice to proprietors extended.

Be it therefore enacted that the time allowed by the second section of the said Act, within which the Commissioner of Public Lands must notify any proprietor or proprietors of the intention of the Government to purchase his or their township lands, shall be, and the same is hereby extended to sixty days after the publication of the Governor General's assent to this Act, in the Canada "Gazette," and any notice served within such last mentioned sixty days, shall have the like effect and force as if the same had been served within the time limited by the second section of "The Land Purchase Act, 1875."

When Commissioners appointed by Lieut. Governor disqualified by relationship or otherwise, another to be appointed in his place.

XV. In any case or cases under the "The Land Purchase Act, 1875," where it has been found, or shall hereafter be found, that the Commissioner appointed by the Lieutenant Governor in Council, was or is related to any proprietor whose lands are sought to be taken under the said Act, or from any cause or disability unable to act as Commissioner on any particular estate: It shall be lawful for the Lieutenant-Governor of this Island in Council to appoint a Commissioner *ad hoc* in his stead and place, *quod* the particular proprietor or estate that such Commissioner is related to, or incapacitated from hearing or adjudicating upon, and such Commissioner shall have as full power and authority in every respect, with reference to the estate of such proprietor, as if he had been the Commissioner appointed under the fifth section of the said Act.

No fresh notice, &c., required.

XVI. No fresh notice, petition, or other proceeding shall be necessary on the part of the Commissioner of Public Lands or proprietor, on the appointment of any such Commission *ad hoc*, but such Commissioner shall, together with the other Commissioner or Commissioners, cause a notice of a time a place of hearing to be published pursuant to the provisions of the fourteenth section of said Act.

Deed from Public Trustee to Commissioner of

XVII. Every deed or conveyance executed by the Public Trustee, under "The Land Purchase Act, 1875," shall be taken and received whenever the execution is proved, by the Public Trustee, in any court of law or equity in this Island, as *primâ facie* evidence that all proceedings had been regularly and legally had, and taken, and done, and that

all conditions had been performed, and all things had happened and existed, and all times had elapsed necessary to entitle such Public Trustee to execute, and that such Public Trustee was at the date thereof entitled to execute such deed or conveyance, and to convey the lands described in such deed, in fee simple, to the Commissioner of Public Lands, at and from the date of such deed and no other evidence of any kind, or of any fact or circumstances, shall be necessary or required to make such deed *primâ facie* evidence, as aforesaid, of the right of such Public Trustee to execute such deed and convey the lands therein described, in fee simple, to the Commissioner of Public Lands, or that the lands therein described became vested in fee simple at the date thereof, in the Commissioner of Public Lands.

Public Lands to be *primâ facie* evidence that proceedings have regularly taken, &c.

XVIII. The Supreme Court shall not make any order for the payment of any moneys awarded for any lands under "The Land Purchase Act, 1875," unless and until the proprietor or person making application for such moneys shall first deposit with the Prothonotary all such deeds, plans, leases, counterparts of leases, agreements, and muniments of title relating to the lands or any part thereof, for which such moneys have been awarded, as may be in the possession, custody, or control of such person so applying, and this clause shall apply as well to all applications already made, as to those which hereafter may be made.

Proprietor to deposit all deeds, leases, &c., of estate with prothonotary before recovering moneys awarded to him for his estate.

XIX. The Prothonotary shall keep all such deeds, plans, leases, and counterparts of leases, agreements and muniments of title so deposited in each estate carefully by themselves, and apart from all papers and muniments of title in any other estate deposited with him as aforesaid, and shall deliver them over to the Commissioner of Public Lands, together with the deed from the Public Trustee in each estate, pursuant to the rules of the said court.

Custody of deeds, plans, leases, &c.

XX. The term and expression "Proprietor," whenever used in "The Land Purchase Act, 1875," shall, in addition to the definitions thereof given in and by the said Act, but not in anywise in limitation of such definitions be held and construed to have included and extended to and to include and extend to all tenants in tail, and the said "Land Purchase Act, 1875," and all proceedings taken or to be taken thereunder shall be construed as if this provision had been enacted therein and formed part of the Act at the time of the passing thereof.

Term proprietor to include tenants in tail.

XXI. Nothing in this Act contained shall be construed to prejudice or affect the rights of Charlotte Antonia Sulivan, the proceedings to purchase whose estate are now pending before the Supreme Court of Canada.

Act not to affect rights of Miss Sulivan, appealed to Supreme Court of Canada.

A true copy,
Which I certify,
(Signed) FREDK. BRECKEN,
Attorney-General.

Charlottetown,
Prince Edward Island.
May 9, 1876.

No. 2.

The HON. S. PONSONBY FANE, to the UNDER SECRETARY OF STATE, Colonial Office.

Lord Chamberlain's Office,
St. James's Palace, S.W.,
June 19, 1876.

DEAR MR. HERBERT,

I THINK it right to let you know that the Government have purchased and paid for my property in Prince Edward's Island by private contract at the award price.

I have, &c.
(Signed) S. PONSONBY FANE.

Robert G. W. Herbert, Esq.

No. 3.

GOVERNOR-GENERAL THE RIGHT HON. THE EARL OF DUFFERIN, K.P., K.C.B., to the RIGHT HON. THE EARL OF CARNARVON. (Received August 8, 1876.)

Government House, Ottawa,
July 27, 1876.

MY LORD,

IN my Despatch of May 26,* I had the honour of forwarding to your Lordship an attested copy of a reserved Bill passed in the last session of the Legislature

* No. 1.

of the Province of Prince Edward Island, entitled " An Act to amend the Land Purchase Act, 1875."

I have now the honour of enclosing a copy of a report of a Committee of the Privy Council concurring in a memorandum by the Minister of Justice advising me for the reasons stated, not to assent to the Bill in question.

I also forward for your Lordship's information, copies of two documents which I have received from the landed proprietors and the counsel for all the English proprietors respectively, protesting against the provisions of the Bill, and praying that it may not become law.

I have, &c.
(Signed) DUFFERIN.

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

Enclosure 1. in No. 3.

Copy of a Report of a Committee of the Honourable the Privy Council, approved by His Excellency the Governor General, on the July 21, 1876.

The Committee of Council have had under consideration the report hereunto annexed, dated 18th July 1876, from the Hon. Mr. Scott, acting in the absence of the Minister of Justice, relating to "An Act to amend the Land Purchase Act, 1875," passed in the Legislature of the Province of Prince Edward Island and reserved by the Lieut.-Governor for the signification of the Governor General's pleasure, and on the recommendation of the Hon. Mr. Scott, and for the reasons stated in his report, the committee advise that the Bill entitled "An Act to amend the Land Purchase Act, " 1875," do not receive the assent of the Governor General in Council.

Certified.
(Signed) W. A. Himsworth,
C.P.C.

Department of Justice, Ottawa, July 18, 1876.

The undersigned has the honour to report :—

That a despatch from the Lieutenant-Governor of Prince Edward Island of 12th May last, mentioned for the consideration of the Governor General, two Acts passed by the Legislature of the Province, as to one of which, relating to certain departments of the Public Service, action has already been taken.

As to the other Bill so transmitted. It is entitled " An Act to amend the Land Purchase Act, 1875," and was reserved by the Lieutenant-Governor for the signification of the Governor General's pleasure. With the despatch of the Lieutenant Governer is a certified copy of the Bill so reserved, and the report of the Attorney General giving his reasons for the passing of the same by the Council and Assembly.

The Lieutenant Governor calls attention to the Attorney General's report and his reasons therein stated for the passing of the Act, in which he (the Lieutenant Governor) concurs, and he expresses his hope that it will receive His Excellency's consideration.

The Lieutenant Governor adds that as the Land Commissioner's Court stands adjourned until the 1st July next, it is very desirable that he should know His Excellency's pleasure as regards the Act in question previous to that period.

The Bill so reserved purports to be an amendment of the " Land Purchase Act, 1875," and recites that doubts have arisen as to the meaning and construction of many provisions of " The Land Purchase Act, 1875," and that is highly expedient that all such doubts should be removed.

It then proceeds to enact that no award theretofore made or thereafter to be made shall be held void in any Court of Law or Equity by reason that certain matters which were required by the Commissioners to be taken under consideration are not expressly mentioned in any award, and that no award shall be void for other reasons.

It also provides that nothing shall affect the rights of Miss Sulivan to purchase, whose estate is now pending before the Supreme Court of Canada.

The effect of the first portion of the Act appears to be that the interpretation of the Supreme Court of the island of the Act of 1875, upon which certain awards of the Land Commissioners were held bad, is reversed, and the awards in question to be declared as valid.

Against the assent to this Bill, Mr. Edward J. Hodgson, by letter of the 8th June last, addressed to the Secretary of State, urges that the Bill in question very seriously affects the rights and the property of persons holding land in the province. He represents that the Act is for the purpose of giving effect to certain awards considered to be void by those whose property is dealt with by them, and that the award similar to those now attempted to be legalized has been declared to be void by the Supreme Court of Prince Edward Island.

Mr. Hodgson further represents that there is another case pending of Miss H. McDonald, of Montreal, and that if the Bill be assented to, it will have the effect of declaring the award to be valid, and not only so, but there are no provisions made for indemnifying her in the costs incurred by her in the proceedings she has instituted.

He also represents that further hardship will arise to individuals in case the Bill should become law; and he adds that memorials explaining the objections in question are being prepared, and requests that consideration of the Act may be delayed for an opportunity of considering the memorials referred to.

In the report of the Attorney-General of Prince Edward Island it is represented that applications to the Supreme Court of the Island were made on behalf of Miss Sulivan and of the Hon. Ponsonby Fane, and the Court quashed the awards in both cases, but that negotiations for a peaceful settlement of the Fane estate are pending.

The undersigned has the honour under the circumstances to report:—

That there does not appear to be any reservation in the Act of the rights of the Hon. Ponsonby Fane, or of any other parties as to whom awards may have been made, and who are similarly situated with Miss Sulivan and Mr. Fane, and who may have regarded the decisions of the Supreme Court of the Island in the cases before them as applicable to themselves.

That by telegraphic communications with the Lieutenant Governor of the Province, it is ascertained that Mr. Fane's case has been settled and withdrawn from the Court, and that the only additional case pending before the Supreme Court of the Province on the 21st June instant is that of John Alister Macdonald, which is not yet tried, but in which a rule nisi has been granted by that Court to set aside the award, on the 19th of June instant, to be tried at the sittings of that Court at Charlottetown on the last Tuesday in June instant.

But petitions have been presented at a later date, (1), by Mr. Edward J. Hodgson, before mentioned, and who describes himself as one of the proprietors of land, and also as counsel for all the English proprietors, and nearly all those resident therein; and (2) from the following proprietors and owners of land in Prince Edward Island, viz., James F. Montgomery, Jane B. Douse, Arabella Douse, John A. McDonell, J. P. Douse, Rev. John A. S. McDonald, by his attorney, Alexander McLean, Edward J. Hodgson, Helen Jane McDonald, and W. C. McDonald.

The allegations in the two petitions are substantially the same, and the petitioners pray that the assent of the Governor-General in Council be not given to the reserved Bill in question.

It is stated:—

1. That it was notorious at the time of passing the Bill that the errors (in the Land Purchase Act of 1875) would be made the grounds of judicial applications to set aside the proceedings, and the awards founded upon them whenever the Government attempted to enforce them.

2. That petitioners did not avail themselves within the period fixed by the Act of 1875 for remission back to the Commissioners of the awards in their cases, relying on their ordinary right to oppose the awards, of which right the reserved Bill would deprive them; which also neglects to provide any means for remission of these irregular and erroneous awards to the Commissioners.

3. That the reserved Bill puts land owners to additional costs and expenses, but makes no provision for the refund of the same.

4. That the Commissioners' award having neglected to specify the portion of the lands taken from the portion reserved, the owners are by the reserved Bill put to additional costs on proceedings before the Court without provision for payment thereof.

5. A special complaint of petitioner James F. Montgomery as to an error in his case, in respect of which he obtained an Order of Court for remission of the case back to the Commissioners; but the reserved Bill provides for a hearing of the case before other Commissioners and a new award; and that the provision in respect to other cases than his own is confined as to the point on which such other cases may be referred back.

6. That in the case of one John Winsloe, a lunatic, the reserved Bill is practically to set aside a judgment of the Master of the Rolls, deciding that the Land Purchase Act, 1875, did not apply to the estate of the lunatic.

7. That proprietors whose claims were to have been heard by the first Commissioners, but which were not heard, and the proceedings as to which have abated through the neglect of the Government, have no indemnification as to their costs.

8. That the 17th section gives an extraordinary and dangerous effect to deeds executed by the public trustee.

9. That many of the proceedings taken in the Commissioners' Court, and which are pending and undetermined, are manifestly irregular, informal, and invalid; and that it is contrary to British legislation to remove doubts in contested proceedings by retrospective legislation as sought to be effected by this Act.

The undersigned has the honour further to report that without giving weight or consideration to any great extent to the allegations in the petitions which are unsupported by any actual proof, he is of opinion that the reserved Bill is retrospective in its effect; that it deals with rights of parties now in litigation under the Act which it is proposed to amend, or which may yet fairly form the subject of litigation; and that there is an absence of any provision saving the rights and proceedings of persons whose properties have been dealt with under the Act of 1875.

He therefore recommends that the Bill entitled "An Act to amend the Land Pur-"chase Act, 1875," do not receive the assent of the Governor-General in Council.

(Signed) R. W. Scott,
Acting Minister of Justice.

Enclosure 2. in No. 3.

To His Excellency the Right Hon. Sir Frederick Temple, Bart., Earl of Dufferin, the Governor-General of Canada.

The humble petition of the undersigned proprietors and owners of land in Prince Edward Island respectfully sheweth:

That an Act was passed in the last session of the General Assembly of Prince Edward Island, entituled "An Act to amend the Land Purchase Act, 1875," which was reserved for the signification of your Excellency's pleasure thereon, and which is of so unusual a nature, and will, if assented to, so prejudicially affect your petitioners that they solicit your Excellency's attention to some of its provisions.

The Land Purchase Act of 1875, in the opinion of your petitioners, affected the rights of private property to an unusual extent, and the Act of last Session is an attempt to cure certain omissions and errors committed by the Commissioners appointed under that Act in proceedings before them, which are still pending between the Government on the one hand and certain proprietors on the other. Although it was notorious at the time of passing the Act that these errors would be made the grounds of judicial applications to set aside those proceedings and the awards founded upon them whenever the Government attempted to enforce them. Indeed, at the very time of passing the Act, awards made in the estates of certain proprietors had been declared invalid by the Supreme Court of the Colony for objections similar to those which the Government now attempt by special legislation to correct in the cases of other proprietors.

By the Land Purchase Act, 1875, leave is reserved to proprietors to make application to the Supreme Court within a limited period after the making of awards to have those awards remitted back to the Commissioners for reconsideration; but because certain of your petitioners were advised that the awards made in their cases were illegal and void, they allowed the time granted for applications to remit them back to elapse, relying upon their ordinary right to oppose the awards whenever the Government attempted to enforce them, but the Government now seek by retrospective legislation to remove objections that have been judicially decided to be fatal to the awards, and by that legislation make no provision for enabling the proprietors thus subjected to the consequences of these irregular and erroneous awards to have them remitted back to the Commissioners for amendment or correction.

The "Land Purchase Act of 1875" makes no provision for indemnifying proprietors whose estates are adjudicated on in the Commissioners Court against expenses to their solicitors' counsel and witnesses, and the second section of the Act of 1876 renders awards legal without any description of the lands taken from proprietors, but subjects such proprietors to the additional expense of settling the description of such lands by the

Supreme Court or a judge thereof, and makes no provision for refunding such proprietors the expenses caused by such additional proceedings.

Your petitioners submit that inasmuch as by the "Land Purchase Act, 1875," proprietors are allowed to retain certain portions of their lands defined by that Act, while the rest is compulsorily taken from them, it is but reasonable and proper that the Commissioners should be required to distinguish in their awards the portion of each estate taken from the portion reserved, and that it is arbitrary and unjust by retrospective legislation to subject proprietors to the expense of having the omissions and errors of the Commissioners corrected by additional proceedings before the Supreme Court without at least providing for the payment of all expenses incident to such supplemental litigation.

The estate of your petitioner, James Frederick Montgomery, was adjudicated on by the Commissioners, who made an award in September last, and your petitioner discovered after the same was made that one year's rent was omitted by them from the award under the impression that your petitioner could recover that year's rent notwithstanding the award, whereas, in fact, it could not be so recovered, because it was overdue in law at the time the award was made, although, in fact, the custom pursued by your petitioner with his tenants was not to collect it until the autumn following. Your petitioner, James F. Montgomery, on discovering this omission applied to the Supreme Court pursuant to the provisions of the Land Purchase Act, 1875, to have his award remitted back to the Commissioners to correct the alleged error, and an order was made in October last remitting back the award to the Commissioners for correction. No application was made by the Government to have his award remitted back or set aside. He has urged the Commissioners of Public Lands, in whose name these proceedings on behalf of the Government are conducted, to have the case re-heard, but hitherto without success. He has also made repeated reasonable offers for the voluntary conveyance of his estate to the Government. If he is in error concerning the said year's rent the amount of the award should stand; on the other hand, if that year's rent has really been omitted the amount of the award should be increased. But the Government, instead of entertaining his offers of a voluntary settlement or bringing the case to a re-hearing within a reasonable time, now pass an Act affecting him individually, and enabling certain persons therein named to hear and re-hear all the evidence and to make a new award (*see* sec. 4), and by section 7 of the same Act, such new award may give your petitioner a less amount than was awarded by the Commissioners whose award has been so remitted back.

The Commissioner on behalf of the Local Government has made and filed an affidavit against the claim of your petitioner, James F. Montgomery, notwithstanding which the Supreme Court remitted back the award; the present Commissioner appointed by the Governor-General had not been appointed when your petitioner's case was heard. If the Act of 1876 becomes law, your petitioner will be obliged to go to the expense of having his whole case re-heard and all his evidence reproduced for the information of the new Commissioner to avoid the danger of having his award reduced notwithstanding the fact that the alleged omission for which his award was remitted back consists of whether said years' rent was omitted; even if your petitioner is in error in contending that it has been omitted, the fact of his being so mistaken could not lessen the award. No provision is made by either Act by which your petitioner can recover the expenses of the former or subsequent hearings, and he confidently hopes that your Excellency will not sanction retrospective and personal legislation of this kind, enacted without cause, and the only effect of which would be to harass your petitioner unnecessarily. Your Excellency will observe that while your petitioner is thus dealt with personally and by name and put to the annoyance and expense of a general re-hearing, the same Act provides that in all other cases (see sec. 8) when awards are remitted back, the duty of the Commissioners in such a case is confined to correct the very error for which such awards are so remitted back.

Your petitioners show that special provision is made by sec. 11 of the Act for bringing the estate of John Winsloe, a lunatic, within the operations of the "Land Purchase Act, 1875," on the ground that "doubts have been expressed whether the provisions of "the said Act extend to or embrace such a case." What this Act terms a "doubt," your petitioners are informed is really a judicial decision of the Master of the Rolls of this island.

Your petitioners learn that the Committee of the said lunatic, on being notified by the Government under the "Land Purchase Act, 1875," petitioned the Master of the Rolls (who has co-ordinate jurisdiction with the Chancellor concerning lunatics and their estates) for the appointment of a Commissioner for said lunatic's estate under the "Land Purchase Act, 1875," and the Master of the Rolls gave a written decision or judgment deciding that the case was not within the provisions of the Statute. A copy of that judgment was served by the

lunatic's committee or trustee upon the Commissioner of Public Lands. The Government took no steps to over-rule or appeal from the decision of the Master of the Rolls, but they now adopt the summary method of annulling that decision by an Act of Parliament.

Your petitioners also show that certain proprietors have been notified that their estates would be valued and taken under the provisions of the "Land Purchase Act, 1875"; that such proprietors appointed Commissioners and were in attendance at the Commissioners' Court with their witnesses, but the Court in the fall of 1875 suspended its labours without hearing these cases, and it is now sought (see sec. 13) to revive proceedings which have abated through the neglect of the Government without indemnifying such proprietors in their former or future costs.

In some instances when proceedings so abated, the then owners or proprietors of land executed conveyances and made other legitimate dispositions of property, and your petitioners submit that it would be unjust to revive these proceedings by means of an Act of Parliament, and have these lands compulsorily assigned to the Government without notice to the persons who since the abatement of the proceedings have acquired them by purchase or conveyance.

Your petitioners cannot allow the 17th section of the Act to pass without pointing out the extraordinary and dangerous effect sought to be given to deeds executed by the public trustee. It is well established that the Commissioners who appraise estates have no power to adjudicate upon titles. If the Commissioners appraise lands in which the proprietor has only a life estate (as in fact they have done), and the public trustee executes a deed of such lands to the Government, this section raises a presumption that such deed conveys an estate in fee simple. Again.—Many occupants of lands on estates hold lands by virtue of many years occupation, but if this section becomes law, the deed of the public trustee will be *primâ facie* evidence that the grantee named in such deed and not the occupant of the land is seized in fee simple.

Your petitioners lastly show that many of the proceedings taken in the Commissioners' Court, and which are pending and undetermined are manifestly irregular, informal, and invalid. And they submit that it is unusual and contrary to the course of British legislation to correct mistakes and remove doubts in contested proceedings by one-sided and retrospective legislation in the manner sought to be effected by this Act, and your petitioners pray that in view of the exceptional, novel, and dangerous nature of the provisions of the Act in question, your Excellency will be pleased to prevent its becoming law.

And your petitioners, as in duty bound, will ever pray.

(Signed) James F. Montgomery.
Jane B. Douse.
Arabella Douse.
John A. McDonell.
J. P. Douse.
Rev. John A. S. McDonald, by Alex. McLean, his Attorney.
Edward J. Hodgson.
Helen Jane McDonald.
W. C. McDonald.

Enclosure 3. in No. 3.

From Mr. E. J. Hodgson to the Earl of Dufferin.

Ottawa, June 17, 1876, Library of Parliament.

May it please your Excellency, as one of the proprietors of lands in Prince Edward Island, and also as counsel for all the English proprietors, and nearly all those resident thereon, I venture to address your Excellency on their behalf, with reference to an Act passed by two branches of the Legislature of Prince Edward Island (but not assented to by Sir Robert Hodgson, the Lieutenant-Governor), entitled "An Act to amend the Land "Purchase Act, 1875."

Since the passing of the "Land Purchase Act, 1875," the following proprietors have received what has been awarded for their estates, and therefore I do not speak on their behalf, viz:—

1. Robert Bruce Stewart.
2. S. C. B. Ponsonby Fane.
3. George W. de Blois.
4. William Cundall.
5. Miss Cundall.

I left Charlottetown last Monday week to attend the Supreme Court of Canada, for the argument of Miss Sulivan's case under this Act. At that time the proprietors whose names I have given above are only those who have been paid for. The great majority of the remainder are still pending, 11 months having elapsed since the unfortunate owners have been brought before the court, deprived of their right to receive the arrears of rent due to them, and still unable to obtain their money.

The Act amending the Land Purchase Act has been reserved for the special consideration of your Excellency as the Governor-General of Canada, and I humbly petition your Excellency to disallow that Act for the reasons, which in this memorial, I shall state for your Excellency's consideration.

As I shall have occasion to make frequent reference to the awards made by the Commissioners, it would be convenient if I should set out the form in which they have been made. It is as follows (omitting the title) :—

" The sum awarded under section 26 of the said Act by us, Commissioners appointed under the provisions of the said Act, is $."

Signatures.

It is provided by the Statute reserved for your Excellency's consideration, that no award, heretofore made, or hereafter to be made, shall be void by reason of its not finding any of those facts which by " the Land Purchase Act, 1875," it was bound to have found expressly.

I shall assume that the decision of the Supreme Court of Prince Edward Island in Miss Sulivan's case is valid. True an appeal has been taken out against it, but until reversed it must be considered to be law. And the legislature must have believed very strongly in the validity of that judgment or they would not have passed a legislative enactment to reverse it.

Now, by that decision, it was declared to be the duty of the Commissioners to find specifically, certain matters in issue submitted to their consideration, which are set forth in section 28 of " the Land Purchase Act, 1875," among others.

1. The quit rents reserved to the crown.
2. The effect of the non-performance of the conditions of the original grants, if they found they had not been performed.
3. The arrears of rent.

There are various other matters in section 28, but I desire to call your Excellency's attention to these three especially. The Supreme Court held that it was the duty of the Commissioners to find these matters on the face of their award, because if they did not the proprietor would be seriously prejudiced. For instance, the quit rents reserved to the crown, by the original grants, have by an Act of the Legislature of Prince Edward Island (14 Victoria, cap. 3), been assigned to the Government of that Province. Sub-section (*c.*) of the 28th section of the " Land Purchase Act," directs the Commissioners to consider (and as a necessary consequence I submit to determine, for it is difficult to understand why any matters were referred to them unless it were that they should determine them,) " the quit rents reserved in the original grants, and how far payment " of the same have been remitted by the crown." This is a Legislative declaration that there is a question whether the quit rents have been waived or remitted by the Crown. Now the effect of the complete absence of any reference to the quit rents in the award might have this effect. That a sum of (say 20,000 dollars) might have been deducted from a proprietor, and a balance of (say) 80,000 dollars awarded him, but this fact not appearing when the 80,000 dollars had been paid into court for the proprietor. There would be nothing to prevent the Attorney-General from coming into court, and by " information " or proceedings in the nature of such, claiming the quit rents over again. It would be unavailing for the proprietor to plead that this matter had been determined and that already thousands of dollars had been deducted from him. He could not plead the award. It is perfectly silent as to this fact, and by its terms is expressed to be made not in pursuance of the " Land Purchase Act, 1875," *but only of its 26th section.*

The Attorney-General, when presenting his claim would, under section 40 of the last mentioned Act, be entitled to the quit rents if found to be due; and thus the unfortunate proprietor would be compelled to pay them a second time.

Now the Legislature of Prince Edward Island recognised this mode of viewing the case to be correct, for by the Act now petitioned against, section three, it is provided :—

" No proceedings either in *personem* or in *rem* shall be commenced, prosecuted, or maintained in any court of law or equity for the recovery of any quit rents reserved in the original grants, or the lands of any proprietor for which any award has been made under the " Land Purchase Act, 1875," and all such quit rents shall be deemed and held

to have been, and to be absolutely and for ever released by such award, and such award shall and may be pleaded in law by any person or persons whomsoever of any action bought for the recovery of such quit rent."

This provision is most fair and just, and gives to the proprietor that protection which he is entitled to.

But it is evident that if these inefficient and illegal awards are to be rendered valid, the proprietors whose lands are dealt with are equally entitled to protection from the consequences which are certain to ensue from all omission to find respecting—

(1.) The conditions of the original grants from the Crown.

(2.) The performance or non-performance of these conditions.

(3.) The effects of such non-performance.

("The Land Purchase Act, 1875," section 28, sub-section (E.).)

A course somewhat similar to that already pointed out regarding the quit rents would be pursued but with consequences still more serious to the proprietor.

The Crown has ceded all its rights in the lands in Prince Edward Island to the Government of that Colony. Having got possession of the proprietor's lands, it would be an easy matter to procure an inquest of office to find whether the conditions of the original grants had been performed; but it may be said, if upon the execution of this inquest of office it were found that the land is liable to escheat, how could it affect the proprietors? Very seriously, and in this way. Upon the resumption of the lands by the Government of Prince Edward Island, every tenant is liable to be ejected from his farm, and under the covenant for quiet enjoyment contained in his lease he would have his remedy by an action for damages against his landlord. The tenants who had no leases would have no cause to fear from the action of the Government, nor indeed would those who have leases, they would be well recouped for any temporary dispossession, or liability to such, but the power of forcing a landlord into court to answer actions of damages by hundreds of tenants would never be allowed to lie dormant. Stripped of their property, allowed in many instances not one third of its value, the unfortunate proprietors never would be allowed to withdraw from the Island the pittance they have been awarded in order to invest it in some other portion of her Majesty's realms, where to own land is not considered in the light of a crime.

This in truth and in fact is the real reason why this Act, now petitioned against, has been passed. The proprietors are withdrawing the money they have received to invest it elsewhere. Their experience of owning property in Prince Edward Island has been too bitter and too dearly purchased, to induce them to risk further there, the wreck of their property. To stop this withdrawal of their money is now sought, and it must be admitted that the mode taken is a most ingenious one. When the proprietors are brought into court to answer their tenants for disturbance of their holdings, under the proceedings soon to be instituted, it will be useless for them to produce the bold naked award consisting of 23 words (exclusive of the amount), for it raises no presumption that this matter has been determined.

If the proprietors are entitled to protection in the matter of the quit rents, and the Legislature of Prince Edward Island have conceded that point, they are also entitled to protection from being twice charged with damages on account of alleged non-performance of the conditions of the original grant.

But this is another matter which the Commissioners are bound to find under section 28, which by the amending Act they are relieved from doing, and although it does not affect so many of the proprietors, still there are some who will be very seriously injured by its omission from the award. It is the direction to find the arrears of rent.

The Commissioners have every power enabling them to do this. They can compel, under section 20, the production of all documents, books, papers, &c. in order to enable them to see how the estate stands.

Where a proprietor has died the arrears of rent due at the time of his death pass to his executors, the rents due since being inciden to the reversion pass with it, to the heir-at-law, or the devisee.

There is a class of cases of this kind which has been dealt with by the Commissioners. Under their award a lump sum has been given. Now, when the executor goes into the Supreme Court to ask for his share of the award, that is, the arrears due to the deceased proprietor at the time of his death, if the award had set out as it should have done the arrears of rent, there would have been no difficulty. But under the award sought to be confirmed, how can the court tell what amount he is entitled to? It may be assumed that, in any case, something has been deducted from these arrears. How can the Supreme Court tell how much? If it gives the executor more than the Commissioners it must come out of the lump sum awarded, and the proprietor unjustly loses by the amount of such

excess. If it gives less than the Commissioners the executor loses the deficiency. I am the administrator *cum testamento annexo* of the estate of the Rev. John McDonald, which at his death passed to his nephew the Rev. J. A. S. McDonald. But the arrears due at the time of the first named gentleman's death passed to me, and, when collected, are to be handed over to Cardinal Manning in trust for certain charitable purposes in England. I would here quote the words of Judge Peters, one of the judges of the Supreme Court of Prince Edward Island, in giving judgment in Miss Sulivan's case.

" There are two lines in the 20th section (of ' The Land Purchase Act, 1875,') which I think have been very much overlooked. They are these, ' And the facts which ' they may require to ascertain in order to carry this Act into effect.' The meaning of these, I take to be, is facts which it is their duty to ascertain in order to give full effect to this Act. This goes far beyond what they themselves have to perform; it points to all that has to be done by others to carry out what they have begun ; to what the public trustee has to do, and to what this Court has to do in making distribution. I see it stated that in one case the arrears are assigned to Cardinal Manning. If the award finds a lump sum, and the Cardinal's claim comes in to participate in the distribution, how could we ascertain how much of the lump sum was awarded in respect of the land, and how much in respect of arrears of rent ? We could make no distribution in such a case; and the same thing may happen in other cases where arrears are due to the deceased proprietor, and the present proprietor is not his personal representative, we could be compelled to hold the award void in such a case."

There is, however, another consideration which I venture to press upon your Excellency's consideration, as even a still stronger reason why this Act should not be permitted to go into operation.

It assumes (and assumes correctly enough) that awards made in the general terms above alluded to are void. In some instances application has already been made to the Court to set them aside. In an application made by myself, as representing Miss Helen McDonald, of Montreal, proceedings have been taken in the Supreme Court to set aside the award for the very defects which this Act now legalizes. The words of the first section of the Act are so strong that they will have, as they are intended to have, a retroactive aspect, so as to make the proceedings already taken of no effect; nor does it provide that the parties who have taken these proceedings shall be indemnified in their costs.

I beg to direct your Excellency's attention to the opinion of English judges to legislation such as this, as reported in the case of Moore *v.* Durden, 2 Exchequer Reports, 22.

In that case the Court refused to follow the rule which requires Acts of Parliament to be construed by giving to its language the interpretation ordinarily attached to it, because its effect would be to make that illegal which but for such rule would have been legal. Alderson B. says, " It is contrary to the first principles of justice to punish those " who have offended against no law, and surely to take away existing rights without " compensation is in the nature of punishment." His Lordship further stated that he would not suppose " that the Legislature contemplated so gross an act of injustice as " without compensation to take away an existing right of action already pending, and " that, too, with no provision even for the costs incurred in the enforcing of what was " before a legal right;" but it was added that this was only a rule of construction, and would yield to the intention of the Legislature if sufficiently expressed.

There can be little doubt that in the Act now under consideration the Legislature has expressed itself in such a manner that " the first principles of justice " have been violated by enacting " so gross an act of injustice as, without compensation, to take away an " existing right." The words of the 1st section, " No award heretofore made or here- " after to be made " will compel the Court " to punish those who have offended against " no law," by compelling them to relinquish proceedings in a court of law which at the time they instituted them they had a legal right so to do, and by compelling them to pay costs for availing themselves of a perfectly legal right. But surely this great wrong, ineffective as it will be for us to argue, should this Act become law, is a strong valid reason why its operation should be stayed, and why the proprietors, whose great misfortune it is to hold lands in Prince Edward Island, should not be still further oppressed by so cruel an act of injustice.

Any forbearance, any clemency on the part of the Commissioners of Public Lands, the proprietors have no reason to hope for or to expect. And I would point out to your Excellency that section 11 of this Act now under consideration arms him with power to seize the lands of an unfortunate lunatic whose income barely enables him to be supported in the Provincial Asylum at Nova Scotia. When his estate has been taken away, if anything be left him at all after the Attorney-General has procured the confiscation of

a large proportion of his award, in the manner I have already pointed out, his fate will indeed be a sad one.

This, however, is a matter in which I have not a right to address your Excellency except in the interest of common humanity, but knowing the circumstances, that the son of an English gentleman, now deceased, an unfortunate lunatic in the Nova Scotia Asylum, is sought to be deprived of his property, and that sections 11 and 12 of the Act, now under consideration, amount to, and are intended as a statutary reversal of the decision of the Master of the Roils of Prince Edward Island, in whose charge he is, in the matter of the estate of that very lunatic. I venture to express the hope that your Excellency will cause that decision to be laid before you, before your Excellency will cause the Royal Assent to be given to so objectionable a measure.

The question whether "The Land Purchase Act, 1875," is not "*ultra vires*," being in excess of the jurisdiction given to the Local Legislature under the British North American Act, has been raised on behalf of the proprietors, and has been decided adversely to their contention that it is so. Such being the case, the measure now under consideration is freed from any of those considerations which attach to the giving of the Royal Assent to those measures over which the Dominion Government has jurisdiction.

Before the admission of Prince Edward Island into the Dominion it was not unusual for those whose rights were attacked by Acts of a nature similar to this to lay their humble petition at the foot of the Throne. Since confederation, they now cannot do it. But in matters such as this solely under the control of the Local Legislature, your Excellency is regarded as in no ordinary degree the special representative of the Queen's Majesty, clothed with the authority, and, we dare not doubt, not indisposed to use it to protect those of Her Majesty's subjects who are conscious of having done no wrong, and who humbly trust that although they are the possessors of landed estates out of England, your Excellency will not on that account refrain from exercising the Royal prerogative to save them from being the victims of a cruel wrong by the operation of a harsh, unjust, and oppressive measure.

I have, &c.

The Right Hon. the Earl of Dufferin, K.C.B., &c. &c. &c.
Governor-General of Canada.

(Signed) Edward J. Hodgson.

No. 4.

Governor-General the Right Hon. the EARL OF DUFFERIN, K.P., K.C.B., to the Right Hon. the EARL OF CARNARVON. (Received April 19th, 1877.)

My Lord, Ottawa, April 4, 1877.

With regard to previous correspondence relative to the appeal in the case of Miss Sulivan to the Supreme Court of the Dominion, under the Prince Edward Island Land Purchase Act of 1875, I have the honour to enclose herewith for your Lordship's information a copy of a letter from the Registrar of that court, covering an official report containing the judgment of the Chief Justice and Justices.

I have, &c.

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

(Signed) DUFFERIN.

Enclosure 1. in No. 4.

Sir, Ottawa, March 29, 1877.

By direction of the Chief Justice, and in compliance with the request contained in your letter to him of the 24th inst., I have the honour of transmitting to you, herewith, for the information of His Excellency the Governor-General, a full report, prepared by the official reporter of the court, of the case appealed to the Supreme Court of Canada, in which the Commissioner of Public Lands of Prince Edward Island, was Appellant, and Miss Charlotte Antonia Sulivan, Respondent.

The report contains at length the reasons for judgment given by the Chief Justice and Judges of the court.

Together with the report I send a copy of the case and factum of both parties, and also a copy of the formal judgment entered in the matter of said appeal.

I am, &c.,

Edward J. Langevin, Esq.,
Under Secretary of State, Ottawa.

ROBERT CASSALS, R.S.C.C.

Enclosure 2. in No. 4.

DOMINION OF CANADA.—IN THE SUPREME COURT OF CANADA.

In the matter of the application of Francis Kelly, the Commissioner of Public Lands, for the purchase of the Estate of Charlotte Antonia Sulivan, and the "Land Purchase Act, 1875."

Charlotte Antonia Sulivan is proprietor of townships numbers 9, 16, 22, and 61, in this island.

Proceedings were commenced to take the said township lands compulsorily under the Land Purchase Act of 1875.

The matter came up for hearing before the Commissioners mentioned in printed case, and the said Commissioners made an award therein, as set out on page 2 of the said case.

The Supreme Court of Prince Edward Island made an order setting aside the award, which rule is set out on page 76 of the printed case.

From the order of the Supreme Court of Prince Edward Island, Francis Kelly, the Commissioner of Public Lands, now appeals to the Supreme Court of Canada.

The respondent, Charlotte Antonia Sulivan, will contend before the Court of Appeal:—

I. That an appeal does not lie direct from the Supreme Court of Prince Edward Island to the Supreme Court of Canada.

II. That if such appeal does lie, this appeal must be dismissed, and the Judgment of the Court below confirmed with costs.

I. No appeal lies direct from the Supreme Court of Prince Edward Island to the Supreme Court of Canada.

By section 11 of the Supreme and Exchequer Court Act: "When an appeal to the Supreme Court is given from a Judgment in any case, it shall always be understood to be given from the Court of last resource in the Province were the Judgment was rendered in such case."

See also Section 17.

The Lieutenant-Governor in Council is constituted a Court of Error and Appeal, in Prince Edward Island, by various Royal Instructions. See *e.g.* Royal Instructions, Appendix to Journal of House of Assembly of Prince Edward Island, A.D. 1851, Appendix F.

See also, Clarke's Colonial Law. Page 111.

By Section 24 of Supreme and Exchequer Court Act, proceedings in appeals shall be *** as nearly as possible in conformity with the present practice of the Judicial Committee of Her Majesty's Privy Council.

It has been decided that appeals from the Supreme Court of Prince Edward Island must, in the first instance, lie to the Governor in Council, and that no appeal lies direct from the Supreme Court to Her Majesty's Privy Council.

Re Cambridge, 3, Moore, P.C.C., 175.

In Nova Scotia and New Brunswick, in which the Governor in Council of each constituted a Court of Appeal, it was found necessary to obtain Orders under the Imperial Act, 7 & 8 Vict., Cap. 69, to allow appeals from the Supreme Courts of these Provinces respectively direct to Her Majesty's Privy Council.

See the order affecting New Brunswick appeals, dated 27th November, 1852, in 4 All. N. B. Reports, page 497.

Do. do. N. S. Journals of the House of Assembly of Nova Scotia, A.D. 1854, page 94, Appendix 10.

No similar order was passed regulating appeals for Prince Edward Island, and therefore the practice as set out in Re Cambridge is unchanged.

The Governor in Council of Prince Edward Island is recognised as a Court of Appeal by the Island Act, 6 Vict., Cap. 26, s. 51, which provides that any person dissatisfied with a decree of the Surrogate, may appeal to the Governor in Council.

The existence of a Court of Error and Appeal for this Province is recognised by various local Statutes ranging from A.D. 1781 to A.D. 1873. See *e.g.* Local Acts, 21 Geo. III. Cap. 17, 6 Vict., Cap. 26, 36 Vict., Cap. 22, &c.

It is submitted that the above authorities show that the Supreme Court of Prince Edward Island, is not the Court of last resort in this Province.

II. The award in this case should be set aside for the reasons recited in the Rule absolute on page 76 of the printed case.

Because :

1. The award is not final, and 2, it is uncertain.

It is uncertain.

Because it does not show that the Commissioners have adjudicated on matters on which they were bound to adjudicate by the "Land Purchase Act, 1875." The submission is of matters specified in Section 28 of that Act, and must be treated as if it contained the terms of a voluntary submission made by the parties. Award is not made *de praemissis*, and there is nothing to show that the various matters specified in this section were taken into consideration by the Commissioners.

The rule of law is, if it be doubtful whether the award has decided the question referred it will be set aside for the uncertainty.

Russell on Awards, 2nd Ed., p. 284.
Tribe *v.* Upperton, 3 A. & E., p. 295.
Pearson *v.* Archibald, 11 M. & W., p. 477.

The award is not only silent as to some matters submitted under Section 28, but it shows on its face that it was made with respect only to matters embraced by Section 26, as the compensation to which Miss Sulivan is entitled by reason of her being divested of her land.

This does not embrace sub-sections 1, 2, and 3 of Section 28.

The rule of law is, if several specific matters are referred and there be no specific adjudication upon any one, the award is void.

Russel on Awards, 2, Ed., p. 261.
Randall *v.* Randall, 7, East., p. 81.
Re Rider and Fisher, 3, Bing. N. C., 874.
Witworth *v.* Hulse, L. R. 1, Exch., 252.
Harrison *v.* Creswick, cited in Russel Awards, page 273.
See Madkins *v.* Horner, 8, A. & E., 235.
Robinson *v.* Henderson, 6, M. & W., 276.
Wakefield *v.* Llanelly, 3, De. G. J. & S., p. 11.
Stone *v.* Philips, 4, Bing. N. C., p. 37.
Ross *v.* Boards, 8, A. & E., p. 290.

The award is uncertain, inasmuch as it only decides some of the matters submitted by the 28th section of the Land Purchase Act, 1875.

It is also uncertain, inasmuch as it does not define or describe the subject matter for which the award gives the sum of 81,500 dollars.

Moreover, a proper construction of the Act requires that the land for which a sum is awarded shall be described by metes and bounds, or such description as is necessary in a deed.

By Section 32 the Public Trustee is empowered to execute a deed in form B—that form requires (what indeed would be necessary without such direction) the land to be particularly described by metes and bounds. The office of the Public Trustee is only ministerial. He is to convey "the estate of the proprietor." What estate? The estate adjudicated on, and for which the sum awarded shall have been paid into the Treasury. *See* Section 32.

Either the Commissioners or the Public Trustee must prepare the description ; but the Public Trustee is not a party to the proceedings *until after* "the number of acres under lease," "the length of the leases," "the rent reserved," "the arrears," &c., Section 28, are adjudicated on. Indeed, the Public Trustee need not receive his appointment until *after* the award is made.

Can he settle these particulars *ex parte ?*

It is submitted the Public Trustee can only convey the estate specified in the award ; and that if the award contains no description of the land the Public Trustee is not authorised to supply the omission.

See Doe-dem Matkins *v.* Horner, 8, A. & E., page 243, where Patterson, J. says he thought residue of land not embraced in award should *be described by metes and bounds.*

If it be the Commissioners duty to define the land for which they award a sum of money, it was improper for them to leave or delegate this duty to the Public Trustee.

The Commissioners, by section 28, are also to take into consideration the conditions of

the original grants from the Crown, and the performance or non-performance of those conditions, &c.

The award is uncertain, inasmuch as it does not show that the Commissioners have considered or adjudicated on the matters submitted to them by sub-sections 1, 2, and 3 of section 28.

A copy of the original grant of one of the lots in this case, viz., township number nine, extracted from the office of the Public Registry of Deeds of this Island, and certified by the Registrar, is annexed, and contains the conditions referred to in the first part of Mr. Justice Peters' judgment on page 87 of the printed case.

The award being that of an inferior Court should show by express words, or by necessary implication, that the Commisssioners had complied with all preliminaries necessary to enable them to adjudicate upon the estate, and make an award.

See cases quoted, 2, Shelf. on Railways, 4 Ed., 302 notes.

Inasmuch as the Commissioners have thus omitted a duty cast upon them by the Act, and without doing which they had no jurisdiction to make the award in this case these preliminary *questions and the award* are open to inquiry by the Supreme Court, notwithstanding the 45th section of the Land Purchase Act, 1875.

Colonial Bank of Australia *v.* Willan, L. R., 5, P. C., 442.

Reg. *v.* Jus. of Staffordshire, 5, Ell & Bl., 49.

So, though Certiorari be taken away by Statute, if cause be decided by majority of a Court improperly constituted, Certiorari yet lies.

Reg. *v.* Cheltenham, 1, Q. B., 467.

Also,

Reg. *v.* St. Albans, 17 Jurist, 531, S. C., 22, L. J. (M. C.), 142.

Also,

Richards *v.* S. Wales R. R. Co., 18 L. J. (Q. B.), 310.
S. C. 6, Rail. Case, 197.

[*Grant referred to in foregoing Brief.*]

ISLAND OF ST. JOHN, S.S.—Edmund Fanning,

To all to whom these Presents shall come Greeting:

Know ye that I, Edmund Fanning, LL.D., Lieutenant-Governor and Commander-in-Chief in and over His Majesty's Island of Saint John and the territories thereunto adjacent, &c., &c., &c. By virtue of the power and authority to me given by His present Majesty King George the Third under the Great Seal of Great Britain, have given, granted, and confirmed, and do by these presents pursuant to His Majesty's Order in Council bearing date the 16th day of April in the year of our Lord 1794, give, grant, and confirm unto Stephen Sulivan, Esquire, of the Kingdom of Great Britain, his hiers and assigns all that tract, lot, or township of land situate, lying and being in the said island of St. John, and distinguished and known by the name of lot or township No. 9, and bounded in manner following, that is to say: bounded on the north by the division line of lot No. 6, east and west distance 4 miles and 3,100 feet; on the south by the Sand Cove and the sea towards Percival Point; on the east by the division line of lot No. 9 and No. 10, north and south distance 8 miles and 2,000 feet; and on the west by the division line of lot No. 8, north and south distance 5 miles, and containeth in the whole by estimation 20,000 acres (be the same more or less), and hath such figure and shape as is delineated and expressed in and by a certain map or plan thereof made and hereunto annexed. Together with all and all manner of mines opened and unopened excepting mines of gold, silver, and coals. To have and to hold the said granted premises with all the privileges, profits, commodities, and appurtenances thereunto belonging unto the said Stephen Sulivan, his heirs and assigns for ever. Saving and reserving to His Majesty, his heirs and successors all such part or parts of the said tract of land as hath or have been already set apart for building wharves, erecting fortifications, enclosing naval yards, or laying out highways for the communication between one part of the said island and another. Also saving and reserving to His said Majesty, his heirs and successors, 100 acres of the said tract of land for the site of a church as a glebe for a minister of the gospel, and 30 acres for a schoolmaster. And further saving and reserving for the disposal of His Majesty, his heirs and successors, 500 feet from high water mark on the coast of the said tract of land hereby granted to erect stages or other necessary buildings for carrying on the fishery. Yielding and paying therefor by the said grantee, his heirs and assigns (which by the acceptance hereof he binds and

obliges himself, his heirs, executors, administrators, and assigns, to pay to his said Majesty, his heirs and successors, or to any person lawfully authorised to receive the same), for His Majesty's use a free yearly quit-rent of 6*s*. for every 100 acres hereby granted, the first payment of the same to commence and become payable on one half of the said granted premises on the feast of Saint Michael which shall first happen after the expiration of five years from the date hereof or within 14 days after. And also yielding and paying the like quit rent for the whole 20,000 acres hereby granted on the feast of Saint Michael next coming after the expiration of ten years from the date hereof or within 14 days after, and so to continue payable yearly and every year thereafter for ever. And the said grantee doth hereby oblige himself, his heirs and assigns, to settle the said tract of land within 10 years from the date hereof with Protestant settlers in proportion of one person to every 200 acres the said Protestant settlers to be introduced from such parts of Europe as are not within His Majesty's Dominions or to be such persons as have resided within His Majesty's Dominions in America two years antecedent to the date hereof. And if the said grantee shall not settle one-third part of the said tract of land in the proportion aforesaid within four years from the date hereof, then the whole of the said tract shall become forfeited to His Majesty, his heirs and successors, and this grant shall thereupon become null and void and of none effect. In witness whereof, I have signed these presents and caused the seal of this island to be thereunto affixed at Charlottetown, this 18th day of May, in the 35th year of the reign of our sovereign Lord George the Third, by the grace of God of Great Britain, France, and Ireland, King Defender of the Faith and so forth, and in the year of our Lord 1795.

By His Excellency's command,

PETER MACGOWAN,
Dep. Secretary.

Registered the 8th day of August 1795.

Office of the Registrar of Deeds, Prince Edward Island, March 31, 1876.

I hereby certify that the foregoing writing is a true copy of a grant from Edmund Fanning, Lieut.-Governor, to Stephen Sulivan, registered in this office in liber 8. Folio 57.

BENJ. DES BRISAY,
Registrar.

Enclosure 3. in No. 4.

DOMINION OF CANADA.—IN THE SUPREME COURT OF CANADA.

In the matter of the application of Francis Kelly, the Commissioner of Public Lands, for the purchase of the estate of Charlotte Antonia Sulivan, and the Land Purchase Act, 1875.

APPEAL BY THE COMMISSIONER OF PUBLIC LANDS OF PRINCE EDWARD ISLAND.

Factum or Points for argument in appeal on the part of the Commissioner of Public Lands.

STATEMENT OF FACTS.

CHARLOTTE A. Sulivan was proprietor of certain township lands of Prince Edward Island, comprising townships or parts of townships, Nos. 9, 16, 22, and 61.

The Commissioner of Public Lands commenced proceedings in August last for the compulsory purchase of these lands under the Land Purchase Act, 1875.

The application was heard by the Commissioners appointed under the said Act and by the proprietor, both parties appearing by counsel.

On the 4th September 1875 two of Commissioners made an award, as follows :—

Dominion of Canada, Province of Prince Edward Island.

In the matter of the application of Emanuel McEachen, the Commissioner of Public Lands, for the purchase of the estate of Charlotte Autonia Sulivan, and the Land Purchase Act, 1875.

The sum awarded, under section 26 of the said Act, by us, two of the Commissioners appointed under the provisions of the said Act, is 81,500 dollars ($81,500).

HUGH CULLING EARDLEY CHILDERS,
Commissioner appointed by the Governor General in Council.

JOHN THEOPHILUS JENKINS,
Commissioner appointed by the Lieutenant Governor in Council.

Charlottetown, 4th September 1875.

The award was duly published on the 7th September 1875.

No application was made, within the time allowed by the 45th section of the Act, to remit the award back to the Commissioners to correct any error, informality, or omission in the award.

On the 3rd November 1875 the public trustee served the proprietor with a notice of his intention to execute a conveyance of her estate to the Commissioner of Public Lands, in which notice the lands were described by metes and bounds (see cases in appeal, pages 3 to 7 inclusive).

On the 16th day of November 1875, the proprietor obtained an injunction restraining the Public Trustee from executing the conveyance of which he had given notice (case, page 10).

She also obtained a rule nisi (case, page 10) calling upon the Commissioner of Public Lands to show cause why the said award and all subsequent proceedings should not be set aside, on four grounds, viz. :—

1. That the award is not final.
2. That it is uncertain.
3. Because a delegated authority must be exercised under it to ascertain metes and bounds of lands to be conveyed by public trustee to the Commissioner of Public Lands.
4. Because the money awarded had not been paid into the Treasury of the Province.

This rule nisi was in 17th January 1876 made absolute (case, pages 76 and 77), and on the 7th February leave was granted to the Commissioner of Public Lands to appeal to the Supreme Court of Canada.

Finality of Award.

The proprietor contended—

1st. That the award is not final, because it did not expressly award on the subjects which the 28th section of the Act directs that the Commissioners shall take into consideration. The Commissioner of Public Lands contends that the award is final, and that the Act only required that the Commissioner should find in their award the sum or amount due to the proprietor for his estate. The 28th section is merely directory. It is true it pointed out certain facts or circumstances which the Commissioners should take into their consideration in making their estimate of the amount to be paid the proprietor.

That 28th section is an enabling clause. It does not exclude other matters or facts from the consideration of the Commissioners in making up their award. It merely enables and directs them to take facts into consideration, many of which certainly without the aid of that clause they would not be justified in considering. Each of these facts, if brought properly in evidence before them, was to be an element to be taken into their consideration. If any of these facts was not brought properly before them in evidence, or was withdrawn by counsel, the Commissioners were not bound to consider them. The several facts and circumstances, as stated in the sub-sections, of themselves afford the clearest evidence that they were intended merely as beacons to light the Commissioners on their way to a true conclusion, and that they were not of necessity to form expressly a part of that conclusion.

All the sub-sections of section 28 are on the same footing, and the intention of the legislature was manifestly the same regarding them all. If one had to be expressly found, then all had. If any one need not be expressly found on the face of the award, then none need. Take sub-section A., the price at which other proprietors on the island had sold to the Government. That price was a mere piece of evidence, which it cannot be argued successfully should appear on the face of the award. *Cui bono?* It was very well as an item to be considered and weighed by the Commissioners. It may have afforded some data on which to found a conclusion of the general value of proprietors' lands on the island. It certainly could not form any part of the conclusion itself. It was a bare, bald fact, not in dispute, and not necessary, in anybody's interest, to be expressly stated in the face of the award. The same argument will apply with more or less force to each of the other sub-sections.

Many of these sub-sections are only applicable to particular cases. As regards the sub-section, relating to the original Grants and quit rents. Miss Sulivan was a consenting party to the Island Statute, 27 Vict. Cap. 2, commonly called the 15 Years Purchase Act, and the questions relating to these subjects, were withdrawn by the counsel, for the Commissioner of Public Lands, from the consideration of the arbitrators, so that under no circumstances could the award be set aside for its silence on these points.

But the Act, we contend, is positive as to the duty of the Commissioners, and that duty is expressly stated twice in different parts of the Act. The Act clearly intended that the Commissioners, in making their award, should simply find and award a sum of money,—they had no power to award anything else, any other award would be *ultra vires.*

In the 4th section it is enacted that the amount of money to be paid to any such proprietor, shall be "*found* and ascertained by three Commissioners, or any two of "them, to be applied as hereafter mentioned."

That section is express and clear. It is the *amount of money* to be paid *they are to ascertain and find;* not any collateral facts.

Then, again, the 26th section:—"*After hearing the evidence* the Commissioners "shall,"—not find a number of collateral facts,—but "shall award the sum due to such "proprietor as the compensation or price to which he shall be entitled, &c."

The *evidence* referred to in this section means in part such evidence as may be offered them on the several matters pointed out in the 28th section and its sub-sections.

It is submitted then as clear from the Act that the intention of the legislature was that like a jury assessing damages, the Commissioners should find *an amount,* and not that they should express their reasons for such findings, so that—as stated by one of the learned judges—if any one of reasons were in the opinion of the court wrong the result might be set aside. It was clearly to avoid any such difficulty and the endless litigation that would follow, that the law declared their award should contain simply their conclusions, and not their arguments in coming to those conclusions, or their findings upon the different branches of evidence. Then, again, it does not appear that any of the sub-sections were not considered, the onus surely lay on the party impeaching the award to show this. The court will not certainly *presume* that the Commissioners neglected anything they were bound to consider. The presumption will be the very contrary.

Omnia, presumuntur, rite esse, acta, here applies. All the arguments as to the possible injury a proprietor may suffer from the omission to consider any of these sub-sections, is simply begging the question, because it must first affirmatively appear that there was an omission on the part of the Commissioners. Of this there is not a scintilla of evidence.

In support of this branch of the argument is cited:—

Duke of Beaufort *v.* Swansea Harbour Trustees, 8, C. B. N. S., 765.

Mays *v.* Cannel, 24, L. J. C. P., 41.

In Re Byles, 25, L. J., Ex., p. 53.

——— 23, L. J. Q. B., p. 185.

Wrightson *v.* Bywater, 3, M. and W., 199.

Harrison *v.* Creswick, 13, C. B., 399.

Uncertainty of Award.

The proprietor contended the award was uncertain in not describing the lands awarded for by metes and bounds, or by some definite description.

The Commissioner of Public Lands contends:—

1. That no description need appear on the face of the award.

The Commissioner of Public Lands, under the 2nd section of the Act, notified Miss Sulivan of the intention of the Government to purchase "all of her township lands in "the island, liable to the provisions of the Land Purchase Act," (notice page 2 of case.) Miss Sulivan was not a resident proprietor, and had no lands "in her actual use and "occupation," within the meaning of the terms, in the 1st section of the Act, which were exempt from the operation of the Act.

The Act grasped all her township lands in Prince Edward Island, none were exempt. Those lands constituted her "estate" within the meaning of the Act. The Commissioners had no power to embrace any lands not part of her estate, or exclude any which were part of it.

Their powers were discretionary as to the sum they should award, not as to the lands for which they made the award.

No description they might insert in their award could alter or change the lands really affected and bound by the award.

If ejectment was brought by the Commissioner of Public Lands, to recover any part of Miss Sulivan's estate, he would be bound to prove that the lands he was seeking to recover *really formed part of the estate of the proprietor, bound and grasped by the Act.*

That fact would require to be proved *aliunde*, the award and the deed from the Public Trustee to the Commissioner of Public Lands. If the award contained a description, embracing the lands sought to be recovered in the ejectment, that would not relieve the Commissioners from proving that such lands really form part of the proprietor's estate.

A *primâ facie* uncertainty in an award does not vitiate it, if capable of being rendered certain.

The "Estate" and the lands in this case are capable of being ascertained with accuracy.

Id certum, est, quod certum, reddi potest. No *bonâ fide* dispute exists as to what constitutes Miss Sulivan's estate; the description given by the Public Trustee is correct description, and therefore no possible harm can accrue to any one.

The following cases are cited:—

Round *v.* Hatton, 10, M. & W., p. 659.
Willoughby & Willoughby, 12, L. J. (N. S.) Q. B., 281.
Mays & Cannel, 24, L. J. (C. P.), 41.
Taylor *v.* Clemson, 2.
Osther *v.* Cooke, 22, L. J. Q. B.
Wilcox *v.* Wilcox, 4, Exch., 499.
The Duke of Beaufort *v.* Swansea Harbour Trustees, 29, L. J. (C. P.), 241, S. C. 8. C. B. N. S., 756.
Aitcheson & Cargay, in error, 9, Moore, 381.

Delegation of Authority to Public Trustee.

There is no delegation of authority. The award bounded all the proprietor's estate. There was no power delegated to the Public Trustee, to add to or detract from the lands bounded. He had merely to describe lands for which the arbitrators had awarded money. He correctly described them at his peril, and the peril of the Government he represented. His describing the lands could not prejudice the proprietor or any third person. In this case it appears he correctly described them. If he did not do so the Court would have restrained him from conveying, as provided by the Act.

But there could be no exercise of any judicial functions by the Trustee in describing the lands. It was purely a ministerial act on his part.

Russel on Awards, Ed. of 1856, p. 281.
Thorpe *v.* Cole, 2. C. M. & K., 367. S. C. 4. Dowl., 457.

The proprietor would be entitled to draw the sum awarded by the Commissioners, irrespective of any description given by the Public Trustee.

In making his application to the Court for the money awarded, the question would not be what lands the Trustee had described, but what *lands really formed part of the proprietors estate*, for which the award was made. *Primâ facie*, the proprietor notified, was entitled to all the money awarded.

An application by any third party, mortgagee, judgment creditor, &c., for any part of the money, might involve an inquiry by the Supreme Court, as to *what really constituted the estate proceeded against*, and whether any particular piece of land formed part of it, but could have nothing to do with the description the Public Trustee might make or give.

Jurisdiction of Court to set Award Aside.

The Court had no jurisdiction to declare the award void. In doing so it acted *ultra vires*. The 45th section of Land Purchase Act (case, page 115), expressly takes away the ordinary jurisdiction of the Court, and declares that no "award shall be invalid or void, for any reason, defect, or informality." The same section gives ample powers to the Court to remit the award back, to correct any error, informality or omission made in it, and gives the Commissioners full powers to revise and re-execute.

If there was any error, informality, or omission, the proprietor should have moved under this section to remit award back, but did not do so.

A further power is given by the 32nd section to the court, or a judge, to restrain the Public Trustee from executing a conveyance.

The award made is clearly on a matter within arbitrators' jurisdiction.

It does not appear that they awarded on any matter not within their jurisdiction. It does not appear that they neglected to exercise a jurisdiction which they should exercise. No attempt is made to show that in estimating the amount awarded to Miss Sulivan, the arbitrators omitted the consideration of any of the circumstances set out in the 28th

section of the Act, the award is expressly made under and pursuant to the Act, and in a matter within the scope of the Act; their jurisdiction appears on the face of the award.

Presumptions will not be made against the award, but rather in its favour.

Richard *v.* South Wales Railway Co., 13 Jurist, 1097.

Faviell *v.* Eastern Counties Railway Co., 17, L. J. Ex., p. 222.

Colonial Bank of Australasia *v.* William, 5 L. Rep. P. C., 442.

Thorpe *v.* Cooper, 2. C. M. & R., 367.

Non-Payment of the money into the Treasury.

The money awarded was paid into the Treasury in Dominion notes, which it afterwards appeared were not legal then in Prince Edward Island.

This is a subsequent act to the award, and does not affect the validity of that document.

The money paid in not being legal tender, the proprietor had a right to an injunction, restraining the Public Trustee from executing a conveyance until legal tender money was paid in. This she got.

The Commissioner of Public Lands would be entitled to dissolve that injunction, when legal tender money was substituted. The section is directory, not *imperative*.

It declares that the money shall be paid *at the* expiration of 30 days—not within 30 days. The non-payment of the legal tender money within 30 days, could not therefore operate to vitiate the award; but could only have the effect of entitling the proprietor to restrain the Public Trustee from executing a conveyance until legal tender money was paid into the Treasury.

Enclosure 4. in No. 4.

In The Supreme Court of Canada, Monday, January 15, 1877.

Present:

The Honourable the Chief Justice.
" " Mr. Justice Ritchie.
" " Mr. Justice Strong.
" " Mr. Justice Taschereau.
" " Mr. Justice Fournier.

Francis Kelly, *Appellant*, and Charlotte Antonia Sulivan, *Respondent*.

In the matter of the application of the said Francis Kelly, the Commissioner of Public Lands for the Province of Prince Edward Island, for the purchase of the estate of the said Charlotte Antonia Sulivan, and "the Land Purchase Act, 1875," and in the matter of an appeal to the Supreme Court of Canada by the said Francis Kelly from the Judgment of Her Majesty's Supreme Court of Judicature for Prince Edward Island, rendered on the 17th day of January 1876, making absolute a rule nisi granted in the said cause by the said last-mentioned Court on the 17th day of November 1875, calling on the said appellant to show cause why the award made and filed in the matter of the said application and all subsequent proceedings should not be set aside.

The above appeal having come on to be argued before this Court on the eighth, ninth, and tenth days of June last past, in presence of counsel, as well for the appellant as the respondent, whereupon and upon hearing what was alleged by counsel aforesaid, this court was pleased to direct that the same should stand over for judgment, and the same having come on this day for judgment, it was ordered and adjudged by the said Court that the said appeal should be and the same was allowed, and that the said judgment of Her Majesty's Supreme Court of Judicature for Prince Edward Island be reversed, that the said rule nisi should be discharged, and that the respondent should pay to the appellant as well the costs incurred in the said last-mentioned court as the costs of this appeal.

Certified,
Robert Cassels, Jr.,
Registrar, S.C.C.

SUPREME COURT of CANADA, June Session, 1876.

PRESENT:

Their Lordships Chief Justice Richards; Ritchie, J.; Strong, J.; Taschereau and Fournier, J.

IN the matter of the application of Francis Kelly, Commissioner of Public Lands for the purchase of the estate of Charlotte Antonia Sulivan, and the Prince Edward Island Land Purchase Act, 1875.

APPEAL by the Commissioner of Public Lands of Prince Edward Island.

Jurisdiction of Supreme Court of Canada. Court of last resort in Prince Edward Island. Jurisdiction of Court to set aside award. Remedy by remitting back award, provided application be made to Supreme Court of Prince Edward Island within 30 days after publication of award. Finality of award.

Held, that the Court of last resort in the Province of Prince Edward Island, from whose judgment an appeal lies direct to the Supreme Court of Canada, is the Supreme Court of Judicature of Prince Edward Island.

Held, that by Statute of Prince Edward Island, known as "The Land Purchase Act, 1875," an award of the Commissioners cannot be quashed and set aside or declared invalid and void on an application made to the Supreme Court of Prince Edward Island, but can be remitted back to the Commissioners in the manner prescribed by the 45th section of the Act.

The island of Prince Edward Island long ago granted in large blocks of about 20,000 acres each was, as time went on, let by the grantees in small parcels, generally for long terms of years, reserving an acreable rent of about one shilling.

Out of these tenures sprung an agitation, which under various names occasioned much discord in the Colony, and in 1862 an Act of Assembly was passed under the provisions of which a portion of the island was purchased by the Government from its owners; but a considerable portion remained in the hands of others, who declined to sell. The Land Purchase Act of 1875 was passed. Under its authority a tribunal called the Commissioners Court was organised, and it is out of proceedings instituted in that Court for the purchase of the township lands of Miss Sulivan the present questions arise.

The nature of the questions decided and the manner in which they arose are fully set forth in the reasons for judgment given by their Lordships.

Mr. Brecken, Attorney-General, Prince Edward Island; Mr. Cockburn, Q.C.; and Mr. L. H. Davies, for appellants.

First, as to the jurisdiction of this Court.

The power of the Governor in Council to sit as a Court was given by Royal instructions previous to Lord Monk's appointment. In subsequent Royal instructions there are clauses which expressly revoke the power given to the Governor.

If this Court exists in Prince Edward Island, it also exists for Nova Scotia; and the practice there shows that the Appeal to the Privy Council lies direct from the Supreme Court. McPherson P. C. Pract., 9392. The Act, 1873, Prince Edward Island, is a copy of the English Procedure Act, and reference is made to a Court of Error and Appeal, because it was intended to provide for a Court of Error and Appeal under the British North America Act, it being only two months previous to confederation that this Act was passed.

No rules were ever made, and since confederation the Lieutenant-Governor is appointed by the dominion Government, and he is not given any judicial functions. Reference is made to Commission to Lieutenant-Governor Patterson, and Royal Instructions to Lieutenant-Governors since 1854.

II. The award is final.

The Act only required that the Commissioners should find in their award the sum or amount due to the proprietor for his estate. Section 28 of the Act, with sub-sections *a*, *b*, *c*, *d*, *e*, are merely directory, and as stated in sub-section *e*, "*the number of acres, the* "*reasonable probabilities, and expenses of the proprietor* shall each and all be *elements* "to be taken into consideration by the Commissioners in estimating the value of the "lands." This proves that these facts and circumstances, as stated in the sub-sections themselves, were merely intended as beacons to light the Commissioners on their way to a true conclusion. In section 27 of the Act, it is stated that the *object of this Act is to pay every proprietor a fair indemnity or equivalent for the value of his interest, and no more.* Now the intention of the Legislature is certainly well expressed, viz., to find the

amount to be paid. It is the *amount of money* to be paid they are to ascertain and find, not any collateral facts. All the arguments as to the possible injury a proprietor might suffer from the omission to consider any of these sub-sections is simply begging the question, because it must first affirmably appear that there was an omission on the part of the Commissioners. Further, the evidence as to quantity was taken from respondent's own agent, and to set aside an award there must either be manifest fraud or excessive jurisdiction or some material matter that has not been taken into consideration. There could not have been any fraud when the evidence given and accepted was that of the agent of the respondent. The case of Withworth *v.* Hulse, L. R. 1 Exch., 252, is not in point, because it does not appear in this case that any of the sub-sections were not considered. On the contrary, all respondent's estate was adjudicated upon.

In support of this branch of the argument is cited--

Duke of Beaufort *v.* Swansea Harbour Trustees, 8, C. B. N. S., 765.
In *re* Byles, 25, L. J. Ex., p. 53.
Mays *v.* Camel, 24, L. J. C. P., 41.
Queen *v.* London N. W. Railway Co., 23, L. J. Q. B., p. 185.
Wrightson *v.* Bywater, 3, M. & W., 199.
Harrison *v.* Creswick, 13, C. B., 399.
Russell on Awards, 2 Ed., pp. 266, 267, 258, 262.

As to the uncertainty of the award, all respondent's estate was adjudicated upon; the Trustee's Act was simply ministerial. The Commissioner of Public Lands, under the 2nd section of the Act, notified Miss Sulivan of the intention of the Government to purchase "all her township lands in the island liable to the provisions of the Land "Purchase Act." The Commissioners had no power to embrace any lands not part of her estate or exclude any which were part of it.

It was decided lately in the island that the mere notice given under the Act brought all the lands of a proprietor under the provisions of the Land Purchase Act, and therefore Commissioners had to estimate only the sum they should award, and their powers were not discretionary as to the lands. There could be no necessity of describing the lands by metes and bounds. The describing of the land is purely a ministerial act. No description they might insert could alter or change the lands really affected and bound by the award. A *primâ facie* uncertainty in an award does not vitiate it, if capable of being rendered certain. The "estate" and the lands in this case are capable of being ascertained with accuracy.

The following cases are cited:—

Round *v.* Hatton, 10 M. & W., p. 659.
Willoughby *v.* Willoughby, 12 L. J. (N.S.) Q. B., 281.
Mays *v.* Camel, 24 L. J. (C.P.), 41.
Taylor *v.* Clemson, 2, Q. B., 978.
Osther *v.* Cooke, 22, L. J. Q. B., 71.
Wilcox *v.* Wilcox, 4 Exch., 499.
The Duke of Beaufort *v.* Swansea Harbour Trustees, 29, L. J. (C. P.), 241.
S. C. & C. B. N. S., 756.
Aitcheson *v.* Cargay in Error, 9, Moore, 381.
On delegation of authority to Public Trustee.
Russell on Awards, Ed. 1856, p. 281.
Thorpe *v.* Cole, 2, C. M. & R. 12, 367, S. C. 4, Dowb., 457.
15 U. C. (C. P.) 565, 2. Pract. Rep. U. C., p. 98.
Duguet *v.* Green, 4 U. C. Q. B. O. S., p. 110.
20 U. C. Q. B. N. S. 283, 24, Q. B. U. C., p. 581.

The Court had no jurisdiction to declare the award void. The 45th section of Land Purchase Act expressly takes away the ordinary jurisdiction of the Court, and declares that "no award shall be invalid or void for any reason, defect, or informality," but the Court had amply power under the same section to remit the award back to the Commissioners to correct any error, informality, or omission, provided application is made 30 days after rendering of the award. This remedy was treated with silent contempt. Now, after reading that prohibitory clause of the Act, nothing in this case could reasonably justify the Court below to quash the award in this summary way. The award is expressly made under and pursuant to the Act; the arbitrator's jurisdiction appears on the face of the award. Presumptions will not be made against the award, but rather in its favour. They referred to—

Richard *v.* South Wales Railway Co., 13, Jurist 1097, & 18 L. J. Q. B.
Favielle *v.* Eastern Counties Railway Co., 17, L. J. Ex., p. 222.
Colonial Bank of Australasia *v.* William 5, L. Rep. P. C., 442.
Thorpe *v.* Cooper, 2, C. M. & R. 367, Queen & Botton, 1, Q. C., 66.

Mr. M. C. Cameron, Q.C., and Mr. E. T. Hodgson, for the respondent.

I. No appeal lies direct from the Supreme Court of Prince Edward Island to the Supreme Court of Canada. Sections 11 and 17 of the Supreme Court Act declare that all appeals to the Supreme Court must be from the Court of last resort in any province. In Prince Edward Island there is a Court of Error and Appeal, composed of the Lieutenant-Governor in Council, before which this case should have been tried before coming here. By various Acts of the Legislature of the Island this Court is recognised to have an existence, 1 vol. Prince Edward Island Statutes, p. 291 ; Rev. Stat., p. 51, 21 Geo. III. ch. 17; and section 145 of Prince Edward Island Act, 1873; 6 Vict. c. 26, sec. 51. The discussion on *re* Cambridge, 3 Moore P. C. C., 175, shows that in the year 1841 the Privy Council decided that an appeal would not lie to them from the courts of the Island, except through the Governor in Council. By section 24 of the Supreme Court Act, the practice in appeals to the Privy Council must be followed in similar cases in the Supreme Court here.

In all other British Colonies there have been Orders in Council passed to enable parties to appeal direct from the supreme courts of the respective provinces to the Privy Council without recognising or appealing to the intermediate court, composed of Governor in Council, but in Prince Edward Island no Order in Council or Act of Parliament has changed or affected the law as it once stood. Reference is made to Royal Instructions, Appendix F. Journals of House of Assembly, Prince Edward Island. Clarke's Colonial Law, p. 111, L. R. 4, Q. B., p. 225.

II. As the jurisdiction of the Supreme Court of Judicature of Prince Edward Island is questioned, it is well to remark that it has always been admitted that an appellate court would never inquire into the manner or process of an inferior court provided it was legally seized of the cause. By the 32nd section of the Land Purchase Act, the Supreme Court had a right to restrain the Public Trustee from executing a conveyance of the estate of a proprietor to the Commissioner of Public Lands. It is not the duty of this court, as an appellate court, to inquire if this was obtained by a rule *nisi* or otherwise. The court is given a jurisdiction which it would not have were it a case of arbitration. When a Statutory power is given to deprive a person of his land, the strictest interpretation must be given to the Statute, and every means afforded to the proprietor to find out if any omission or error has taken place. The award was open to inquiry by the Supreme Court, notwithstanding the 45th section of the Land Purchase Act, 1875. Colonial Bank of Australia *v.* Willan, L. R. 5, P. C., 442 ; Reg. *v.* Jus. of Staffordshire, 5, E. U. B. C., 49. So though *certiorari* be taken away by Statute, if cause be decided by a majority of a court improperly constituted, certiorari yet lies, Reg. *v.* Cheltenham, 1 Q., B. 467 ; Reg. *v.* St. Albans, 17, Jurist, 531, S. C. 22, L. J. (M. C.) 143 ; Richards *v.* S. Wales, R. R. Co., 18, L. J. (Q. B.), 310 S. C. 6 ; Rail., case, 197. The Commissioners had no jurisdiction in this case, and therefore their award was bad, and should be set aside first, because the notice required by the Act had not been properly given. This being a proceeding *in rem* the notice from the Commissioner of Public Lands should have set out a description of the lands by *metes* and *bounds* over which jurisdiction was claimed ; second, because it did not appear on the record that notification of the appointment of the Commissioner had been given, or that the Commissioners were sworn under sections 9 and 13 of the Act.

L. Canada Rep. 11 Vol., 499; Joseph *v.* Ostell. Third, because the notice in the Royal Gazette, required to be given under section 14, of time and place of hearing for three consecutive weeks was advertised for only two weeks.

3. C. P. U. C., p. 19.; 28 Q. B. U. C., p. 333; 24 Q. B. U. C., p. 439. No appearance of respondent by counsel could waive these defects, because (a.) no consent can give jurisdiction. (b.) The interests of parties other than Miss Sulivan's were affected whom no consent of hers could bind. (c.) The Commissioners derive their authority from the Statute and not from the consent of the parties. The award is not final and it is uncertain.

It is uncertain : It does not show that the Commissioners adjudicated on matters on which they were bound to adjudicate under section 28 of the Land Purchase Act. The award is not made *de priemissis*, and there is nothing to show that the various matters specified in this section were taken into consideration by the Commissioners. The Act is intended to convey an absolute and indefeasible estate of fee simple from all incumbrances of every description, and to divest the proprietor not only of the land but also of all arrears of rent. Now unless a proper description be given somewhere, how can Commissioners award on these arrears of rent.

The rule of law is, if it be doubtful whether the award has decided the question referred, it will be set aside for the uncertainty. Russel on Awards, 2nd Ed., p. 284. Tribe *v.* Upperton, 3 A. and E., p. 295. Pearson *v.* Archibald, 11 M. and W. p. 477.

The award does not embrace sub-sections 1, 2, and 3 of section 28, and the rule of law is if specific matters are referred and there be no specific adjudication upon any of them the award is void. Moreover the form of conveyance used in the schedule annexed to the Act, implies that the lands should be described by *metes* and *bounds*. In answer to the contention of the counsel for the appellant that in this case it would have been impossible for the Commissioners to find on the matters and things contained in sub-section *e.* of section 28 of this Act, it is well to remark that section 24 clearly confers authority which would enable them not only to examine the quality of the land, timber, &c., but also to cause such surveys to be made as might be necessary for carrying the Act into effect. How could the Public Trustee execute a deed in form B. of the Act if the award were held to be valid? The Public Trustee is merely a ministerial officer and he could not execute a deed to the Commissioner of Public Lands without exercising judicial functions in ascertaining what lands to insert in such deed.

Reference is made to the following cases: Russell on Awards, 2 Ed., p. 261. Randall *v.* Randall, 7 East, p. 81. Re Rider *v.* Fisher, 3 Bing, U.C., 874. Whitworth *v.* Hulse, L.R., 1 Exch., 252. Robinson *v.* Henderson, 6 M. & W., 276. Wakefield *v.* Llanelly, 3 De G. I., &c., S., p. 11. Stone *v.* Phillips, 4 Bing, U.C., p. 37. Ross *v.* Boards, 8 A. & E., p. 290.

Further the award shows an excess of jurisdiction inasmuch as it deals with all Miss Sulivan's lands, whereas they had jurisdiction only over the excess above 500 acres. As Judge Peters, in his judgment puts it, "Now, surely if I say you shall not hold over "500 acres the plain and necessary implication is that you may hold 500." It can only be with regard to this excess that the compulsory clauses of the Act were intended to operate. The respondents counsel rely also on the reason for judgment by the court below, and referred also to the following authorities:

Rorer on Judicial Sales, p. 36, vol. II. Hopper *v.* Fisher, Head's Reports, vol. II., p. 353. Grey *v.* Steamboat Reveille, 6 Wisconsin, p. 61. Little *v.* Pitts, 33 Alabama, 343. Lawson *v.* Kerr, 10 M. P. C., p. 162. Devino *v.* Holloway, 14 M. P. C., p. 290.

Mr. L. H. Davies in reply—

In this case Miss Sulivan did not wish to retain her 500 acres. The scope of the Act was to reach proprietors whose lands were not in their actual use and occupation. The presence of respondent's Commissioner, her appearance by counsel, and affidavit of her agent, G. W. Le Blois, surely put at rest any contention that certain preliminary formalities of the Act were not complied with. Supposing an omission had taken place, the remedy was marked out in the 45th section of the Act.

As to mentioning in the award all the matters submitted to the Commissioners by sub-sections 1, 2, and 3, section 20, the Act would have been absolutely unworkable.

The following is a Synopsis of the Land Purchase Act of 1875.

The Island Statute known as the Land Purchase Act of 1875, came in force by the proclamation of the Lieutenannt-Governor on the 13th June 1876. It refers to the fact that the government of the island was entitled to receive from the dominion government $800,000 for the purpose of enabling the Province to purchase the *township lands* held by proprietors in the island; and further recites that it was desirable to convert leasehold tenures into freehold estates upon terms just and equitable to the tenants as well as to the proprietors in the island. The first section declared that the term "proprietor" should include and extend to any person for the time being receiving or entitled to receive the rents, issues, or profits of any *township lands* in the island (exceeding 500 acres in the aggregate), in his or their own right or as a trustee, guardian, executor, or administrator for any other person or persons, or as a husband in right of or together with his wife, and whether such lands are leased or unleased, occupied or unoccupied, cultivated or wilderness. But nothing in the Act contained should be construed to affect any proprietor whose lands in his actual use and occupation and untenanted did not exceed 1,000 acres.

Section 2. That the Commissioner of Public Lands shall, within 60 days after the publication of the Governor-General's assent to the Act in the "Canada Gazette," notify any proprietor that the Government intend to purchase his or their township lands under the Act.

Section 3 provides for the service of notice.

Section 4. The amount of money to be paid to any such proprietor shall be ascertained by three Commissioners or any two of them appointed under the Act.

Sections 5, 6, 7, 8 and 9 provide for the selection of the three Commissioners, one by the Governor-General in Council, one by the Lieutenant-Governor of the Island, and the third by the proprietor.

Sections 10, 11, 12 and 13 refer to appointing Commissioners in place of those who die or who are incapacitated from serving or who refuse to serve, and electing a commissioner to preside at the meetings.

Section 14. Notice of the day and place of the sitting of the Commission to be published in the "Royal Gazette."

Section 15 makes the Commissioner of Public Lands in all proceedings the claimant, and subjects him to process for contempt.

Section 16 provides for the cases of proprietors who are lunatics, infants, &c.

Section 17. Court may appoint a guardian *ad litem*.

Section 18. Commissioner of Public Lands may appoint a solicitor to act for him.

Section 19. Either party may obtain subpœnas for witnesses.

Under the 20th section the Commissioners are authorised to examine witnesses on oath upon the matters submitted to their consideration, *and as to the facts which they may require to ascertain in order to carry this Act into effect.*

Section 21. The Commissioners, when appointed, shall make oath before one of the judges of the Supreme Court that they will well and faithfully discharge the duties imposed upon them under the Act, and adjudicate on all matters coming before them to the best of their judgment.

Sections 22, 23, 24 and 25 authorise Commissioners to proceed *ex parte* when parties neglect to appear, to extend time to proprietors before entering on case, and to have power to enter on and examine lands and adjourn the hearing of any matter from time to time.

Section 26. "After hearing evidence adduced before them, the Commissioners, or any "two of them, shall award the sum due to such proprietor as the compensation or price "to which he shall be entitled by reason of his being divested of his lands and all "interest therein and thereto."

Section 27 provides that no compensation shall be allowed in consequence of the purchase being compulsory, "the object of the Act being to pay every proprietor a fair "indemnity or equivalent for the value of his interest and no more."

Section 28 enacts that in estimating the amount of compensation to be paid to any proprietor for his interest in, or right to, any lands, the Commissioners shall take the following facts or circumstances into consideration:—

(*a.*) The price at which other proprietors in the island have sold their lands to the Government.

(*b.*) The number of acres under lease in the estate or lands they are valuing, the length of the leases on such estates; the rents reserved by such leases; the arrears of rent, and the years over which they extend, and the reasonable probability of their being recovered.

(*c.*) The number of acres of vacant or unleased lands; their quality and value to the proprietor.

(*d.*) (1.) The gross rental actually paid by the tenants on any estate yearly for the previous six years; (2.) The expenses and charges connected with and incidental to the recovery of such rent and its receipts by the proprietor; and (3.) the actual net receipts of the proprietor for the said period of six years.

(*e.*) The number of acres possessed or occupied by any persons who have not attorned to or paid rent to the proprietor, and who claim to hold such land adversely to such proprietor, and the reasonable probabilities and expenses of the proprietor sustaining his claim against such persons holding adversely in a court of law, shall each and all be elements to be taken into consideration by the said Commissioners in estimating the value of such proprietor's land; (1) the conditions of the original grants from the Crown; (2) the performance of those conditions; (3) the effects of such non-performance, and how far the despatches from the English Colonial Secretaries to the different Lieutenant-Governors of the island have operated as waivers of any forfeitures.

(*f.*) The quit rents reserved in the original grants, and how far the payment of the same have been waived or remitted by the Crown.

Section 29. A copy of the award to be delivered to the proprietor or his agent and the original to be filed in the office of the prothonotary of the Supreme Court.

Section 30. At the expiration of 60 days from such publication, the Government shall pay into the Colonial Treasury the sum awarded to the credit of the suit or proceeding in which the award is made.

Section 31. A certificate of the amount paid in to be delivered to the prothonotary of the Court.

Section 32. The Public Trustee shall (unless restricted by the Supreme Court or a judge) after 14 days notice to the proprietor, execute a conveyance of the estate of such proprietor to the Commissiouer ot Public Lands, which conveyance may be in the form B. of the Act.

Section 33. The conveyance shall rest in the Commission of Public Lands an absolute and indefeasible estate of fee simple free from all incumbrances of every description, and shall be held and disposed of by him as if such lands had been purchased under the provisions of 16 Vict. c. 18., and shall also vest in the Commissioner all arrears of rent due upon the said lands.

Section 34. The appointment of the Public Trustee to be under the Great Seal, and shall be registered.

Section 35. Party entitled to sum awarded or portion of such sum to obtain the same by obtaining an order from the Supreme Court on petition, and proving his or their right to such sum or portion thereof. Provided the Commissioner of Public Lands be made a party to such application.

Section 36. The Supreme Court, on application, to make all proper persons parties to such proceedings and to apportion the sums amongst the parties entitled to receive the same.

Section 37. When the full sum for the land is paid into the Treasury and the conveyance executed by the Trustee, the Government shall be exonerated from all claims on the estate.

Section 38. The party obtaining an order from the Supreme Court for any money to which he is entitled or any interest therein shall be indemnified his cost on the application, but a person failing in his application is not to get costs, but must pay to the party obtaining the order his costs incurred by the unsuccessful application.

Sections 39 and 40 refer to the Court ordering money to be invested in the name of trustees, &c., to meet the circumstances of each case and the same or the interest thereof to be paid to the proper parties.

Sections 41 and 42. Trustees to hold purchase money upon same trusts as they held the lands. Court may appoint trustees and dismiss them and appoint others in their stead.

Sections 43 and 44. Compensation of Commissioners and Public Trustees.

Section 45 refers to the setting aside of the award.

Section 46. The Supreme Court to have power to make rules and regulations for the carrying the Act into effect.

Section 47 declares, as it is expedient that the matters referred to the Supreme Court under the Act should not interfere with the ordinary business of the Court during term time, the Court from time to time may appoint sessions for the purpose of hearing proceedings under the Act, and provides for one week's notice to be given.

Section 48. Penalty on Commissioners for neglecting to proceed under provisions of the Act.

And, lastly, the 49th section enacts: After the Commissioners shall have given notice to any proprietor under the second section of the Act, no such proprietor shall maintain any action at law for the recovery of more than the current year and subsequent accruing rents due to him from any tenant or occupier upon his lands, and if any such action is brought the tenant may plead the Act in bar of the action; nor shall any execution issue on any judgment, recovered or to be recovered, for rent by any such proprietor against any tenant on the Island, except the current year's rent and subsequent accruing rent; and in case any such execution is issued the Supreme Court, or a judge thereof, shall, on application, stay any such execution until the award of the said Commissioners shall be made.

January 15th, 1877.—Chief Justice Richards.

The appeal is from the Supreme Court of Prince Edward Island, making absolute a rule to quash the award made and filed in this matter and all subsequent proceedings, wherein it was ordered that the said award be quashed and set aside, and that the said Commissioner of Public Lands pay the costs of the application and the rule. Against this judgment and order of the Court the Commissioner appeals. On the hearing, the first objection taken on behalf of the respondent was first discussed, viz., that no appeal lies direct from the Supreme Court of Prince Edward Island to the Supreme Court of Canada.

The latter part of Section 11 of the Supreme and Exchequer Court Act, reads as follows:—"And when an appeal to the Supreme Court is given from a judgment in any "case it shall always be understood to be given from the Court of last resort in the "province where the judgment was rendered in such case." The respondent in the factum suggests that the Governor in Council is constituted a Court of Error and Appeal in Prince Edward Island by various Royal Instructions, and refers to the instructions to Sir John Colborne, accompanying his Commission of 13th December, 1838, appointing him Captain-General and Governor-in-Chief of the Island.

The instructions, which in the absence of the Captain-General and Governor-in-Chief were intended for the Lieutenant-Governor or officer administering the government for the time being, are referred to as being in the Appendix to the journals of the House of Assembly of the Island, A.D. 1851, Appendix F. The Commission to Sir John Colborne is also to he found in the same book.

The 23rd and 24th sections of the Instruction were especially referred to on the argument. The first part of the 23rd section is as follows:—"Our will and pleasure is that "you do in all civil causes, on application being made to you for that purpose, permit "and allow appeals from any of the Courts of Common Law in our said Island of "Prince Edward; and you are for that purpose to issue a writ in the manner which has "been usually accustomed, returnable before yourself and the Executive Council of the "said Island of Prince Edward, who are to proceed to hear and determine such appeals." It goes on to provide that the judges of the Court whose judgment is appealed from shall not vote on the appeal, though they may be present and give the reasons of their judgment. It also directs that the sum or value appealed from must exceed 300*l.* sterling, and security be given, and when the sum exceed 500*l.* sterling, and either party is not satisfied with the judgment of the Governor in Coucil, an appeal may lie to the Queen in Council, the same to be made within 14 days, and security given. And in certain cases when the rights of the crown are involved, he is to *admit* an appeal to the Queen in council, though the value be less than 500*l.* sterling.

The 24th paragraph directs him to *admit* appeals to the Queen in her Privy Council in case of fines to a certain amount for misdemeanor. Clarke's "Colonial Law," page 111, was cited, and referring to the position of most of the North American Colonies the following language is used:—"From the Common Law Courts an appeal in the nature "of a Writ of Error lies in the first instance to the Court of Error in the Colony, and "from them to Her Majesty in Council. The Colonial Court of Error is usually com-"posed of the Governor in Council, who decide by a majority."

Re Cambridge, 3 Moore, P. C. C., 175. An application was made for leave to appeal where the amount was under 300*l.*; the Court of Appeal in the Island only allowing appeal when the amount was over 300*l.* Lord Brougham, in giving judgment, refers to the existence of the Court of Appeal in the Colony.

The Act 6 Vict. c. 26, sec. 5, provides that any person dissatisfied with the decree of the Surrogate may appeal "to the Governor in Council." Under section 51 he was to give a bond for the payment of such costs as should be awarded by the Governor in Council (sec. 52). If the decision of the Surrogate should be reversed or altered the Governor in Council should make such order touching the subject of the appeal as to them shall seem fit, and by section 53 every license to sell real estate "shall be made in "such form as the Surrogate (or in case of the decision of the Surrogate being altered "by the Governor in Council) may prescribe." The Island Statute 21 Geo, 3 ch. 17, relates to the limitation of actions. Section 4 provides that when "judgment given for "a plaintiff is reversed on a writ of Error, arrest of judgment, &c., he may commence "another action within a year."

The Island Statute 5 Wm. IV. c. 10, constitutes the Governor in Council a court for hearing matters of divorce, with full power, authority, and jurisdiction. The court to sit on the second Monday in May in each year. The Governor may appoint the Chief Justice to preside.

In re Monckton, a barrister, 1 Moore P. C. C., p. 455. The Chief Justice of the island had made an order in a matter wherein the applicant, a barrister, was arrested, striking his name off the rolls as a barrister. On appeal to the Privy Council the order was set aside.

The sections of the Island Statute 36 Vict. c. 22, from 136 to 158 inclusive, and section 230, refer to appeals to a court of error or appeal. Sections 136 to 157 inclusive, are the same as those in the English Common Law Procedure Act, 15 & 16 Vict. c. 76, from section 146 to 167 inclusive, slightly varied to adapt them to the circumstances of the island. The 136th section begins, "And with respect to proceedings in error, be it

enacted," &c. The 145th section speaks of the setting down of the case for argument in the Court of Error in the manner heretofore used, refers to the roll being sent into the Court of Error or Appeal, and "the Court of Error or Appeal shall thereupon review the proceedings."

The appellants on the argument contended that as a matter of fact no such tribunal as a court of error and appeal was ever established in the island.

There is no existing official document of any kind showing the establishing of such a court. There is no record of any case ever having been brought before such a tribunal, and the reference in the is land Statute 21 Geo. 3. c. 17, respecting the limitation of actions to a year for bringing an action when cases are reversed in error, &c., cannot be considered as establishing or recognising the establishment of a court of appeal as a court of the last resort from the Supreme Court in the island.

That the Statute 6 Vict. c. 26, so far as it relates to an appeal from decisions of the Surrogate Court to the Governor in Council, does not form them into a general appellate tribunal, but in those special cases allows an appeal to the Governor in Council, and directs the Probate Court to carry out the decision of that body when the appeal is made to them.

That the reference to appeals in the Act 36 Vict. c. 22, arose from hasty legislation in adopting the general provisions of the Common Law Procedure Act, and if no court of appeal actually existed, would not necessarily establish one.

A copy of instructions to Governor Patterson was produced at the argument, but his commission was not.

It was suggested that application should be made to the Colonial Office for copies of the commissions and instructions of such Governors as would be likely to throw light on the subject, and any other documents of a like nature, and these documents were to be placed before this court.

Reference was also made on the argument to Stuart's History of Prince Edward Island, printed in 1805, and to Haliburton's Nova Scotia, vol. 2, p. 330.

Since the argument copies of the commission of Governor Patterson of Prince Edward Island, then the island of St. John, and of two commissions to Guy Carleton, Esq., as Governor of the Province of Quebec, and the instructions accompanying each of the commissions, have been filed with the registrar of the court. No other documents referring to the establishment of a court of appeals have been brought to the notice of the court. We must, therefore, dispose of the preliminary question on the materials before us.

Copies of the commissions of Lord Monck, Sir John Young, Lord Dufferin, and of the present Governor of the island, Sir R. Hodgson, were obtained in Ottawa.

Prince Edward Island, or the island of St. John, as it was then called previous to the year 1764, was under the same Government with the Province of Nova Scotia, and giving the boundaries of that province in the commission of William Campbell, Esq., commonly called Lord William Campbell, dated 11th August 1766, appointing him Captain General and Governor of Nova Scotia, the island of St. John is included. In the commission to Walter Patterson, dated 4th August 1769, so much of the patent to Lord William Campbell as mentioned the island of St. John was revoked, and Patterson was appointed Captain General and Governor-in-Chief of the island and territories adjacent thereto. Under the commission to Governor Patterson he had power, by and with the consent of the Council, to erect and establish courts of judicature within the island, for the determining and hearing of all causes, civil and criminal, according to law and equity, and to constitute and appoint judges and commissioners of oyer and terminer for the better administration of justice. The commission also refers to such reasonable Statutes as should thereafter be made and agreed upon by him, with the advice and consent of the Council and Assembly of the island; and as soon as the situation and circumstances of the island would admit thereof, and as soon as need should require, he was to call general assemblies of the freeholders and planters, to be called the Assembly of the island; and by the consent of the Council and Assembly he had power to make laws for the good government of the island. By the instructions he was to constitute a council to assist him in the administration of the affairs of the Colony, and the council to have all the powers and privileges and authority usually exercised in the other American colonies.

He was to give his immediate attention to the establishing of such courts of judicature as might be found necessary for the administration of justice. He was to consult the Chief Justice as to the measures proper to be pursued for the purpose, governing himself, as far as difference of circumstances would admit, by what had been approved and found

advantageous in Nova Scotia. He was to transmit to the Secretary of State copies of all acts, orders, commissions, &c., by virtue of which any courts, officers, jurisdictions, &c. were established.

The consideration of calling a Lower House of Assembly could not too early be taken up.

There is no authority in his commission or instructions directing him to establish a court of error or appeal, nor to permit or allow appeals to himself in council.

The commission of Guy Carleton, afterwards Lord Dorchester, appointing him Governor of the Province of Quebec, dated 12th April 1768, is similar to that of Governor Patterson, which was dated 4th August 1769. It appoints him Captain General and Governor-in-Chief of the Province of Quebec. His instructions differ somewhat from those afterwards given to Governor Patterson, and as to summoning a general assembly of freeholders as soon as the more pressing affairs of Government would allow, stated, as it was impracticable to form such an establishment, then he was to make such rules and regulations, with the advice of the Council, as should appear to be necessary for the peace, order, and good government of the Province.

He was to establish courts of justice, and consider what had been established in that respect in the other colonies in America, particularly in Nova Scotia.

He was to allow appeals from any of the Courts of Common Law to the Governor in Council and for that purpose was to issue a writ "in the manner which has usually been accustomed" before himself and the Council who were to proceed to hear and determine such appeals. (As already stated, no such direction or authority as this is contained in the commission to Governor Patterson).

He was again appointed Governor of Quebec, his commission being dated 27th December, 1775, after the passing of the Imperial Statute 14, Geo. III. ch. 83, for making more effectual provision for the Government of the Province of Quebec. Following the provisions of the Imperial Statute he was authorised, with the consent of the Council, to make ordinances for the peace, welfare, and good government of the Province, certain exceptions as to ordinances imposing taxes. He had authority to appoint judges, &c., as in his former commission.

Under his instructions he was directed by and with the advice of his Council to establish courts of justice. Suggestions were made as to the kind and number of courts, but he was to be guided by circumstances, and amongst other suggestions as to what should be done was the following, viz. :—That the Governor and Council should be a court of civil jurisdiction for the hearing of appeals from the judgments of the other courts when the matter in dispute exceeded 10 pounds.

The decision of the Governor in Council to be final in cases not exceeding 500*l.* sterling, in which case an appeal from the judgment to be admitted to the King in Council.

An ordinance was passed by the Governor in Council on 25th July 1777, establishing certain courts according to the suggestions contained in the Royal Instructions, and under that ordinance the Governor in Council was constituted a court of appeal.

On the margin of the ordinance in the copy in the library of Parliament here, there is the following entry in manuscript, "vide ordinance of 17th Sept. 1773, passed on Ch. J. Hayes going home." It was the model of this and the next ordinance in some instances.

The next ordinance was to regulate the proceedings in the courts of civil judicature in the Province of Quebec. From this it appears that before the Act of 14 Geo. III. and the commission and instructions under it were given, the Governor in Council had passed an ordinance to establish a court of appeal in Quebec, and this under a commission and instructions similar to that under which Governor Patterson was acting in Prince Edward Island, except so far as the power to grant appeals was wanting in the instructions to Governor Patterson, which was contained in the instructions to Governor Carleton.

In August 1769, the commission to Governor Patterson was issued, and he is said to have arrived in the colony in 1770. The first meeting of the Legislature composed of the Council and Assembly, with the Governor, of course, was, according to Stewart's History of Prince Edward Island, p. 177, in 1773, and the first Statute, as appears by the Acts of the General Assembly of the island, published in 1862, was passed in 1773. It is entitled "At the General Assembly of His Majesty's Island of St. John, begun and "holden at Charlottetown the seventh day of July, Anno Domini, 1773, in the thirteenth "year of the Reign of our Sovereign Lord George the Third, by the Grace of God of "Great Britain, France, and Ireland, King, Defender of the Faith. Being the first "General Assembly convened in the Island." The first Statute passed recited that it had been found absolutely necessary and expedient by His Majesty's Governor in Council of the island to make several resolutions, ordinances, and regulations for the good

government of the said island, it then repeats these ordinances and confirms what was done under them.

Cap. 2 is entitled " An Act to confirm and make valid in Law all manner of process " and proceedings in the several Courts of Judicature within this Island, from the first " day of May 1769, to this present Session of Assembly."

The recital states:—

" Whereas this Island has been without a complete Legislature from the commence- " ment of the goverment thereof, which took place on the first day of May 1769, unto " this present Session of Assembly, during which time many and various proceedings " have been had at the several Courts of Judicature in the Island." It then declares the writs, judgments, and proceedings in the courts from and after the said 1st May, 1769, to the end of that session good and valid in law. That it should not extend to take away or rectify errors in the using of process, mispleadings, and erroneous rendering of judgment in point of law, but in all such cases the parties aggrieved might have their writ or writs of error upon such erroneous judgment in such manner as they might have done before the making of the Act.

Governor Patterson apparently remained Governor until 1786, when he was succeeded by Governor Fanning, who continued in office, it is said, for 19 years, that would be until 1805. Governor Patterson was authorised by his commission, with the advice and consent of the Council, to establish such and so many courts of justice within the island as they should think fit for determining causes, as well criminal as civil, according to law and equity, and to constitute and appoint judges, and in cases requisite, to issue commissions of oyer and terminer.

We have nothing to show that in Governor Patterson's time any court of error or appellate court was established by any act of his; and it seems admitted that, as a matter of fact, no such court ever exercised any jurisdiction in the island, and no case was ever brought before such a court. If it had been established under any ordinance of the Council, before the first sitting of the Legislature, we have not been referred to any such ordinance. It is shown by Statutes passed at that sitting, that courts of judicature had before that been established and have been continued ever since. As to those courts that have been exercising their functions and powers ever since with legislation from time to time with reference to them, they would no doubt be considered as established tribunals, and as having been legally established. But when it is contended that so important a tribunal as a court of last resort exists in a province, it should be shown there was such a court actually exercising judicial functions, or that it was established by some act of the Legislature or of the Crown. As far as Governor Patterson is concerned, it does not appear that by any kind of legislative enactment or order, either by the Governor in Council or by the more perfect legislation after the General Assembly was called, such a court was established nor does it appear that he was by instructions specially authorised to establish such a court or to allow appeals from any of the courts of the common law as Governor Carleton was in the instructions accompanying his first commission, and as Sir John Colborne was in the instructions accompanying the commission to him in 1838.

Under the instructions to Governor Patterson he was to send to the Secretary of State copies of all acts, orders, commissions, &c., by virtue of which any courts, &c. were established. We presume the parties have had proper inquiries made as to the existence of copies of such documents, and that none can be found. It is said none exist in the island.

Whether, under any subsequent commission or instructions, an attempt was made to establish such a court in the interval between the commission to Governor Patterson 1769, and that to Sir John Colborne 1838, we have nothing before us to show.

Under that commission, as already stated, he was authorised to allow appeals, and for that purpose to issue a writ in the manner "which has been usually accustomed," returnable before himself and the executive council who were to proceed to hear and determine the same. The instructions to most of the Colonial Governors were said to be to the same effect. In Macpherson's Practice of the Privy Council, Appendix 72, he speaks of the Governor in Council as forming the Court of Error in the colony.

The instructions accompanying the commission to Lord Monk in 1861 do not in any way refer to the allowing of appeals, and from what is said on the subject in Macpherson's Practice in the Privy Council, it seems that in the Royal Instructions issued to Colonial Governors of the Colonies (that have legislatures) for some time past no mention is made of appeals. And the same can be said as to the instructions to Lord Lisgar in 1868. Nor is anything said as to allowing appeals in the commissions to Lord Monk and Lord Dufferin, nor in the instructions accompanying the same.

The reference to the matter in Haliburton's Nova Scotia, Vol 2, p. 330, is to the effect that "The Governor in Council conjointly constitute a court of error from which an "appeal lies on the *dernier ressort* to King in Council." He considers the origin of this appellate jurisdiction to have been the custom of Normandy when appeals lay to the Duke in Council.

In Stewart's Nova Scotia, after stating the only common law court established in the island was the Supreme Court, pointing out how the Chief Justice was appointed and how the proceedings were conducted, adds: "An appeal in the nature of a writ of "error is allowed from the Supreme Court to the Governor or Commander-in-Chief in "Council where the debt or value appealed for exceeds 300*l.* sterling, with an appeal "from their judgment when the debt or value appealed for exceeds 500*l.* sterling."

There is a chapter on appeals in Clark's Summary of Colonial Law, p. 106, in which he refers to the right of determining in the court of last resort all controversies between the citizens of a state as having been always considered the best evidence of the possession of sovereign power. At page 111 he uses the language already referred to, and at page 120, referring to the practice in the Privy Council, and to the case of a party who has been prevented, by accidental causes, from applying to the Governor of a colony within the period limited in the particular colony, for leave to appeal to His Majesty in Council, the Governor having no jurisdiction after that to allow the appeal, he proceeds, "but His Majesty in Council, from whom the right of appeal itself in all "cases emanates, may of course, at his pleasure, relax in any such particular instance "when it appears equitable to do so, the restrictions to which it is generally subject. "So it may happen that a Governor improperly refuses to allow an appeal from some "doubts as to its competency or regularity or from any other cause where justice "required a contrary decision. In all such cases the party aggrieved is of course "entitled to apply to His Majesty in Council."

In the report of the case in re Cambridge, cited on the argument, Lord Brougham said there is no instance of allowing an appeal from the Supreme Court at once to the Queen in Council, there being by the constitution of the island a Court of Appeal, namely, the Governor in Council, from whose decisions alone an appeal lies and then says the proper course and the only course their lordships can take is to advise Her Majesty to allow it to be appealed to the Governor in Council, it may then be brought before us in a future stage if the parties are not satisfied with the decision.

In the statement of the case it is said (this was in 1841) that by the royal instructions to the Governor, he was directed to allow appeals to himself in council in cases where the value appealed from amounts to 300*l.* sterling, and to the King in Council only where the value appealed from amounts to 500*l.* sterling. That the amount being below 300*l.*, the case was not appealable either to the Governor in Council or to Her Majesty.

Now if a court in the sense now contended for by the respondent had been created by the constitution of the Colony, or in any other way recognised by law, where the jurisdiction it had was only in matters above 300*l.* sterling, could an appeal be allowed in that court by order of the Queen in the manner suggested in Cambridge's case, I should think not. But if it be considered as the exercise of the prerogative right of the Crown to review the judgments of Colonial courts, and the Crown chooses to exercise that right through the Governor and Council, appeals may be allowed to them according to instructions, which, of course, may be varied from time to time or according to specific cases, as to the Crown may seem just. The Governor in Council may be considered a court as long as the instructions exist, but when they are withdrawn the court must fall with them.

At the time of the passing of the Dominion Statute establishing the Supreme Court, the Lieutenant-Governor of the Island was not an officer holding a commission under the Great Seal of Great Britain, nor did he receive any instructions to allow appeals, nor was he authorised to issue writs for that purpose returnable before him and the Executive Council, nor were they directed or authorised to proceed to hear and determine such appeals.

In the absence then of any evidence showing the establishment of a court of error, or that any tribunal ever exercised within the Island the powers of such a court, I am of opinion that the unmistakeable references to such a court in the Island Statute of 1873, or in the other Acts to which we are referred, do not create such a court, if it had not an existence previous thereto. If it had been shown that such a court assumed to exercise the functions of a properly organised court and had been doing so for years, the recognition of it by the Acts of the legislature might be considered as affirming its legal existence, but not to create a court.

In the reference to the Court of Error or Appeal in the Statute referred to, mention is not made of the Governor in Council constituting such court.

The Island Statute of 21 Geo. III. c. 17, does not necessarily imply that the revising of a judgment in error must be by a court superior to the Supreme Court, or if it does that that court must be necessarily one existing in the Colony. The King in Council might revise in error.

As to the Statute relating to the estates of intestates special jurisdiction is by the Statute given to the Governor in Council, who are to decide the matter on appeal, and their decision, I apprehend, is to be carried out by the judge of the court.

The fact that in the instructions to most of the Governors in the American Colonies, reference is made to their granting letters of administration and probates of wills, probably suggested that it was desirable to have an appeal to the Governor, and that appeal is expressly given to him and the Council by name in the Statute. The Act constituting the Governor in Council a divorce court, creates them for that purpose, and does not make them a court of error or appeal. In the Imperial Act of 1791, 31 Geo. III. c. 31, the existence of the ordinance of the Governor in Council of the Province of Quebec, constituting the Governor in Council a court of civil jurisdiction for hearing and determining appeals in certain cases is recognised under section 34, which enacts that the Governor of each of the Provinces (of Upper and Lower Canada) with such executive council as shall be appointed by His Majesty for the affairs of such province shall be a court of civil jurisdiction within each of said provinces for hearing and determining appeals within the same, in like cases and manner, and subject to such appeal as before the passing of the Act might have been heard and determined by the Governor in Council of the Province of Quebec, but subject nevertheless to such further or other provisions as might be made by the Legislature of the Provinces.

The Legislature of Lower Canada passed a Statute on the subject, 34 Geo. III. c. 6. In Upper Canada, the same year, by 34 Geo. III. c. 2, sec. 33, the Governor, Lieutenant-Governor, or person administering the Government, or the Chief Justice of the Province, together with any two or more members of the executive council of the Province, shall compose a court of appeal for hearing and determining all appeals from such judgment or sentences as might lawfully be brought before them. Section 35 declared in what cases an appeal should lie to the court. Appeals were also allowed under the Upper Canada Act of 1837, from the decisions of the Vice-Chancellor, though the Governor was Chancellor.

In Woodcock's West Indies, page 288, the following reference is made to appeals in the Colonies:—

"Appeals from decisions of Colonial courts may be considered as existing at the common law as affected by the King's instructions to the Governors, by Colonial law and parliamentary enactment. It has been said to be an inherent right of the subject of which he cannot be deprived, to appeal to the sovereign to redress a wrong done to him in any court of justice, and also an inherent right of the king inseparable from the crown to distribute justice amongst his subjects."

"His Majesty by his instructions declares his Royal will and pleasure to be that his representative shall in all cases, on application being made to him for that purpose, permit and allow appeals from any of the courts of common law, and he and the council, with the exception of such as may have heard the cause as judges in the court below (who are nevertheless allowed to give their reasons for the judgment complained of), are to proceed to hear and determine the appeal. It is provided, however, that the sum or value appealed for do exceed 300*l.* sterling, and that security be first given by the appellant to answer such charges as shall be awarded in case the first sentence be affirmed. And if either party be dissatisfied with the decision of the Governor in Council, then an appeal is allowed to the King in Council, provided the sum or value appealed for exceed 500*l.* sterling; the appeal to be made within 14 days after sentence, and good security given by the appellant that he will effectually prosecute the same and answer the condemnation, and also pay such costs and charges as shall be awarded in case the sentence of the Governor in Council be affirmed."

It is also provided that in special cases the Governor is to admit the appeal.

In McPherson's Practice of the Privy Council, Appendix 72, the instructions to Governors, previous to 1854, are referred to; they were said to be substantially the same in all the American colonies, and were generally to the effect mentioned in Mr. Woodcock's book. It is added in the Royal Instructions now issued to colonial governors, no mention is made of appeal.

Special orders are made in the Privy Council as to appeals from the Supreme Court in

the colony named in the order, where the sum or matter in issue is above a certain amount. Such orders appear to have been made in reference to the Provinces of New Brunswick and Nova Scotia.

It may be that after the powers conferred by the Statute 3 and 4 Williaam IV. c. 41, on the Judicial Committee of the Privy Council, had began to be exercised, it was found by experience that it was better not to continue to all the governors of the colonies the right to permit appeals to the Governor in Council, but rather that the appeals should come direct to the Queen in Council, and that, in consequence, when it was not desired to continue such powers, the governors were not authorised to exercise them by their instructions. Whatever may be the reason, the latest instructions I have seen to the Governor of the Island, viz., those to Sir John Young, afterwards Lord Lisgar, date December 29, 1868, contain no authority to allow appeals to the Governor in Council from any of the courts of the island.

When the Provincial Statute of 1875, called the Land Purchase Act, was passed, and when the judgment now appealed from was pronounced, the Governor of the Island was appointed by a commission issued under the Great Seal of Canada, and attested and signed by the present Governor-General of Canada, Lord Dufferin, and no instructions accompanied that commission.

During the time instructions of the kind alluded to and the appeal to the Governor in Council existed and was exercised, it might be referred to as a court in the same way as the Queen in Council or the Judicial Committee of the Privy Council is frequently called a court, but when these instructions were withdrawn and no other authority existed by which the appeals to the Governor in Council could be made, then I fail to see how the Governor in Council for the time being could be such a court. If the commission to any Governor had ordered and directed that he and his Executive Council and the Governor and Council for the time being should constitute a court to which appeals might be made, it could then with more force be urged that a court was thereby established. But I do not think such authority as was contained in the instructions to Sir John Colborne by itself constituted a court of appeals as a permanent institution, but for the time being he was to exercise the prerogative right of the Crown to hear appeals from the Colonial Court under such instructions; and when such instructions were withdrawn the right of the Governor in Council to hear appeals ceased.

I am not satisfied that any court of error or appeal, or any court or the last resort, save the Supreme Court, within the meaning of the Dominion Act creating this court, was established or existed in the Island of Prince Edward, during the time that Mr. Patterson was Governor of the Province. We were not referred to any case that had ever been brought before such a court, and it was not denied that no case had ever been taken to such a court within the Island. It is not pretended that such a court had ever been established by Legislative enactment, though it was contended the existence of such a court was recognised in Statutes passed by the Legislature. If established at all it must have been by an instrument under the Great Seal, or under the instructions to the Governor, if that would establish a court of that kind. No instrument under the Great Seal either of Great Britain or of the Colony has been referred to establishing such a court.

Now the Governor in Council was constituted a court of appeals by an ordinance of the Province of Quebec, when the instructions expressly authorised an appeal to the Governor in Council. The instructions to Governor Carleton with his second commission, when referring to subjects for (if I may use the term) legislation, directs his attention to constituting the Governor in Council a Court of Civil Jurisdiction for the hearing of appeals. The Act of 31 Geo. III. c. 31, distinctly recognises such a court, and the subsequent Legislation, both in Upper and Lower Canada, constitute the Governor in Council a court. The tribunals so established were properly courts, and exercised their powers under laws which continued them as long as the laws existed. There is a manifest difference between tribunals so constituted and those which exercise powers conferred by the Royal Instructions alone, and which seem only to exist whilst the instructions are continued. In the one case they exist and continue by positive enactment, and in the other by virtue of the prerogative right, to revise the decisions of the Colonial courts, and when the Governors are not authorised to exercise that right it seems the natural and logical result that they cease to possess it. The commissions issued to the Governors since Sir John Colborne's time, which we have seen, do not contain any authority to the Governor to hear and allow appeals, and the reference to this matter in Macpherson's Practice indicates that in most, if not all, of the commissions issued lately, that authority which was formerly given has been intentionally withdrawn.

On the whole I come to the conclusion that the present Governor of the Island of Prince Edward had no authority to allow an appeal in the matter now before this court, and that it is properly brought before us. As already stated, I do not think the references to the Court of Error or Appeal in the Island Statute of 1873, create such a court if none existed at the time.

The other Statutes referred to do not necessarily imply that a court of appeal existed in the Colony, and none of those Statutes create a general court of appeal.

I do not think the Dominion Parliament when they enacted that the appeal given to this court was to be "understood as given from the court of last resort in the Province "in which judgment was rendered," meant to compel suitors, before bringing their cases here, to have them heard in, if I may use the term, a mythical court that had never been resorted to by suitors, or to courts to which, if such recourse ever existed it had long been abandoned and disused. I think, therefore, that this Appeal is properly before us, and we have jurisdiction to hear it.

The case states that the Right Honourable Hugh C. E. Childers was duly appointed a Commissioner by the Governor-General in Council under the seventh section of the Act (the Land Purchase Act, 1875). John T. Jenkins, Esquire, was duly appointed a Commissioner by the Lieutenant-Governor in Council under the fifth section; and Robert Grant Haliburton was appointed by Miss Sulivan as her Commissioner under the ninth section.

That the Commissioners so appointed met at a day and place in Charlottetown then appointed for the purpose of hearing and considering the matter referred to them, and at the same time and place so appointed the Commissioner of Public Lands and the proprietress, Miss Charlotte Antonia Sulivan, were represented by counsel, and evidence tendered on both sides having been heard, the said three Commissioners made an award which was set out. The notice of the Commissioner of Public Lands, served on Miss Sulivan's agent, is set out in the case, and refers to the Act and the powers of the Commissioner under it, and states that the island Government "intend to purchase all of her "township lands in the island liable to the provisions of the Act, including all such parts "or portions of lots or townships, numbers 9, 16, 22, and 61, in the island, as she was or "claimed to be the proprietor of and as were liable to the provisions of the Act."

It appears from the Statute that the Government of the island was entitled to receive from the Dominion Government a large sum of money for the purpose of enabling the Government of the province to purchase the township lands held by the proprietors in the island.

We may, without going beyond what is considered the legal province of a judge, be supposed to know that there had been difficulties in the island existing for many years in relation to the collection of rents on these lands; that there had been legislation on the subject, and that further legislation was deemed necessary.

The recital in the Statute, that it was desirable to convert leasehold tenures into freehold estates, indicates that it was a matter affecting the public interests. This Statute ought, therefore, to be viewed not as ordinary legislation, but as the settling of an important question of great moment to the community, and in principle like the abolition of the Seignorial tenure in Lower Canada, and the settling of the land question in Ireland. In carrying out such measures as these there may be cases where the law works harshly, where important rights may seem to be disregarded and private interests are made to yield to the public good without sufficient compensation being given; yet the legislation on the subject generally assumes to be based on the principle of compensation to individuals when their property is taken from them, and points out a mode of ascertaining what the indemnity shall be and how it shall be paid.

It is not doubted in the court below, and we do not doubt that the Legislature of the island had a right to pass the Statute. The great object of the Statute seems to have been to convert the leasehold tenures into freehold estate. A matter of very great importance, and one which, if not settled, would be likely to affect the peace as well as the prosperity of the province.

Their intention seems to have been as to all questions connected with the lands, such as rents and judgments obtained for the rents and claims arising out of the ownership of the land, and, as far as the proprietors were concerned, that they should no longer be enforceable by them; and that those incidents, such as arrears of rent, and the like rights, should, with the soil itself and all interest in it, pass from the proprietor to the Government. That the money value of the rights of the proprietor, taking into consideration in estimating such value, certain circumstances, such as the price at which other proprietors had sold their lands, the annual rentals due and actually received each year, the expense of collecting the net receipts for six years, &c., was to be fixed by three Com-

missioners. These Commissioners were to be selected—one by the Dominion Government, one by the island Government, one by the party interested. It can hardly be disputed that this was a fair mode of selecting the Commissioners, who were, after hearing evidence, to make the award, and the money awarded was to be paid into the island treasury to the credit of the suit or proceeding. The object, no doubt, being that the money should represent the land, and the different parties interested should, on application to the court, receive what they were entitled to from that fund.

They intended the award of the Commissioners to be final, but if either party wished to have any error, informality, or omission in the award corrected, he could apply within 30 days after the publication of the award to the Supreme Court to have it remitted back to the Commissioners.

A trustee was to be appointed to convey the estate of the proprietor to the Commissioner of Public Lands, notice was to be given to the proprietor and the court, or a judge might restrain the execution of the deed. This conveyance and the payment of the money awarded into the Treasury was to vest the lands in the Commissioner in fee simple.

The money awarded in each case was to be paid into the provincial Treasury at the expiration of 60 days, and the Public Trustee, after the money was so paid, was to execute a conveyance of the estate of the proprietor unless restrained after 14 days' notice to the proprietor. Why should not the intention of the Legislature be carried out in this matter? I do not think it necessary to discuss the elaborate judgments given by the learned judges in the court below. The view I take of the Statute renders that unnecessary. The view I take is that the mode pointed out by the Statute is the one which should have been pursued by the proprietor in this matter if there were any error, informality, or omission in the award, and that the court had no other authority to inquire into the proceedings of the Commissioners further than to see if the subject matter was properly before them, and perhaps to see if they had been guilty of any fraud in their proceedings; and if they had the strict legal right to do so, in the exercise of a sound discretion according to the best of my judgment, the proprietor's application to set aside the award should have been refused.

I see no reason to doubt that the Commissioners properly entered on the enquiry as to the compensation to be awarded to Miss Sulivan for her rights as a proprietor in township lands in the island.

It is not denied that Miss Sulivan was a "proprietor" within the meaning of the Act of Township Lands, exceeding in the aggregate 500 acres. Her lands were therefore liable to be purchased under the Act.

The appointment of the Commissioners is stated in the case, and the notice to Miss Sulivan of the intention to purchase all her lands is set out. The notice complies with the Act. If only a portion could be purchased it might be that the portion selected would be that which was most profitable to the proprietor and most desirable or her to keep. In my opinion the Statute contemplates the purchase of all of the peculiar description of lands owned by a proprietor whose estate exceeded 500 acres, and when the value was to be ascertained it would be for the interest of the proprietor to show what the land was in order that compensation might be given for all, and that none might be omitted. If the Statute had required the Commissioner of Public Lands to define by metes and bounds in his notice the land he intended to "be purchased" under the Act, it would probably induce them to describe such lands as were well known to belong to the particular proprietor, and which probably would be those that were most valuable and most for the interest of the proprietor to retain, or it would have the effect of making the Statute useless if the Commissioner could not give a minute description of each parcel of land owned by the proprietor. The court below thought the notice sufficient, and I see no reason to dissent from that view.

It was suggested on the argument for the first time that it did not appear that the Commissioners were sworn, or that the Commissioner appointed by the proprietor ever notified the Commissioner of Public Lands of his appointment. It was also suggested that the notice of the sitting of the Commissioners was not published a sufficient length of time before the day fixed for their sitting.

The provisions of the Statute as to these matters seem directory, and it is reasonable to presume they were followed. Particularly as the objections were not taken on the argument in the court below, nor in the rule, nor mentioned as relied on in the respondent's factum. It is not now shown affirmatively that as to the points suggested, the proceedings were not regular except as to the time of giving the notice of the sitting of the Commissioners, which as the parties appeared could be no objection. If necessary

to show in any proceeding that these things were done, it could, I apprehend, be averred in pleading and proved by evidence.

If the proprietor Commissioner gave the Commissioner of Public Lands no other notice of his appointment than claiming to sit and sitting as such when the matter was proceeded with, when the said Commissioner was either personally present or was represented by counsel, that would be some notice of his appointment, and on a bare suggestion of this kind we will not presume that the parties did not do what they ought to have done.

The papers before us show that the case was fully inquired into before the Commissioners, a large number of witnesses examined, able advocates addressed the Commissioners, and two of them made their award as follows :—

" Dominion of Canada, Province of Prince Edward Island."

" In the matter of the application of Emmanuel McEachen, the Commissioner of Public Lands, for the purchase of the estate of Charlotte Antonia Sulivan, and the 'Land Purchase Act of 1875.'

" The sum awarded under section 26 of the said Act by us, two of the Commissioners appointed under the provisions of the said Act, is eighty-one thousand five hundred dollars.

" Hugh Culling Eardley Childers,
" Commissioner appointed by the Governor-General in Council.
" John Theophilus Jenkins,
" Commissioner appointed by the Lieutenant-Governor in Council.

" Charlottetown, 4th Sept. 1875."

The award was duly published 7th Sept. A.D. 1875, pursuant to 29th section of the Act. The application was made to set it aside on the 17th November. The Public Trustee having notified Miss Sulivan's agent, on the 3rd November, that the sum awarded had been paid into the Treasury of the Island to the credit of the suit, and that after 14 days from the service of the notice he would execute a conveyance to the Commissioner of Public Lands of the estate of Miss Sulivan, the proprietor, which estate was more particularly described in the four schedules annexed.

The question is whether the court below had any authority to make the rule absolute to quash the award, and in discussing this question it is necessary to refer to the 45th section of the Act, which is as follows :—

" No award made by said Commissioners, or any two of them, shall be held or deemed to be invalid or void for any reason, defect, or informality whatsoever, but the Supreme Court shall have power, on the application of either the Commissioner of Public Lands or the proprietor to remit to the Commissioners any award which shall have been made by them to correct any error, informality, or omission made in their award. Provided always that such application to the Supreme Court to remit such award to the Commissioners shall be made within thirty days after the publication thereof as aforesaid; and provided further, that in case any such award is remitted back to the Commissioners, they shall have full power to revise and re-execute the same, and their powers shall not be held to have ceased by reason of their executing their first award, and in no case shall any appeal lie from any such award, either to the Supreme Court, the Court of Chancery, or any other legal tribunal; nor shall any such award or the proceedings before such Commissioners be removed or taken into or inquired into by any court by *certiorari*, or any other process, but with the exception of the aforesaid power given to such Supreme Court to remit back the matter to such Commissioners, their award shall be binding, final, and conclusive on all parties."

Could any more emphatic language be used to show that the Legislature intended that this award should be " binding, final, and conclusive on all parties," and should not be held or deemed to be invalid or void for any reason, defect, or informality whatsoever?

On the application of the court below certain facts were stated by the agent of Miss Sulivan in his affidavit.

One, that in Schedule B. there is a farm alleged to be 34 acres, purchased by Arthur Ramsay on lot 16, whereas Ramsay had purchased 84 acres, this being 50 acres more than Miss Sulivan claimed to own or demanded compensation for.

2. That in the 15,000 acres claimed to be conveyed to the Commissioner by the trustee, there is included 1,100 on lot 16, held under verbal agreement, whereas in truth under verbal agreement the lands owned by Miss Sulivan, and for which she claimed compensation, amount only to 708 acres.

The following matters are in dispute, and evidence given concerning the same :—

The amount of arrears of rent due by several tenants upon the estate. The performance of the conditions of the original grants from the Crown, and how far the performance has been waived. That Miss Sulivan contended the conditions of the original grants had been waived; the Commissioner of Public Lands alleged the contrary, and gave in evidence despatches of Secretaries of State for the Colonies, printed in the journals of the House of Assembly, in support of his claim and in denial of her contention.

That in Schedule B. in four several plots of land purchased by Arthur Ramsay and Samuel Yeo upon township lot No. 16, and excepted out of the said township claimed to be conveyed as aforesaid, are referred to as "being numbered or coloured green upon "the plan of the said township in the possession of Miss Sulivan's agent, and produced "by him before the Commissioners under the Land Purchase Act"; whereas there was more than one plan of lot 16 in the agent's possession and produced by him before the Commissioners. There were two produced by him, and they differ from each other, and he had no means of finding out from the notice which of the plans is referred to.

The same thing is stated in effect as to Schedule D., township lot No. 61.

If in relation to these matters thus stated in the affidavit it was necessary to protect Miss Sulivan's interest, or even to prevent inconvenience in carrying out the award, that something more explicit should be stated in the award relative thereto, application might have been made, under the 45th section of the Act, to the Supreme Court to remit the award to the Commissioners to correct the same. But that was not done. If an application had been made to the court, and it had been shown that the omissions or errors referred to in the affidavit would prejudice Miss Sulivan, or were such as ought to be remedied by the arbitrators, the court would have sent it back for that purpose. But the course taken on Miss Sulivan's behalf in lying by until the time for applying to the court under the Statute had passed, it can be seen, has worked great injustice and inconvenience to those acting on behalf of the public. If it had been urged that the award was faulty, it could have been corrected. The Commissioner of Public Lands does not complain of it, therefore there was no reason to apply on his behalf; the proprietor does object, therefore she ought to have applied sooner. She might have applied according to the terms of the Statute, she has deliberately chosen not to do so, she must therefore abide by the consequences. As I understand the judgment of the court below, the matter, in their view, was properly before the Commissioners; it was within their jurisdiction, and they were fully authorised to decide on all questions arising in relation to the inquiry and decision they were to make. The objection is that they did not decide matters which they ought to have decided, and that the award is void by reason of that defect, though if the proprietor had applied within the 30 days, the award might have been remitted to the Commissioners to correct the error or omission.

It is not pretended that after the 30 days the court have the power of setting aside this award under the Statute, nor am I aware that they have any peculiar powers conferred on them by local Statutes to interfere when the legislature has declared that an award shall be final. I understand that the court below proceed on the common law right of the court to review the decisions of inferior tribunals, and to see that they properly carry out the powers and authority vested in them; not that they are a court of appeal to review the conclusions at which the inferior tribunal has arrived, but that they can, if that tribunal has not done all that it should have done, declare void its decision. The more logical course to take under such circumstances would be to require the inferior tribunal to do what it ought to do, and that was what the Legislature authorised the court to do. But in this case I do not think any such right existed in the court below. The Statute emphatically declares that in no case shall an appeal lie from any such award either to the Supreme Court, the Court of Chancery, or any other legal tribunal; nor shall any such award or the proceedings before such Commissioners be removed or taken into or inquired into by any court by *certiorari* or any other process, but, with the exception of the power of the Supreme Court to remit back the matter, their award shall be binding, final, and conclusive on all parties.

If a power of a superior court to review or set aside an award or decision of a special tribunal can be taken away by Act of Parliament, it seems to me that the words in this Statute ought be held to do it. In Richards *v.* South Wales Railway Co., 13 Jurist., p. 1097, Sir William Earle, in his judgment said, "It was admitted that the writ (of "*certiorari*) was taken away as to all proceedings under the Acts (which he referred to), "this rule therefore cannot be made absolute unless it distinctly appears that in the "proceedings the sheriff and the jury have taken upon themselves to decide on a "matter on which they had no jurisdiction. When that is made out the statutory "prohibition does not apply, and the inherent jurisdiction of this court is unrestrained.

" . . . There is, however, a great disposition to evade clauses in Acts of Parliament " which take away the certiorari on the alleged excess of jurisdiction, and we feel bound " not to yield to attempts of this kind unless they rest on very clear and satisfactory " grounds."

In the Colonial Bank of Australasia *v.* William, 5 L. R. P. C., p. 442, the following language is used in the decision of the Judicial Committee of the Privy Council: " There are numerous cases in the books which establish that notwithstanding the " privative clause in a Statute the Court of Queen's Bench will grant a certiorari, but " some of those authorities establish and none are inconsistent with the proposition that " in any such case that court will not quash the order removed except upon the ground " either of a manifest defect of jurisdiction in the tribunal that made it or of manifest " fraud in the party procuring it." And at p. 450 the following language is used, " The " Court of Queen's Bench, whose exercise of this power is discretionary, would certainly " not quash an order of an inferior court upon the ground of fraud unless the fraud " were clear and manifest."

Here there is no defect of jurisdiction and it is not pretended that there is any fraud; but as I understand the argument, it was urged that all the jurisdiction was not exercised and that it is a defect of jurisdiction. They were to consider and award on the matters referred to in the 28th section, and not having done so the whole proceeding is void.

After giving the matter my best consideration, I have arrived at the conclusion that the Legislature did not intend that the Commissioners should find, as specific facts, the facts and circumstances mentioned in the 28th section which they were to take into their consideration in estimating the amount of compensation to be paid to a proprietor for his interest or right in any lands.

If it had been intended they should find specifically on each of these points, I think different language would have been used, and if the court thought some kind of decision necessary on the points, they could have referred the award back to the Commissioners for that purpose. In any view it does not seem so plain a question of want of exercise of jurisdiction as to justify setting aside the award under such a Statute as this.

The object of this section 28 being to allow the Commissioners to take evidence on all these subjects, and having all these matters and the evidence relating to them before them, and seeing that the declared object of the Legislature was to pay every proprietor a fair indemnity or equivalent for the value of his interest and no more in the land to be purchased, all this was to be taken into consideration, and then they were to award under section 26 the sum due to the proprietor as " the compensation or price to which he should " be entitled by reason of being divested of his land and all interest therein and thereto."

The papers before us show that the matters referred to in the 28th section were brought before the Commissioners, except, perhaps, those relating to the conditions of the original grants. It is said that as Miss Sulivan was one of the parties referred to in the Act of 27 Vict. c. 2, she was not a party affected by any decision of that question. After hearing the evidence the Commissioners made their award. They say, in express terms, the sum awarded under the 26th section of the Act is 81,500 dollars. Is there any reason why we should presume they did not take the matter into consideration, which the law directed them to do, before they made their award? They were to make their award after hearing the evidence; this, of course, implies they were to consider it, or it would be useless to offer evidence. On the contrary, we ought not to assume that they could not properly make an award under the 26th section, unless they considered these matters, that they have done so.

In Brittain *v.* Kinnaird, 1 Brod *v.* Bing, at p. 430, Dallas, C. J., said, formerly the rule was to intend anything against a stinted jurisdiction, that is not the rule now, and nothing is to be intended but what is fair and reasonable, and it is fair and reasonable to intended magistrates will do what is just. It is fair and reasonable to presume here that the Commissioners did what was right. It is a fair and reasonable intendment that they did what the law required of them, unless it appears on the face of the award that they did not. The proceedings before the arbitrators show that these matters were discussed before them, and the only reasonable conclusion is that they must have taken them into consideration. In the view that I take, then, the award ought not to have been set aside. The Commissioners were not required to find specifically on the matters they were to take into consideration under the 28th section, and the presumption is they did take them into consideration. Then as to the necessity of describing the specific land as to which they made the award. Suppose they had in the award described lands that Miss Sulivan did not own, or lands that were not liable to be purchased under the Act, would their finding bind anyone not a party to the award? It is not pretended it would. The Commissioner notified her he intended to purchase all her township lands,

that being the kind of land referred to in the Statute, which he was authorised to purthase; and it was concerning all these lands the award was made. The money has been paid into the provincial Treasury, and represents all these lands. When those claiming the money are brought before the court they will decide to whom and in what proportion the money is to be paid. *Primâ facie* it is Miss Sulivan, and those who contest her right must show how their claim originates. The finding of the Commissioners could not in any way deprive the parties of rights which arose out of matters in which they and Miss Sulivan were alone connected. The court might say, if the Commissioners took a certain view, it would be only fair as between individuals that the other parties should have a certain sum, but the court would not necessarily be bound to take that or any particular view. The whole matter is open to them, and when the parties are before them they will dispose of their rights as they show them to be. Mere speculative difficulties ought not to be very seriously considered when the party suggesting them had an opportunity of having them all settled, but did not choose to avail herself of it.

I do not consider the describing of the property in the deeds by the Public Trustee a transfer of their authority by the Commissioners. There were certain lands, the value to be paid for, which was the subject of their inquiry. What those lands were seems to me easily ascertainable, and if the particular maps in the description cannot be identified and the conveyance is held void for uncertainty, I fail to see how Miss Sulivan is injured by that, or why she should concern herself with it. It seems to me all her township lands and her interest in them and in the rents were properly before the Commissioners, and they have awarded her all the compensation she is entitled to for them. The amount so awarded has been paid into the Treasury, and I see no reason why she should not get what she is intitled to out of it. Why she should concern herself about the conveyance unless it may affect her interest is not so apparent. If this conveyance included any of her land not liable to be purchased under the Act, she might then say she was interested as to that, and insist upon its being put right. She might apply to the court to restrain the conveyance under the 32nd section until it was corrected. I fail to see that the omission to describe the lands in the award is ground for setting it aside. The trustee is to execute a conveyance of the estate of the proprietor. If he executes a deed of property not a part of her estate, that cannot prejudice her nor anyone else, as I can see.

It has indeed been suggested that if it was her estate the conveyance gives a *primâ facie* title; and if a squatter on the estate were sued, the Land Commissioner or purchaser under him would only be obliged to show title under the conveyance by the trustee, instead of tracing the title from the Crown. I hardly think a court would set aside an award like this on that ground alone.

The money was awarded under the 25th section, for the lands of which Miss Sulivan was divested, and they were all the lands of a certain description of which she was proprietor in the Island. As it was not necessary to describe them in the notice, I fail to see why it is necessary for the Commissioners to describe them in their award. If she had devised all her township lands in the island and died, it is not doubted that such a description would carry to her devisee all the lands of that description which she owned in the colony. It urged that the form of deed appended to the Statute makes it necessary the lands should be described by metes and bounds. The Section 32 says, the deed may be in the form,and if a clear and intelligible description were given without metes and bounds I do not think the deed would be inoperative.

It seems to me that the words of the 20th section of the Act authorising the Commissioners to summon and examine witnesses upon matters submitted to their consideration " and the facts which they may require to ascertain in order to carry this Act into effect," taken in connection with the 28th section, mean the facts and circumstances they are to take into consideration in order to make their award, and they could not do this unless they had power to examine the witnesses as to these facts. That cannot mean all the facts necessary to carry the Act into effect as far as the action of others is concerned. Much must be left to the court to ascertain when they are called upon to distribute the money, and as the Commissioners were not called upon, in my view, to find specially on these matters referred in the 28th section. I do not think the words referred in the 20th section compelled them to do so.

Take the converse of the case before us. Suppose after the time for moving to refer the case back to the Commissioners had passed, and after the money had been paid into the Treasury and an application had been made on Miss Sulivan's behalf to the court for an order to pay over the same, then for the first time the Commissioner of Public Lands had applied to set aside the award, because he would be embarrassed in

discharging his duties under the Act, inasmuch as the Commissioners had not found specially on the matters referred to in the 28th section, would not the answer have been, you had the knowledge of the award and its contents long ago, you have deliberately chosen to let the opportunity pass of having the alleged errors corrected, and you must now work out your rights under the award as you best can, Miss Sulivan has had a certain sum awarded to her, by your notice you claimed to purchase all her township lands, she has been awarded a sum for her interest in those lands and she ought to have it. If this would be the proper answer to such an application, a similar answer to Miss Sulivan seems to me equally just and proper. I have not met with any case where the special provision was made for the correction of the errors or omissions of the tribunal created by the Statute and where the private re-enactments was so stroug and emphatic as it is in this Statute, when the court has felt justified in setting aside the award of the inferior tribunal.

Under such circumstances, on an application like this, I think that the declared intentions of the Legislature ought to be respected, and the parties should be left to assert their rights in some other way than by asking the court on an application such as this is to declare the award invalid and void, where the Legislature has said it shall be binding, final, and conclusive on all parties, unless inquired into in the manner prescribed by the Act, and shall not be enquired into by any court on *certiorari*.

If either of the parties to the award find a difficulty in obtaining all the benefits under it to which they claim to be entitled, that is a matter which may be said to have arisen either from their own deliberate act or want of reasonable care and attention.

The appellant in this matter does not anticipate difficulties of a serious character as far as his part of the case is concerned. If the respondent finds a difficulty she ought to have taken the steps that were open to her to have had it remedied.

The case may be briefly summed up as follows:—After considering what has been brought before us relating to the subject, we are not satisfied there is a court of last resort in the Province of Prince Edward Island other than the Supreme Court from whose judgment this appeal is brought, and therefore the appeal is properly brought to this court.

Secondly. That by the Statute passed by the Island Legislature, and which they had a right to pass, the award of the Commissioners could not be quashed and set aside or declared invalid or void on an application made to the Supreme Court, but it could have been remitted back to the Commissioners in the manner prescribed by the 45th section of the Act. The application for the rule in the court below not having been made within the proper time nor according to the provisions of that section, the decision of that court is against the express words of the Statute, and cannot be allowed to stand.

Mr. Justice Ritchie.

I think this appeal is properly before us. It was admitted on both sides on the argument that no evidence could be discovered of the establishment of a court of appeal, either by charter or patent under the Great Seal, or by any statutory enactment; nor could it be discovered that any such court has ever sat in the island. The observation of Lord Brougham in the Cambridge case must therefore, I think, refer to the clause at that time usually inserted in the Royal Instructions to Colonial Governors authorising the Governor in Council to permit and allow appeals.

I think this was not the establishment of a court, because there is clear authority for saying that the power to establish courts cannot be granted by the Crown, by instructions or otherwise, than under the Great Seal, but is rather, I think, an exercise of the Royal Prerogative in furtherance of the right of the Queen to receive and hear appeals from colonial courts, by which the Queen directs that, before coming to her direct, the appellant shall first go to her representative in council in the colony. A governor without instructions to that effect has, it appears to me, no authority to entertain such appeals, and no such instructions exist at present. If the Queen's representative, without instructions, would have no such power, much less would the officer of the Dominion Government. I do not think it can be said that there is either *de jure* or *de facto* any court of appeal in the island, therefore I think the matter was appealable to this court from the Supreme Court as being the highest court of final resort in the island.

It was clearly the object of the legislature to provide for a speedy, final, and conclusive decision by the Commissioners of all questions referred to them, and to make

their award "final, binding, and conclusive on all parties," at the same time it was obviously the desire of the legitlature to secure to the public through the Commissioner of Public Lands, and to the proprietors the means of having the doings of the Commissioners reviewed, and any errors they may have committed corrected, any omissions supplied, and any informalities or defects cured. For accomplishing which, the commissioners were placed, as is were, under the immediate supervision of the Supreme Court of the Island, and ready access to that court was afforded by the simple application either of the Commissioner of the Public Lands or the proprietors, and to enable the court, when its aid was invoked, to see that right was done; ample power is given to remit the awards to the Commissioners to correct any error or informality or omission, provided the application was made within the time limited, and on such award being remitted to the Commissioners, full power is given them to revise and re-execute the same.

The Statute first declares that "no award made by the Commissioners or any two of "them shall be held or deemed to be invalid or void for any reason, defect, or infor- "mality whatsoever," and then provides a suitable tribunal for the correction "of any "error or informality or omission," and declares that in no case shall any appeal lie from any such award, either to the Supreme Court, the Court of Chancery, or any other legal tribunal, nor shall any such award or the proceedings before such Commissioners be removed or taken into or inquired into by any court by certiorari or any other process, and as if to prevent the possibility of the intention of the Legislature being misapprehended, the section of the Act after being thus minute thus concludes "but with "the exception of the aforesaid power given to such Supreme Court to remit back the "matter to such Commissioners, their award shall be binding, final, and conclusive on "all parties." It cannot be denied that the Legislature had the power to deal with this subject, and if it chose, make the award of the Commissioners final, and most certainly it had the right to establish a court of review final in the island, so far as the courts of the island were concerned, and could they have selected a more suitable tribunal than the Supreme Court, the Court to which, under ordinary circumstances, belongs especially the duty of supervising the proceedings of the inferior tribunals of the island. The practical effect really was merely to give the Supreme Court a more summary and ample jurisdiction to enable it more speedily and effectually to deal with the matter free from the technicalities and delays, and possibly costs incident to the ordinary mode of proceeding. If this was the intention of the Legislature, as from the Statute I gather it to have been, I am at a loss to conceive what language could have been used to achieve that object if the language of the 45th section of the Land Purchase Act of 1875 does not do it.

In the case of Nawab of Surat, 9 Moore, P. C. C., p. 88, an Act of the Legislature of India empowered the Governor in Council of Bombay to administer the private estate of the Nawab of Surat, and it was by Section 2 enacted, "that no act of the said Governor "of Bombay in Council in respect to the administration of and administration of such "property, from the date of the death of the said late Nawab, should be liable to be "questioned in any court of law or equity." No provision was made for an appeal from the Governor's decision. On an application by a claimant dissatisfied with the award made distributing the estate for leave to appeal to the Judical Committee, Knight Bruce, Lord Justice, said: "Their Lordships are of opinion that the intention of the "Act was not to create a court; that the intention of the Act was to delegate either "arbitrarily or subject to certain limitations of discretion, the administration and dis- "tribution of the Nawab's property, but in such a way that the administration and "distribution should not be judicially questioned. * * * It seems," he says, "an "anomalous and extraordinary proceeding to vest powers of this description, not liable "to be checked by any ordinary course or powers of law, in any individual or in any "body; but the Indian Legislature had power over the property; they might, in the "exercise of that power, which is inherent in legislation, have given the whole property "at once to any stranger, or devoted to any purpose, and whether, with moral justice "or not, is not the question. Instead of doing that, they do what, to their Lordship's "appear substantially the same thing, they vest the power of dealing with it in a "particular individual or a particular body, and declare that its acts shall not be liable "to be questioned in any court of law or equity."

How different is this case in view of the exigencies and necessities of the country. The Legislature compels proprietors to sell, no doubt, in many cases against their will, and makes provision for compensation to be estimated by disinterested parties and not by parties whose acts cannot be judicially questioned. It only provides that if such acts are

questioned it must be before a particular court within a specified time and in a specified manner.

I have been unable to discover, after a most careful investigation, that the Commissioners have in any way dealt with any matter over which their jurisdiction did not extend, or that in dealing with matters over which they had jurisdiction, they exceeded in any way that jurisdiction. The only question the Commissioners had finally to determine and award was in the words of the Statute, "the sum due to the proprietor as the com-"pensation of price to which he shall be entitled by reason of his being divested of his "lands and all interest therein or thereto."

The provisions of the Act as to how they were to proceed and what they were to take into their consideration to enable them to arrive at a just and proper conclusion were directory, though not the less obligatory, on them, and which, if they failed to regard ample remedy as we have seen was provided. It is not shown that they did not do everything that they were required to do, and did not follow the directions of the Statute in every particular; but the complaint seems to be that this does not appear on the face of their award. But if they did not do as they were required, or if they did, and it should have appeared on the face of the award, which I by no means affirm, is not the answer to the complaining party very obvious? If you were aggrieved thereby, or in any other way, why did you not avail yourself of the remedy provided for you and apply to the Supreme Court within the time and in the manner prescribed and have the error or omission, irregularity, or defect, rectified?

The Commissioners have referred to and so incorporated in their award the application of the Commissioner of Public Lands and the Lands Purchase Act, 1875; and in the matter of such application for the purchase of the estate of C. A. Sulivan, have awarded, under Section 26 of the said Act, a certain sum. This, it seems to me, is just what they were authorised and required to do. If in their proceedings the Commissioners were guilty of any error, informality, or omission, a remedy was at hand. The course to be pursued by a dissatisfied party was plain and simple in the extreme; but it was a course they could adopt or not; if they did not choose to take it, and so get the error corrected, or omission supplied, and award revised and re-executed in the mode prescribed, but have allowed the time given them by the Legislature to elapse, they have only themselves to blame. The law, in clear, strong, and unambiguous language, not to be misunderstood, says in effect, "if the Commissioners err or for any reason you are dissatisfied with the "award go to the Supreme Court within a certain time, and in a certain way, and get "the error corrected; but you shall go to no other court, and with the exception "of the power given to the Supreme Court to remit the matter to the Commissioners, "their award shall be binding, final, and conclusive on all parties;" and neither the Supreme Court of the island nor this court have, in my opinion, any right to say to the contrary. Therefore I think the adjudication of the Supreme Court was not warranted, and their judgment must be reversed.

MR. JUSTICE STRONG.

Although entirely concurring in the conclusion arrived at, I am unable to assent to all that has been propounded in the preceding judgment as to the law on the question of the jurisdiction of a Colonial Governor and Council as a court of appeal. I consider it sufficient to say that the preliminary objection raised in this case to the jurisdiction on the ground that the Supreme Court of Prince Edward Island was not a court of last resort has not been sustained, for the following reasons:—If any appellate court exists in the island, it must owe its origin either to an Imperial Act of Parliament, a Statute of the island Legislature, or to letters patent under the Great Seal of the United Kingdom or of the island, if, indeed, a court, exercising a jurisdiction by way of appeal which was unknown to the common law, could be created otherwise than by Statute. No such Statute can be shown to have been in existence, and no letters patent conferring such a jurisdiction are now extant. For this reason, and this reason only, I think the objection fails.

As regards the merits, I agree on all points with the judgments of his Lordship the Chief Justice and my brother Ritchie.

MR. JUSTICE TASCHEREAU.

The facts of the case have already been stated by my learned brother judges who have just expressed their opinion, and I will therefore abstain from repeating them. I shall neither notice the objection made on the part of Miss Sulivan to the right of appeal *de*

plano in this case from the judgment of the Supreme Court of Prince Edward Island on the ground that the same appeal should have been in the first instance to the Governor in Council as a court of error and appeal, and thence to our own court, viz., the Supreme Court of Canada, as it has been clearly shown no such court of error and appeal exists in the island, and thereiore the appeal was rightly brought before this court, the judgment complained of being rendered by the court of last resort in Prince Edward Island.

But coming to the merits of the case, I say that the respondent had no right such as she claimed in the court below, and such as the same court entertained; that is to say, to set aside the award made by the Commissioners appointed under the Land Purchase Act of 1875, stating the amount of money to be paid to respondent, Miss Sulivan, as proprietor of certain township lands.

The grounds on which the respondent based her motion to set aside the award were on account of pretended irregularity and insufficiency in the wording of the award. Looking at the text of the Act in question, we find at Section 4 that the amount of money to be paid as an indemnity to any such proprietor shall be found and ascertained by three Commissioners, or any two of them duly appointed; no form of procedure is indicated, and it seems that the duty of the Commissioners is purely and simply limited to the award of an amount as an indemnity, and, in fact, they were authorised to proceed in a summary way, without even reducing the evidence to writing. It is also to be observed that by Section 45 of the Land Act in question it is provided that "in no case "shall any appeal lie from such award, either to the Supreme Court, the Court of "Chancery, or any other legal tribunal; nor shall any such award or the proceedings "before such Commissioners be removed or taken into or inquired into by any other "court by *certiorari* or any other process, but" (mark this) "the Supreme Court shall "have power, on the application of either the Commissioner of Public Lands or the "proprietor, to remit to the Commissioners any award which shall have been made by "them, to correct any error or informality or omission made in their award; provided "always that any such application to the Supreme Court to remit such award to the "Commissioners shall be made within thirty days after the publication thereof, and "provided further that the said Commissioners shall have power to revise and re-execute "the same."

I think the above enactment of the Land Purchase Act clearly indicates the intention of the Legislature as to celerity of action and proceedings as to denial of any revision or appeal, as to avoiding a multiplicity of proceedings in the law courts, and as to the correction and revision, by the Commissioners themselves alone, of any defect or informality duly pointed out to them by any of the parties within 30 days from the promulgation of the award. Now the 30 days had elapsed before any of the parties had, in the terms of the Statute, lodged any complaint. I infer that the respondent is now estopped from lodging her complaint before a court of justice, unless section 45, above referred to, means nothing and should be looked upon as a dead letter. The language of the section seems so clear and so energetic that I can see no way of eluding it. It is true that the learned judges of the court appealed from have quoted a number of decisions having some bearing on the case, but others of equal strength are to be found to show we could not interfere and set aside such an award, supported by a section so formed as the 45th section of the Land Act in question. I, for one, would not be disposed to set aside the law (which is clear and positive in its terms) on the strength of decisions whose authority is destroyed by contrary rulings.

Now, referring to the 46th section of the said Land Act, we will see that the Supreme Court of Prince Edward Island has power to make rules and regulations not inconsistent with the provisions of the Act for the purpose of more effectually carrying out the requirements of the Act, and I say that it is not shown that any such regulations have been made authorising all the forms of proceeding claimed in the respondent's brief.

But what did the Commissioners omit to do? To declare in their award the matters mentioned in the 28th section of the Land Purchase Act of 1875, and therein indicated as to be taken into consideration by them in estimating compensation to proprietors? An attentive perusal of that section has convinced me that the suggestions therein contained are merely directory for their investigation, and, as it was very well said in appellant's factum, were intended merely as beacons to light the Commissioners on their way to a final conclusion, and that the mention of details was not a necessary ingredient in their award.

In arriving at their award the Commissioners must be presumed to have taken into their consideration all the suggestions contained in the Land Purchase Act, and this, under the very common rule of law, "*omnia presumuntur rite et soleminta ipse acta.*" The Commissioners by the Act in question are put in the position of juries. It is not

either evident that all the details required by the respondent can easily be reached, and in fact of what great use would it have been for the respondent if the Commissioners had categorically alluded to each of the matters of fact mentioned in the 28th section? None whatever, for the report was final to all intents and purposes; it could not be questioned in any way nor reversed. The respondent, if desirous of knowing her true position, can easily ascertain it, the important facts being very few in number, her number of acres guaranteed, and her rights to arrears of rent not affected.

All the presumptions are against the respondent, and so is the law of the case. She did not comply with the law; she did not complain in due time (and she had ample time to do so), but allowed her adversary to rest in peace; she does not avail herself of the only efficient proceeding pointed out by the Statute, but an after thought leads her to adopt in the Court below the proceedings alluded to. I consider the respondent is not rightly before this Court, and as one of its members I am not disposed to disturb the award of the Commissioners for the reasons mentioned in the rule *Nisi* granted by the Supreme Court of Prince Edward Island. I would therefore maintain the appeal.

MR. JUSTICE FOURNIER.

La première question: Cette cour a-t-elle jurisdiction pour entendre cet appel? L'Intimée pretend que non. Il existerait d'après elle, dans l'Isle du Prince Edouard un tribunal supérieur à la Cour Suprême, composé du Gouverneur en conseil, auquel il aurait du s'adresser avant de porter son present appel. Elle fonde cette prétention sur l'article de notre acte declarant qu'il n' y aura d'appel à cette cour que du jugement de la cour de dernier ressort dans la province d'où l'appel provient.

Les nombreux documents cités par l'Honorable Juge en chef et les recherches historiques faites pour constater l'existence de cette Cour n'ont eu d'autre resultat que de prouver d'une manière bien certaine qu'un tel tribunal composé du Gouverneur en Conseil, comme Cour d'Appel pour l'Isle du Prince Edouard n'existe pas, s'il a jamais existé.

Consequemment l'Appel est bien porté—Ce point règlé, reste la question de savoir si l'Intimée en s'adressant à la Cour Suprême de l'Isle du Prince Edouard, au moyen d'un *certiorari* pour faire mettre de côté la sentence arbitrale dont elle se plaint. Dans se procédé devant la Cour Suprême, l'Intimée a eu gain de cause.

Mais l'Acte concernant la vente des terres de l'Isle du Prince Edouard "The "Land Purchase Act" contenant une disposition formelle enlevant le recours au procédé du *certiorari* pour attaquer les procédures des arbitres, et y substituant un mode particulier, l'Intimée ne devait-elle pas recourir au remède particulier que lui indique le Statut pour se proteger contre les erreurs et omissions qui pouvaient se glisser dans les procédés des arbitres?

N'ayant pas jugé à propos d'invoquer le seul remède que lui indiquait la loi, elle ne doit s'en prendre qu'à elle si elle n'obtient pas de faire reformer la sentence arbitrale. Mais au surplus je suis convaincu comme mes honorables collègues que les formalités voulues par la loi ont été remplies par les arbitres et que l'Intimée n'a pas de griefs réels.

Solicitors: For Appellant - Louis H. Davies, of Prince Edward Island.
„ „ Respondent - Edward J. Hodgson, of Prince Edward Island.
Agents in Ottawa: For Louis H. Davies—Bradley & Bell.
„ „ „ Edward J. Hodgson, Cockburn & Wright.

Certified a true copy of my Report,
G. DUVAL.
Précis writer of the Supreme Court of Canada.

No. 5.

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

MY LORD, Downing Street, August 16, 1880.

WITH reference to the Earl of Dufferin's Despatch of the 24th February 1876,* relating to the proceedings before the Commissioners under the "Land Purchase Act, 1875," passed by the Provincial Legislature of Prince Edward Island, I have the honour

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* Not printed.

to request that you will obtain from the Lieutenant-Governor of that Province a full report of the proceedings under the Act in question, containing the following particulars :—

(1.) The awards (in a tabular form), by the Commission, whether during the chairmanship of Mr. Childers or afterwards, including a statement of the acreage, the sums awarded, and any particulars of the annual rent, &c.

(2.) The cases in which the amount was disputed and the result of the dispute.

(3.) The total amount paid.

(4.) Particulars of the sales to the tenants of their holdings up to the present time.

(5.) Some account of the present holdings in the island; for example, the number and total acreage of holdings exceeding 200 acres, of those between 100 and 200 acres, of those between 50 and 100 acres, &c.

As there appears reason to believe that information on this subject might be interesting to the Imperial Parliament, I should be glad if it should be in your Lordship's power to forward the report to me at an early date in order, that if there should be no objection, the particulars may be in the hands of Parliament early next session.

I have, &c.

Governor-General the Marquis of Lorne. (Signed) KIMBERLEY.

No. 6.

GOVERNOR-GENERAL THE RIGHT HON. THE MARQUIS OF LORNE, K.T., G.C.M.G., to the RIGHT HON. THE EARL OF KIMBERLEY. (Received Dec. 10, 1880.)

Government House, Ottawa,

MY LORD, November 23, 1880.

IN compliance with the request contained in your Lordship's Despatch, of the 16th August last,* I have the honour to forward herewith a copy of a letter from the Secretary of State for Canada, covering a copy of a full report of the proceedings under the Land Purchase Act of 1875, of the Province of Prince Edward Island.

I have, &c.

The Right Hon. the Earl of Kimberley, &c. &c. &c. (Signed) LORNE.

Enclosure 1. in No. 6.

THE DEPARTMENT OF THE SECRETARY OF STATE to the GOVERNOR-GENERAL'S SECRETARY.

SIR, Ottawa, November 19, 1880.

ADVERTING to your letters of the 30th August and the 1st September last, and to the Despatch of the Right Honourable the Secretary of State for the Colonies, of the 16th August last, a copy of which was enclosed in the former of those communications, I am directed to transmit to you herewith, for the information of his Excellency the Governor-General, a copy of a Despatch from his Honour the Lieutenant-Governor of Prince Edward Island, and of the documents referred to in the margin thereof, being a copy of the report of the proceedings of the Commission under the provisions of the "Land Purchase Act, 1875."

Nov. 6, 1880.

I have, &c.

(Signed) EDWARD J. LANGEVIN,

The Governor-General's Secretary. Under Secretary of State.

Enclosure 2. in No. 6.

Province of Prince Edward Island, Government House,

SIR, November 5, 1880.

IN accordance with the request contained in the Despatch of the Earl of Kimberley of the 16th August last, addressed to his Excellency the Governor-General, I have the honour to transmit to you certain documents mentioned in the margin, prepared in the

Report of the Commissioner to the Lieut.-Gov. Schedule A. from Commissioner of Public Lands Office.

* No. 5.

Schedule B. from Commissioner of Public Lands Office. Recapitulation of Schedules A. and B.

office of the Commissioner of Public Lands of this Province, containing a full report of the proceedings of the Commission under the provisions of the "Land Purchase Act, 1875," in order that the same may be forwarded by you to the Right Honourable the Secretary of State for the Colonies.

I have, &c.

The Honourable the Secretary of State, Ottawa. (Signed) T. Heath Haviland, Lieutenant-Governor.

To the Honourable Thomas Heath Haviland, Q.C., Lieutenant-Governor of the Province of Prince Edward Island, &c., &c.

Charlottetown, Prince Edward Island,
November 4, 1880.

Sir,

I have the honour to submit a report of the proceedings of the Commissioners under the "Land Purchase Act, 1875," as required in Earl of Kimberley's Despatch to the Governor-General of the 16th of August 1880, specifying as required by the Secretary of State for Canada in his letter to your Honour of the 6th September, the points in which the landlords had not complied with the conditions of their respective grants.

In 1767 Prince Edward Island, with the exception of three small reservations intended for county towns, was divided into 67 lots or townships, containing about 20,000 acres each, 65 of which were disposed of in one day by lottery in London before the Board of Trade and Plantations.

Grants were subsequently issued to the various allottees, which contained the following among other conditions.

That the grantee of each township should settle the same within 10 years from the date of the grant. in the proportion of one person for every 200 acres, such persons to be foreign Protestants or persons who had resided in British America for two years previous to 1767.

That if one third of the land was not so settled within four years of the date of the grants the whole should be forfeited.

The payment of a certain quitrent varying from 6*s.* to 2*s.* sterling per 100 acres, according to the different lots, payable annually on one half of the grant at the expiration of five years, and on the whole at the expiration of 10 years from the date of grant.

On these terms the original proprietors accepted their grants, and in the following year they petitioned the British Government that the island might be granted a separate Government, and offered in order to defray the expense thereof, that such portion of the quitrent which would not be payable until five years after the date of the grants should become payable the first of May 1769, and the payment of the remaining half to be postponed for 20 years.

This application was acceded to by Her Majesty's Government.

During the five years following the establishment of the Local Government in 1768 the quitrents were not paid as stipulated, and at the expiration of 10 years from the date of the grants the condition of settlement as regards population was complied with in only 10 townships. Nine others were partially settled, and the remaining townships neglected.

But in no case were the settlers foreign Protestants.

In 1802 the quitrents in arrears amounted to 59,162*l.* sterling, and the British Government, desirous of encouraging the settlement of the Colony, determined to accept a moderate commutation, discriminating in favour of such proprietors as had exerted themselves to any degree in carrying out the conditions of their grants.

The commuted arrears were not paid. The total amount shown to have been paid up to 1833 was only 6,000*l.* sterling; whereas the total amount by the terms of the grants would have been about 145,000*l.* sterling.

The agitation in the island on the subjects of quitrents and escheat for the nonfulfilment of the conditions of the original grants was commenced in 1770. One of the first acts of the local Legislature was the taking into consideration the non-performance of these conditions. From that time forward the agitation was increasing, various attempts having been made to establish a Court of Escheat.

In 1853 an Act was passed by the provincial Legislature for the purchase of the estates of such proprietors as might be disposed to sell them. This Act received the Royal assent, and between the years 1854 and 1871 13 proprietary estates, consisting of

457,260 acres were purchased, and the office of Commissioner of Crown Lands was created for the purpose of managing the sales of the said lands to the tenants or occupiers.

In Schedule A. to this report may be found the following particulars respecting the working of this Act:—

1. Date of purchase.
2. Acreage of the different estates.
3. Amount of purchase money.
4. Rate per acre paid proprietors.
5. Particulars of holdings purchased by tenants.
6. Acreage rate per acre to tenants.

The proprietors of the greater portion of the island having refused to sell their lands under this Act, and the agitation still continuing, it was agreed upon by the provincial Legislature and some of the largest proprietors that the questions which had hitherto formed the subject of agitation should be referred to a commission with power to devise a system by which the leasehold lands might be converted into freehold. At the suggestion of the proprietors, the commissioners were empowered to enter into all the inquiries that might be necessary, and to decide upon the different questions which should be brought before them.

The Commission was constituted in 1860, the Hon. John H. Gray, of New Brunswick, being nominated by the British Government, the Hon. Joseph Howe, of Nova Scotia, by the Legislature of Prince Edward Island, and the Hon. J. W. Ritchie, of Halifax, by the proprietors.

The Legislature of Prince Edward Island on the 2nd day of May, 1860, passed an Act in advance to give effect to the award of the Commissioners, but on the publication of the award the proprietors raised an objection against the manner in which it provided for the valuation of land, and on this objection the award was ultimately set aside.

The excitement in consequence of what was regarded as the bad faith of the proprietors in refusing to accept the award of the Commissioners became very general all over the Colony. An organisation, known as the "Tenant League," came into existence, and resistance was offered to the collection of rent by the civil officers, so that it became necessary in 1865 to despatch a company of about 200 soldiers from Halifax to the island to assist in the maintenance of the law.

In 1868 a minute of Council urging on the British Government the necessity for the adoption of compulsory measures for the settlement of the land question was forwarded to the British Government.

The Land Purchase Act, 1875, produced a final settlement of an agitation which had for over 100 years greatly retarded the prosperity of the province

Schedule B. contains the following particulars respecting the estates purchased under this Act.

1. The acreage of the various estates.
2. The arrears of rent due proprietors.
3. Gross annual rental reserved in leases.
4. Gross amount of rental received in six years preceding the sitting of Commission.
5. Gross amount awarded by Commission.
6. Rate per acre paid by Government.
7. Particulars of present holdings of land sold under the provisions of the "Land Purchase Act, 1875."
8. Rate per acre charged to tenants.
9. Total amount paid by Government.

Applications to the Supreme Court of Prince Edward Island to set aside the awards of the Commission under "the Land Purchase Act, 1875" were made by the following proprietors, viz.:—

Charlotte A. Sulivan.
Robert Bruce Stewart.
John A. S. Macdonald.
Helen J. Macdonald.
William C. Macdonald.
John A. Macdonald.
Spencer C. B. P. Fane.
Sidney T. and Amelia Evans.

The awards were set aside in the cases of Charlotte A. Sulivan, Robert Bruce Stewart, John A. S. Macdonald, and Spencer C. B. P. Fane, but appeals having been taken to

the Supreme Court of the Dominion, and the case of Charlotte A. Sulivan being heard, the decision of the Island Court was reversed with costs.

The case of John A. S. Macdonald was compromised by the payment of the attorney's costs, Mr. Macdonald being allowed interest on the award from the date thereof.

Spencer C. B. P. Fane and Robert Bruce Stewart abandoned their cases and accepted the award. William C. Macdonald's award was affirmed by the Island Court, Sidney T. and Amelia Evans, Helen J. Macdonald, and John A. Macdonald abandoned their cases before they obtained hearings in the Provincial Court and accepted the amounts awarded to them.

An application was made to the Court by James F. Montgomery that the award in his case be referred back to the Commissioners for amendments; the application was granted, but subsequently a compromise was effected, Mr. Montgomery being allowed an additional sum of $1,590 as accruing rent and costs. The foregoing were all the cases in which the amounts awarded by the Commissioners were disputed.

In the case of Colonel Cumberland and wife the sum of $1,000 was deducted from the award, as on the production of titles it was found that "Warren Farm," containing 123 acres, which was included in the award was only held under lease by Colonel Cumberland.

Some delay occurred in perfecting the titles of some of the estates, in which cases the landlords were allowed interest on the amount of the awards until payment was made. This will explain the discrepancy between the sums in the fifth and ninth columns of Schedule B. in the estates of Sidney and Amelia Evans, George A. McNutt, trustee of Mrs. Stephens and Margaret Stewart.

The sums received at this office during the years 1877, 1878, and 1879 in payment of instalments, and interest on purchase money, amount to $177,878 76c.

A much larger sum would no doubt have been received were it not for the great depression in trade existing during that period, causing a decline in the prices usually received for agricultural products.

Whilst some of the tenants are somewhat slow in meeting their instalments as they fall due, the majority are making commendable efforts in that direction, and the public sentiment in the Colony will sustain the Department of Public Lands in firmly but prudently enforcing payment of the balances remaining unpaid by the tenants.

I have, &c.

(Signed) DONALD FERGUSON,
Commissioner of Public Lands.

Enclosure 3. in No. 6.

RECAPITULATION.

	No. 1. Classification.	No. 2. Number.	No. 3. Acres.
SCHEDULE A.			
Holdings of tenants on the estates acquired by voluntary sale from the year 1854 to the year A.D. 1873 - -	1 acre to 50	1,390	41,381
	50 „ 100	3,100	198,667
	100 „ 200	1,124	139,757
	200 acres	90	23,245
SCHEDULE B.			
Holdings of tenants on the estates acquired by compulsory and voluntary sale from the year A.D. 1876 to date -	1 acre to 50	612	18,998
	50 „ 100	1,519	97,060
	100 „ 200	615	69,170
	200 acres	35	8,619
		8,485	596,897

Office of the Commissioner of Public Lands,
Charlottetown, Prince Edward Island, October 1, 1880.

(Signed) ROBT. A. STRONG,
The Assistant Commissioner.

Enclosure 4. in No. 6.

SCHEDULE B.

ESTATES purchased by the Government of Prince Edward Island under the operation of the "Land Purchase Act of 1875;" the Acreage of each, Arrears of Rent due, Gross Annual Rental reserved, Amount received in Six Years, Amount of Award, and Rate per Acre; also the Number and Acreage of Holdings, with Rate per Acre paid therefor, and Actual Amount paid by Government to Proprietors.

Name of Proprietors.	No. 1. Acreage of Estate.	No. 2. Arrears due Proprietor.	No. 3. Gross Annual Rental Reserved.	No. 4. Amount of Rental Received in Six Years.	No. 5. Award of Commissioners.	No. 6. Rate per Acre.	No. 7. Holdings Purchased by Tenants.								No. 8. Rate per Acre to Tenants.	No. 9. Actual Amount paid by Government.
							No.	From 1 to 50 Acres.	No.	From 50 to 100 Acres.	No.	From 100 to 200 Acres.	No.	From 200 Acres.		
		$ c.	$ c.	$ c.	$ c.	$ c.									$ c.	$ c.
Bellin and Traverse	1,986½	—	—	—	6,000 00	3 10	4	125	11	717	4	400	—	—	1 33	6,000 00
Bourke, John Roache	3,114	2,066 33	536 33	1,984 91	5,402 00	1 73	2	73	10	600	8	880	1	204	1 33	5,402 00
*Brenan	1,378½	—	—	—	5,887 69	4 27	—	—	—	—	—	—	—	—	1 65	5,877 69
Crooke, Mary and Frances	2,131¾	711 93	388 59	2,391 11	5,500 00	2 58	—	—	7	509	6	620	—	—	1 80	5,500 00
Cumberland, Colonel, and wife	6,216½	4,623 85	1,919 50	11,101 73	31,900 00	5 13	5	169	39	2,510	13	1,400	—	—	2 66	30,900 00
Cundall, William	2,844	1,187 60	529 84	3,463 00	9,200 00	3 23	10	332	18	1,186	9	938	—	—	2 12	9,200 00
Cundall, Mary Eliza	1,455	2,086 86	266 24	1,506 00	4,450 00	3 05	2	56	18	1,152	1	100	—	—	2 07	4,450 00
Cundall, Henry T.	1,886⅓	456 18	535 08	—	5,149 00	2 73	8	222	14	817	5	516	—	—	2 17	5,149 00
Cundall, H. T. (Guardian)	7,590	248 18	1,421 76	—	22,300 00	2 93	21	595	57	3,234	25	2,595	1	219	2 02	22,300 00
*Cunningham	2,188	—	—	—	2,055 00	—	—	—	—	—	—	—	—	—	—	2,055 00
Douse, Esther	2,039½	414 01	522 32	5,459 48	7,525 00	3 68	3	101	16	1,235	4	453	—	—	2 16	7,525 00
Douse, Henry C.	733⅓	—	169 33	5,172 05	3,010 00	3 78	10	146	5	391	1	125	—	—	3 10	3,010 00
*Douse, Arabella	410½	—	—	—	1,436 75	3 50	1	19	3	180	1	146	—	—	1 88	1,436 75
*Douse, James T.	423	—	—	—	1,196 55	2 83	1	28	3	200	—	—	—	—	2 35	1,196 55
*Douse, Jane B.	402	—	—	—	1,407 00	3 50	3	93	2	159	1	100	—	—	2 20	1,407 00
Douse and Strong	809½	—	—	—	6,080 00	7 52	3	137	6	439	2	225	—	—	2 14	6,080 00
*Des Brisay	5,200	—	—	—	16,374 54	3 14	10	383	15	1,082	6	713	—	—	1 94	16,374 54
Evans, Sydney T. Amelia	4,598	927 46	864 54	6,409 83	10,907 00	2 48	25	830	30	2,036	11	1,151	—	—	1 96	11,452 00
Evans, Arthur W.	997½	—	—	—	2,954 00	2 96	1	19	8	426	3	350	—	—	2 12	2,954 00
*Earle, Samuel L.	384	—	—	—	1,383 00	3 34	—	—	2	139	1	100	—	—	2 20	1,383 00
Fane, Spencer C. B. P.	13,000	5,481 68	1,297 93	—	21,200 00	1 63	21	585	49	3,397	15	1,963	1	299	1 84	21,200 00
Fanning, Maria S. M.	8,469	7,818 05	1,194 17	4,123 98	20,200 00	2 40	31	981	58	3,568	23	2,521	—	—	1 56	20,200 00
Fanning, W. W., and others	10,000	17,854 00	1,753 22	—	25,250 00	2 52	21	724	44	2,998	43	4,451	3	614	1 07	25,250 00
Hodgson, Edward J.	1,751	291 70	342 69	—	4,800 00	2 74	18	315	7	381	6	719	—	—	1 93	4,800 00
Hodgson, Daniel (Trustee)	4,730	1,736 52	1,103 78	6,781 10	21,700 00	4 63	13	443	38	2,348	9	939	—	—	2 01	21,700 00
Holland, A. E. C., and wife Holland, A. E. C.	4,846	1,556 12	841 30	—	11,734 00	2 42	11	334	22	1,604	9	1,091	1	213	1 70	11,734 00
Holland, F. F.	615	105 59	103 22	—	1,450 00	2 36	3	132	2	120	3	300	—	—	1 57	1,450 00
Irving and Debwis	928¾	208 71	135 82	—	2,572 00	2 77	4	117	5	393	1	100	—	—	1 52	2,572 00
Lawton, Anna Maria, and others	2,131	878 11	277 59	1,391 23	4,222 00	1 98	1	25	11	727	3	354	—	—	1 33	4,222 00
	93,259				263,245 53											

NOTE.—The estates marked thus * were disposed of by private sal to the Government.

ESTATES purchased by the Government of Prince Edward Island—*continued.*

Name of Proprietors.	No. 1. Acreage of Estate.	No. 2. Arrears due Proprietor.	No. 3. Gross Annual Rental Reserved.	No. 4. Amount of Rental Received in Six Years.	No. 5. Award of Commissioners.	No. 6. Rate per Acre.	No. 7. Holdings Purchased by Tenants.								No. 8. Rate per Acre to Tenants.	No. 9. Actual Amount paid by Government.
							No.	From 1 to 50 Acres.	No.	From 50 to 100 Acres.	No.	From 100 to 200 Acres.	No.	From 200 Acres.		
	93,259	$ c.	$ c.	$ c.	$ c. 263,245 53	$ c.									$ c.	$ c.
Melville, Lord	11,309¾	13,702 02	2,104 37	12,172 32	34,000 00	3 00	1	49	12	728	3	350	—	—	1 52	34,000 00
Montgomery, Sir G. G.	5,610	6,020 79	877 76	3,894 62	12,400 00	2 21	14	455	59	3,911	36	3,800	2	516	1 48	12,400 00
Montgomery, Louisa	1,362½	597 68	253 19	—	4,569 00	3 35	17	542	32	1,973	11	1,307	1	220	2 06	4,569 00
Montgomery, James F.	5,678½	1,028 04	968 99	6,299 60	15,200 00	2 89	5	164	19	1,499	11	1,613	—	—	1 63	16,790 46
Macdonald, W. C. (*see* note)	10,435	—	—	—	13,775 00										—	23,153 77
Macdonald, H. T.	1,068	450 71	243 82	1,258 52	3,700 00	2 32	14	487	79	5,196	17	1,784	1	200	0 95	3,700 00
Dower	562						1	35	14	753	3	300	—	—		1,399 70
Macdonald, John A. S.	21,779	—	3,944 05	—	34,000 00	1 78	21	697	97	6,528	47	5,443	3	600	1 06	38,880 00
MacDonell, John A.	2,400	125 13	624 85	—	7,592 00	3 16	4	110	10	802	5	613	—	—	1 79	7,592 00
MacMillan, Mrs. (Guardian)	2,994½	295 37	603 08	3,572 19	10,247 00	3 42	35	1,129	22	1,311	3	335	—	—	2 07	10,247 00
MacNutt, G. A. (Trustee	3,382¾	1,065 88	584 39	2,882 17	8,875 00	2 62	5	188	17	1,239	9	1,043	1	210	1 65	9,238 50
Palmer, Henry	1,800	—	—	—	4,952 00	2 75	9	245	18	1,164	2	200	—	—	1 56	4,952 00
Rennie, Robert (Trustee)	10,220	8,484 87	2,553 50	14,768 81	33,000 00	3 22	49	1,496	60	3,880	27	3,206	—	—	1 99	33,000 00
*Ramsay, A. A., and others	1,763½	—	—	—	3,350 65	1 90	—	—	5	304	4	493	1	250	1 41	3,350 65
Stewart, Robert Bruce	66,727	32,102 78	6,470 83	—	76,500 00	1 14	72	2,312	252	15,301	92	10,511	12	3,202	1 27	76,500 00
Stewart, Margaret	3,235½	713 41	560 88	—	8,500 00	2 85	21	696	22	1,373	2	200	—	—	1 41	9,240 55
Sulivan, Charlotte A.	66,937	36,303 79	7,289 70	—	81,500 00	1 29	42	1,468	159	9,131	48	5,456	2	600	1 03	81,500 00
																2,606 00†
*Stewart, Mary	592	—	—	—	1,776 00	3 00	2	90	1	72	—	—	—	—	1 94	1,776 00
Thompson, Elizabeth, and others	7,140	9,172 70	1,433 93	3,520 17	10,700 00	1 50	13	358	29	1,971	28	3,157	—	—	1 58	10,700 00
*Wright, George	492	—	—	—	1,476 00	3 00	—	—	—	—	1	140	—	—	2 43	1,476 00
Wiggins, H. D., & others	1,004	303 80	314 41	2,179 76	4,890 00	4 87	6	72	4	240	1	122	—	—	2 00	4,890 00
Wright, Thomas, and wife	1,103½	95 63	172 28	521 26	3,066 00	2 78	4	139	6	372	3	332	—	—	2 75	3,066 00
*Wright, Lemuel	856	—	—	—	2,568 00	3 00	1	25	2	144	—	—	—	—	2 40	2,568 00
*Windoe, John	2,016	—	—	—	6,328 33	3 18	16	409	9	533	4	472	—	—	1 74	6,328 33
Yates, A. H., and wife	611	—	83 06	—	1,483 00	2 45	1	12	—	—	1	100	—	—	2 02	1,493 00
Yeo, estate of the late Hon. J.	17,202	13,243 29	1,894 68	—	37,000 00	2 15									1 06	37,000 00
Ditto. Willd. J. Yeo and others	996½	—	—	—	3,195 28	3 20	27	836	91	6,087	44	4,943	5	1,272	1 62	3,195 28
Ditto. Ditto. J. Juge and others	679	—	—	—	2,283 00	3 30									1 62	2,283 00
	343,216				690,171 79		612	18,998	1,519	97,060	615	69,170	35	8,619		

* The estates marked thus * were disposed of by private sale to the Government. † Rent.

NOTE.—The sum of 9,388 dollars 77 cents. paid in addition to the amount of the award for this estate represents dower rights which were not considered by the Commissioners.

Office of the Commissioner of Public Lands,
Charlottetown, Prince Edward Island, October 1880.

(Signed) ROBT. A. STRONG,
The Assistant Commissioner.

Enclosure 5. in No. 6.

SCHEDULE A.

ESTATES purchased by the Government of Prince Edward Island under the operation of "Act 16 Vict. cap. 18," Date of Purchase, Acreage, Amount paid therefor, Rate per Acre; also Number of Holdings purchased by Tenants, and Average Rate per Acre.

Estates.	No. 1. Date of Purchase.	No. 2. Acreage.	No. 3. Amount of Purchase.	No. 4. Rate per Acre.	No. 5. Holdings Purchased by Tenants.								No. 6. Average Rate per Acre to Tenants.
					No.	From 1 to 50 Acres.	No.	From 50 to 100 Acres.	No.	From 100 to 200 Acres.	No.	From 200 Acres.	
			$ c.	$ c.									
Worrell	December 1854	70,539	66,997 77	0 94	252	7,431	354	26,119	136	16,312	19	4,564	1 44
Walsh, or Lot 11	June 1856	12,720	9,246 67	0 72	26	631	72	4,834	42	5,132	4	981	1 13
Selkirk	September 1860	62,059	32,178 52	0 51	122	4,129	552	34,664	179	20,362	5	1,595	0 94
Winchester	November 1860	13,000	9,733 33	0 74	20	679	77	4,598	48	5,362	5	1,014	1 25
Montgomery	From 1863 to 1866	22,931	24,165 44	1 05	45	1,288	173	10,397	69	7,333	2	526	1 53
Cunard	July 1866	212,885	257,933 30	1 21	732	21,148	1,519	93,466	501	67,727	46	11,888	1 87
Townshend	November 1867	3,715	3,568 88	0 96	11	378	22	1,231	8	863	3	785	1 19
Pope	July 1868	7,413	13,006 98	1 76	37	1,095	51	3,204	25	2,629	1	200	1 84
Haviland	February and March 1869	24,167	29,913 78	1 23	26	788	92	6,014	57	6,409	4	1,468	1 97
Hodgson, Lot 23	March 1869	3,728	7,861 94	2 10	28	861	28	1,487	11	1,346	—	—	2 22
Palmer	March 1870	11,928	24,187 55	2 02	64	2,100	83	5,654	20	2,294	—	—	2 30
Hodgson, Lot 19	December 1871	12,175	39,500 00	3 24	12	336	37	4,076	3	782	—	—	3 40
Loan Act, "28 Vict. cap. 5."		—	—	—	15	517	41	2,923	25	3,206	1	224	—
		457,260	518,294 16		1,390	41,831	3,100	198,667	1,124	139,757	90	23,245	

Office of the Commissioner of Public Lands,
Charlottetown, Prince Edward Island, October 1, 1880.

(Signed) ROBT. A. STRONG,
The Assistant Commissioner.

LONDON:
Printed by GEORGE E. EYRE and WILLIAM SPOTTISWOODE,
Printers to the Queen's most Excellent Majesty.
For Her Majesty's Stationery Office.

UNITED STATES. No. 1 (1881).

FURTHER CORRESPONDENCE

RESPECTING THE

OCCURRENCES

AT

FORTUNE BAY, NEWFOUNDLAND,

IN

JANUARY 1878.

[In continuation of "United States No. 1 (1880)."]

Presented to both Houses of Parliament by Command of Her Majesty.
1881.

LONDON:
PRINTED BY HARRISON AND SONS.
[C.—2757.] *Price* ½*d.*

Further Correspondence respecting the Occurrences at Fortune Bay, Newfoundland, in January 1878.

No. 1.

Earl Granville to Mr. Lowell.

Sir, *Foreign Office, October* 27, 1880.

HER Majesty's Government have carefully considered the correspondence which has taken place between their predecessors and the Government of the United States respecting the disturbance which occurred at Fortune Bay on the 6th January, 1878, and they have approached this subject with the most earnest desire to arrive at an amicable solution of the differences which have unfortunately arisen between the two Governments on the construction of the provisions of the Treaties which regulate the rights of United States' fishermen on the coast of Newfoundland.

In the first place, I desire that there should be no possibility of misconception as to the views entertained by Her Majesty's Government respecting the conduct of the Newfoundland fishermen in violently interfering with the United States' fishermen, and destroying or damaging some of their nets. Her Majesty's Government have no hesitation in admitting that this proceeding was quite indefensible, and is much to be regretted. No sense of injury to their rights, however well founded, could, under the circumstances, justify the British fishermen in taking the law into their own hands, and committing acts of violence; but I will revert by and by to this feature in the case, and will now proceed to the important question raised in this controversy, whether, under the Treaty of Washington, the United States' fishermen are bound to observe the Fishery Regulations of Newfoundland in common with British subjects.

Without entering into any lengthy discussion on this point, I feel bound to state that, in the opinion of Her Majesty's Government, the clause in the Treaty of Washington which provides that the citizens of the United States shall be entitled, "in common with British subjects," to fish in Newfoundland waters within the limits of British sovereignty, means that the American and the British fishermen shall fish in these waters upon terms of equality, and not that there shall be an exemption of American fishermen from any reasonable regulations to which British fishermen are subject.

Her Majesty's Government entirely concur in Mr. Marcy's Circular of the 28th March, 1856. The principle therein laid down appears to them perfectly sound, and as applicable to the fishery provisions of the Treaty of Washington as to those of the Treaty which Mr. Marcy had in view; they cannot, therefore, admit the accuracy of the opinion expressed in Mr. Evarts' letter to Mr. Welsh of the 28th September, 1878, "that the fishery rights of the United States conceded by the Treaty of Washington are to be exercised wholly free from the restraints and regulations of the Statutes of Newfoundland," if by that opinion anything inconsistent with Mr. Marcy's principle is really intended. Her Majesty's Government, however, fully admit that, if any such local Statutes could be shown to be inconsistent with the express stipulations, or even with the spirit of the Treaty, they would not be within the category of those reasonable regulations by which American (in common with British) fishermen ought to be bound; and they observe, on the other hand, with much satisfaction, that Mr. Evarts, at the close of his letter to Mr. Welsh of the 1st August, 1879, after expressing regret at "the conflict of interests which the exercise of the Treaty privileges enjoyed by the United States appears to have developed," expressed himself as follows:—

"There is no intention on the part of this [the United States'] Government that these privileges should be abused, and no desire that their full and free enjoyment should harm the colonial fishermen.

"While the differing interests and methods of the shore fishery and the vessel fishery make it impossible that the regulation of the one should be entirely given to the other, yet if the mutual obligations of the Treaty of 1871 are to be maintained, the United States' Government would gladly co-operate with the Government of Her Britannic Majesty in any effort to make those regulations a matter of reciprocal convenience and right, a means of preserving the fisheries at their highest point of production, and of conciliating a community of interest by a just proportion of advantages and profits."

Her Majesty's Government do not interpret these expressions in any sense derogatory to the sovereign authority of Great Britain in the territorial waters of Newfoundland, by which only regulations having the force of law within those waters can be made. So regarding the proposal, they are pleased not only to recognize in it an indication that the design of Her Majesty's Government to arrive at a friendly and speedy settlement of this question is fully reciprocated by the Government of the United States, but also to discern in it the basis of a practical settlement of the difficulty; and I have the honour to request that you will inform Mr. Evarts that Her Majesty's Government, with a view to avoiding further discussion and future misunderstandings, are quite willing to confer with the Government of the United States respecting the establishment of regulations under which the subjects of both parties to the Treaty of Washington shall have the full and equal enjoyment of any fishery which under the Treaty is to be used in common. The duty of enacting and enforcing such regulations, when agreed upon, would, of course, rest with the Power having the sovereignty of the shore and waters in each case.

As regards the claim of the United States' fishermen to compensation for the injuries and losses which they are alleged to have sustained in consequence of the violent obstruction which they encountered from British fishermen in Fortune Bay on the occasion referred to, I have to state that Her Majesty's Government are quite willing that they should be indemnified for any injuries and losses which upon a joint inquiry may be found to have been sustained by them, and in respect of which they are reasonably entitled to compensation; but on this point I have to observe that a claim is put forward by them for the loss of fish which had been caught, or which, but for the interference of the British fishermen, might have been caught by means of strand fishing, a mode of fishing to which, under the Treaty of Washington, they were not entitled to resort.

The prosecution by them of the strand fishery being clearly in excess of their Treaty privileges, Her Majesty's Government cannot doubt that, on further consideration, the United States' Government will not be disposed to support a claim in respect of the loss of the fish which they had caught, or might have caught, by that process.

I am, &c.
(Signed) GRANVILLE.

No. 2.

Mr. Lowell to Earl Granville.—(*Received October* 29.)

My Lord, *Legation of the United States, London, October* 28, 1880.

I HAVE the honour to acknowledge the receipt of your Lordship's letter of yesterday in relation to the disturbance which occurred at Fortune Bay on the 6th January, 1878, and to acquaint you that I shall forward a copy of the same to Mr. Evarts by the earliest opportunity.

I have, &c.
(Signed) J. R. LOWELL.

UNITED STATES. No. 1 (1881).

FURTHER CORRESPONDENCE respecting the Occurrences at Fortune Bay, Newfoundland, in January 1878.

[In continuation of "United States No. 1 (1880)."]

Presented to both Houses of Parliament by Command of Her Majesty. 1881.

LONDON:
PRINTED BY HARRISON AND SONS.

UNITED STATES. No. 2 (1881).

FURTHER CORRESPONDENCE

RESPECTING THE

OCCURRENCES

AT

FORTUNE BAY, NEWFOUNDLAND,

AND

OTHER PLACES.

[In continuation of "United States No. 1 (1881)."]

Presented to both Houses of Parliament by Command of Her Majesty.
1881.

LONDON:
PRINTED BY HARRISON AND SONS.
[C.—3059.] *Price* 1*s.* 2½*d.*

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Further Correspondence respecting the Occurrences at Fortune Bay, Newfoundland, and other places: 1879-81.

[In continuation of "United States No. 1 (1881)."]

No. 1.

Mr. Welsh to the Marquis of Salisbury.—(*Received August* 15.)

My Lord, *London, August* 13, 1879.

I AM instructed to bring to the attention of Her Britannic Majesty's Government the case of the schooner "Mist," Captain Cozzens, of Gloucester, Massachusetts, as made in the affidavit which accompanies this note.

As therein stated, it appears that Captain Cozzens and his crew, while taking squid in Conception Bay, Newfoundland, on the 8th July, 1878, were forcibly compelled to abandon the fishery by the inhabitants of that locality.

This case involves the same violation of the rights secured to the fishermen of the United States by the Treaty of Washington, 1871, as occurred in the transactions at Fortune Bay. The amount claimed for damages is 800 dollars.

I have, &c.

(Signed) JOHN WELSH.

Inclosure in No. 1.

Deposition of John Cozzens.

I, JOHN COZZENS, of Gloucester, County of Essex, State of Massachusetts, do on oath depose and say that in the month of July, about the 8th, I was lying in Broad Cove, Conception Bay, Newfoundland, in the schooner "Mist," of Gloucester, Massachusetts, of which schooner I was master. I went in for bait myself, and crew commenced catching squid for bait by use of jigs. I had taken about 3,000 squid, when the inhabitants of the place, in about sixty boats, surrounded my vessel and threatened to cut our cable unless we stopped fishing. We were obliged to haul in our jigs and stop fishing, as the mob outnumbered my crew five to one. At the time the threats were made we were lying about 300 yards from a lee shore, wind blowing a good breeze, and in case our cable had been cut our vessel would have gone on to the rocks and been lost. We could have taken all the bait we wanted if we had not been stopped by this threatening demonstration. Mr. Yuck, of Portugal Cove, a Custom-house officer, came on board my vessel and said I ought to have bought my bait of the inhabitants or compromised the matter in some way. The men that came off to my vessel were furious in their threats, and they were determined to force me to buy bait of them. I considered that I had a right under the Treaty of Washington to catch all the bait I needed. My fishing for bait did not in any way interfere with the inhabitants; and the whole cause of their attacking me was to force me to buy my bait instead of catching it myself. Finally, I was obliged to buy my bait of the inhabitants, paying 20 cents per hundred for squid, the action of the inhabitants rendering the privileges of the Treaty useless to me. I took 30,000 squid in number. went in five different times for bait that season, and having been deprived of my rights on this occasion, I bought all my bait afterward, not daring to fish for it, costing me in tim

and expense 800 dollars. And I hereby claim for my vessel that amount as justly due for being deprived of my rights under the Treaty, for if I could have been allowed to catch my own bait, it would have cost me nothing in addition to the expense of the voyage.

(Signed) JOHN COZZENS.

Gloucester, November 23, 1878.

Massachusetts, Essex, S.S.

On the 23rd day of November, A.D. 1878, personally appeared said John Cozzens, and made oath to the truth of the above affidavit.

Before me,

(Signed) AARON PARSONS, *Notary Public.*

No. 2.

The Marquis of Salisbury to Mr. Hoppin.

Sir, *Foreign Office, August* 23, 1879.

I HAVE the honour to acknowledge the receipt of Mr. Welsh's letter of the 13th instant in regard to the case of the schooner "Mist," and I beg leave to acquaint you, in reply, that the letter in question shall receive the early attention of Her Majesty's Government.

I am, &c.

(Signed) SALISBURY.

No. 3.

The Marquis of Salisbury to Sir E. Thornton.

Sir, *Foreign Office, August* 28, 1879.

I TRANSMIT to you herewith, for your information, copies of correspondence, as marked in the margin,* in regard to the case of the schooner "Mist."

I am, &c.

(Signed) SALISBURY.

No. 4.

Sir J. Pauncefote to Mr. Herbert.

Sir, *Foreign Office, August* 28, 1879.

I AM directed by the Marquis of Salisbury to transmit herewith, to be laid before Sir M. Hicks Beach, copies of correspondence, as marked in the margin,* in regard to the case of the schooner "Mist."

I am, &c.

(Signed) JULIAN PAUNCEFOTE.

No. 5.

Mr. Wingfield to Sir J. Pauncefote.—(*Received September* 3.)

Sir, *Downing Street, September* 3, 1879.

I AM directed by the Secretary of State for the Colonies to acknowledge the receipt of your letter of the 28th ultimo, inclosing a despatch, with its inclosure, from the United States' Chargé d'Affaires at this Court in reference to the alleged forcible interference with United States' fishermen in Conception Bay in July 1878.

I am to request that you will inform the Marquis of Salisbury that copies of these papers have been communicated to the Governor of Newfoundland in a despatch of which

* Nos. 1 and 2.

a copy is inclosed, with a request that he will obtain from his Government a Report upon the matter.

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

Inclosure in No. 5.

Sir M. Hicks Beach to Governor Sir J. Glover.

Sir, *Downing Street, September* 2, 1879.

I HAVE the honour to transmit to you a copy of a letter from the Foreign Office, inclosing a despatch from the United States' Chargé d'Affaires at this Court, with its inclosure, respecting the alleged forcible interference with the United States' fishermen in Conception Bay, Newfoundland, in July 1878.

I should be glad to receive from your Government a Report in reference to this matter.

I have, &c.
(Signed) M. E. HICKS BEACH.

No. 6.

The Secretary to the Admiralty to Lord Tenterden.—(Received September 17.)

Sir, *Admiralty, September* 16, 1879.

I AM commanded by my Lords Commissioners of the Admiralty to transmit, for the information of the Secretary of State for Foreign Affairs, a copy of a letter, dated the 27th ultimo, from the commanding officer of Her Majesty's ship "Druid" at St. John's, Newfoundland, relative to the fisheries, and reporting that the "Zephyr" was about to proceed to make inquiry as to a disturbance between some American and English fishermen at Trinity Bay, and will proceed about the middle of September to Port au Basque to convey his Excellency Sir John Glover to St. George's Bay.

A similar letter has been sent to the Colonial Office.

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

Inclosure 1 in No. 6.

Captain Kennedy to Vice-Admiral Sir E. Inglefield.

Sir, *"Druid," at St. John's, Newfoundland, August* 27, 1879.

I HAVE the honour to report that the "Druid" and "Zephyr" are in port, and the "Plover" is daily expected from the west coast.

The steam-yacht "Northumbria," belonging to the Earl of Lonsdale, arrived here on the 17th instant; the French man-of-war steamer "Adonis" on the 18th instant; and the United States' screw-ship "Kearsage" on the 21st.

On the arrival of the next mail from Halifax, about the 5th September, I shall proceed on my second cruize to Labrador, touching at several ports on the north-east side of the island where the French have rights of fishing. After visiting the Labrador coast, I shall proceed down the west coast to the Bay of Islands, where I expect to meet his Excellency the Governor, who is desirous of visiting some recently-discovered coal-fields in the interior, after which I shall return here with his Excellency.

The "Zephyr" will proceed to Port au Basque about the middle of September to meet his Excellency, who goes there by steamer, and will convey him to St. George's Bay, from whence she will join me at Bay of Islands.

The squadron continues to be remarkably healthy.

I inclose copy of "Zephyr's" sailing orders for Port au Basque.

Having, on the 25th August, received official notice from his Excellency the Governor of a disturbance between some American and English fishermen at Trinity Bay, at the request of his Excellency, I have ordered the "Zephyr" to proceed there with Judge

Prowse to inquire into the matter. The particulars will be forwarded on the return of the "Zephyr" to this port. Sailing orders attached.

The "Zephyr" will carry out her other orders on her return.

I have, &c.

(Signed) W. R. KENNEDY.

Inclosure 2 in No. 6.

Sailing Orders.

(Memo.) "*Druid*," *at St. John's, August* 25, 1879.

IN consequence of a disturbance having taken place at Smith's Sound, Trinity Bay, between some English and American fishermen, you are, after embarking Mr. Prowse, J.P., to proceed to that place with all dispatch to inquire into the same.

You are to place the "Zephyr" at the disposal of Mr. Prowse, and return with him to this port at the conclusion of the inquiry.

(Signed) W. R. KENNEDY, *Captain and Senior Officer.*

To Lieutenant and Commander Clutterbuck,
Her Majesty's gun-boat "Zephyr."

Inclosure 3 in No. 6.

Sailing Orders.

(Memo.)

THE "Zephyr" being in all respects ready for sea, you are to proceed to Channel, Port au Basque, in time to meet his Excellency Sir John Glover, who will arrive there by the steamer leaving St. John's on or about the 13th September.

2. Having embarked his Excellency, you are to take him to Codroy, or wherever he may desire, and place yourself entirely at his disposal.

3. After disembarking the Governor, you are to join me at Bay of Islands.

Dated on board Her Majesty's ship "Druid," at St. John's, the 27th August, 1879.

(Signed) W. R. KENNEDY, *Captain and Senior Officer.*

To Lieutenant and Commander W. R. Clutterbuck,
Her Majesty's gun-boat "Zephyr."

No. 7.

The Marquis of Salisbury to Sir E. Thornton.

Sir, *Foreign Office, September* 23, 1879.

I TRANSMIT to you herewith, for your information, copy of a letter from the Admiralty in regard to a disturbance between American and English fishermen at Trinity Bay.*

I am, &c.

(Signed) SALISBURY.

No. 8.

Mr. Bramston to Lord Tenterden.—(*Received September* 26.)

Sir, *Downing Street, September* 26, 1879.

I AM directed by the Secretary of State for the Colonies to transmit to you a copy of a despatch from the Governor of Newfoundland, inclosing a communication from the United States' Consul at St. John's, with accompanying statements, relating to the alleged opposition offered to the American fishing schooner "Howard Holbrook," at Smith's Sound, Trinity Bay, on the 16th August last. The Governor's despatch also incloses a Report by Judge Prowse, whom he deputed to inquire into the circumstances of the case, and certain depositions relating to the matter are promised by next mail.

* No. 6.

In submitting these papers for the consideration of the Marquis of Salisbury, I am desired to request that you will direct his attention to the Act of the Legislature of Newfoundland, Cap. 6 of 1876, "To amend the law relating to the coast fisheries," section 3 of which prohibits the taking of squid "by means of any seine, bunt, or other such contrivance."

The question of how far certain provisions of the Law of Newfoundland are or are not at variance with the intention of the Treaty of Washington is, Sir Michael Hicks Beach believes, now under the consideration of the Secretary of State for Foreign Affairs, in connection with the claims of American fishermen arising out of the Fortune Bay disturbances.

On this point I am desired to call attention to paragraph 5 of Sir John Glover's despatch, in which he asks for instructions.

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

Inclosure 1 in No. 8.

Governor Sir J. Glover to Sir M. Hicks Beach.

Sir, *Government House, Newfoundland, August* 28, 1879.

I HAVE the honour to inclose, for your information, copy of a letter from the United States' Consul at this port, dated the 23rd instant, putting forward a complaint that opposition had been offered by our fishermen to the crew of the American schooner "Howard Holbrook," when attempting to seine for squid at Smith's Sound, in Trinity Bay.

2. This appearing to be a repetition of the interruption which occurred in Fortune Bay in 1878, I at once applied to the Senior Naval Officer for the service of one of Her Majesty's ships of war to convey to the spot a legal officer charged with the duty of inquiring into the correctness of the statements put forward to sustain the case which I conclude would, if supported by evidence, have been followed by the United States' Government submitting a claim for compensation.

3. The Senior Naval Officer, complying with my request, dispatched Her Majesty's ship "Zephyr" to Smith's Sound, and on her return I was furnished with the inclosed Report of Judge Prowse, the legal officer deputed by my Government to conduct the inquiry, which proves most fully, by sworn evidence, that the whole charge against our fishermen was frivolous, and void of all sustainment.

4. It will be seen from the evidence inclosed that the question involved is, whether our local laws for the protection of a fishery common to two Contracting Parties, but passed subsequent to the date of the Treaty, are binding on the one party who have not assented to what they consider a modification of, or indeed a violation of, contract.

5. I should desire to be instructed on this point, because the great number of American vessels frequenting our waters in the exercise of their fishery rights under the Treaty of Washington may, ere the present season be ended, produce an indefinite number of claims for compensation on the part of the American Government.

6. The depositions which should accompany Mr. Prowse's Report are so voluminous that it has been found impossible to forward them by the present mail, but they will be sent by the next.

Trusting my proceedings may meet your approval, I have, &c.
(Signed) JOHN H. GLOVER.

Inclosure 2 in No. 8.

Mr. Molloy to Governor Sir J. Glover.

Sir, *United States' Consulate, St. John's, Newfoundland, August* 23, 1879.

HEREWITH beg to inclose statement of Captain Daniel McFaden, of the schooner "Howard Holbrook," of Gloucester, Massachusetts; also statement of Martin Ryan, of Torbay, pilot of said vessel, complaining of the interference of Cooper and others, of Smith Sound, Trinity Bay, in preventing his procuring supply of bait, which I have the honour to call your Excellency's attention to, and reply at earliest convenience.

I have, &c.
(Signed) THOMAS N. MOLLOY,
United States' Consul.

Inclosure 3 in No. 8.

Statement of Daniel Mc Faden.

I, DANIEL McFADEN, of Gloucester, in the Commonwealth of Massachusetts and United States of America, being duly sworn, do depose and say that I am captain of the American "Howard Holbrook," and that on the 16th day of August, 1879, I was at Smith's Sound, Trinity Bay, that I had a seine with which I attempted to seine bait, but the natives at that place opposed my setting the seine. One man named Cooper, speaking for the others, said that if I attempted to use my seine they would cut it to pieces and break up our dories. There were thirty men prepared there to do this. Not being able to catch my bait myself by using my seine, I offered to pay the native fishermen 75 cents per barrel for herring, but they demanded 1 dollar. I was finally obliged to purchase squid at 22 cents per hundred. I needed 30,000 squid, but as I could not purchase them there I left Trinity Bay for Torbay, where I arrived on the 22nd August. If I had been allowed to set my seine I could have taken all the squid I needed.

Mr. Cooper said that no one should set a seine for squid within 3 miles of these shores and river. He said he knew the law. I do not know whether Cooper was an officer of the Government of Newfoundland or not.

(Signed) DANIEL McFADEN.

Torbay, Newfoundland, August 23, 1879.

Attested,
(Signed) THOMAS N. MOLLOY, *United States' Consul,*
St. John's, Newfoundland.

Inclosure 4 in No. 8.

Statement of Martin Ryan.

I, MARTIN RYAN, of Torbay, Newfoundland, being duly sworn, do depose and say that I was with Captain McFaden, of the American schooner "Howard Holbrook," at Smith Sound, Trinity Bay, when he was prevented by the native fishermen from using his seine. We were all ready to shoot the seine, and had it in the dory; Mr. Cooper and his people forbid our setting it. Cooper said if we shot the seine, he and the other native fishermen would cut it to pieces; that he knew the law, and we should not seine. There was no doubt that the seine would have been destroyed, as the people are determined not to allow the Americans to seine, as it would deprive them of the money they would receive for bait.

I have an ice-house in Torbay, and have been engaged in the business for four years. I sell about 100 tons of ice each year to the American fishing schooners at from 4 to 5 dollars per ton.

It is a great advantage to our people to have the American schooners come in for ice and bait, as they pay us in cash for what they purchase. Within the last two years a great many persons at different points along the coast are fitting up ice-houses to sell ice to the Americans. The general feeling of the operative fishermen along the coast of Newfoundland is opposed to the Americans taking their own bait with seines or otherwise, but they desire to have them come to this coast and purchase bait and ice. I know of no American vessels fishing within 3 miles of the coast of this island. About two years ago the schooner "Concord" was interfered with while fishing at Torbay.

(Signed) MARTIN RYAN.

Torbay, Newfoundland, August 23, 1879.

Attested,
(Signed) THOMAS N. MOLLOY, *United States' Consul,*
St. John's, Newfoundland.

Inclosure 5 in No. 8.

Captain Morgan to Mr. Molloy.

Sir, *Government House, Newfoundland, August* 25, 1879.

I AM instructed by his Excellency the Governor to acknowledge the receipt of your communication of the 23rd instant, with inclosures, relating to an alleged interruption

of American fishermen by Newfoundland fishermen in Smith's Sound, of Trinity Bay, on the 16th instant, and I am to inform you that his Excellency will cause a strict investigation to be made into the circumstances attending the alleged occurrence.

I have, &c.

(Signed) HORATIO H. MORGAN,

Private Secretary and Aide-de-Camp.

Inclosure 6 in No. 8.

Governor Sir J. Glover to Captain Kennedy.

Sir, *Government House, Newfoundland, August* 25, 1879.

I HAVE the honour to inclose copy of a letter from the United States' Consul, together with copies of depositions made by Daniel McFaden, master of the American vessel "Howard Holbrook," and Martin Ryan, a British subject, employed as pilot of the "Howard Holbrook," relating to obstruction offered by British fishermen to the taking of bait by the Americans, on the 16th August, at Smith's Sound, Trinity Bay,

I would suggest, for your consideration, that one of Her Majesty's ships under your command be detailed to proceed to Smith's Sound, in Trinity Bay, for the purpose of ascertaining the correctness of the statements put forth in the depositions made before the United States' Consul, and I consider it advisable, in Imperial interests, that a gentleman of legal acquirements and local knowledge should conduct the inquiry. If in accordance with your views, I propose that Mr. Prowse, Q.C., Judge of the District Court of St. John's, be the officer to proceed on the duty before named, who will be instructed to caution Newfoundland fishermen against taking the law into their own hands.

I have, &c.

(Signed) JOHN H. GLOVER.

Inclosure 7 in No. 8.

Captain Kennedy, R.N. to Governor Sir J. Glover.

Sir, *"Druid," at St. John's, August* 26, 1879.

I HAVE the honour to acknowledge the receipt of your Excellency's letter, inclosing a copy of a letter from the United States' Consul, together with correspondence relating to a disturbance between some English and American fishermen, at Smith's Sound, Trinity Bay, on the 16th of this month..

In compliance with your Excellency's wishes, I have detailed Her Majesty's gunvessel "Zephyr" to convey Mr. Prowse, Q.C., to that part, to ascertain the truth of the charges advanced by the Americans, and I have to add that the "Zephyr" sailed this morning in pursuance of those orders.

I have, &c.

(Signed) W. R. KENNEDY.

Inclosure 8 in No. 8.

Mr. Prowse to the Colonial Secretary.

Sir, *St. John's, Newfoundland, August* 27, 1879.

HAVING proceeded to Smith's Sound, in Trinity Bay, in Her Majesty's ship "Zephyr," by order of the Government, to investigate the facts connected with an alleged obstruction by Newfoundland fishermen to the taking of bait fishes by the crew of an American schooner called the "Howard Holbrook," I have the honour to report, for the information of his Excellency the Governor, that, having made a careful examination of the facts at Smith's Sound, where we arrived last evening, and having taken a number of depositions there, which are appended to this Report, I am enabled to state that the facts of the case are as follow:—

The American schooner "Howard Holbrook" arrived at Aspey Cove, Smith's Sound. On Thursday, the 14th August, the master came in a dory, with the witness Martin Ryan, to that cove to seine for squid; the man referred to in the depositions,

John Cooper, and his two men-servants, were on the beach preparing to have their breakfast. A conversation took place between Ryan and Cooper, the purport of which is given by Cooper, and confirmed by Ryan. Ryan said to Cooper that he was a Newfoundlander, and could seine; Cooper replied that he could not. Ryan said he would; and Cooper replied, "You'd better try." Not a word was said by McFaden, the master of the American schooner, and not a word was said by Cooper or any one else to him. Cooper alleges that he threatened no violence, and that he never intended to do any.

After the short conversation, which lasted a few minutes, Ryan and the master of the schooner went down to Lower Lances Cove, which is a short distance from Aspey Cove, and there shot their seine, and hauled some herring.

The schooner remained in the Sound until the following Monday, buying squids and jigging them, and that instead of any obstruction being offered to the American (Ryan's evidence shows) they were treated with the greatest kindness and hospitality.

From the short experience that I had of Cooper, who is an immense man, very outspoken and honest, with a great fund of humour, I feel convinced that his statement* is substantially correct; his story is also confirmed, almost word for word, in all important points, by Ryan's own deposition taken before me, and by the evidence of other witnesses.

Knowing that the Government were most anxious to protect the rights of the fishermen of the United States under the Washington Treaty, I took special pains to obtain accurate information respecting the obstruction complained of by Consul Molloy; and I am happy to inform the Government that in this instance, at all events, there is no cause of complaint against our fishermen.

Ryan, who is favourably disposed towards the Americans, shows in his evidence† the wisdom of the law against seining squid, and his opinion will be confirmed by every fisherman in the Colony.

I have to thank Lieutenant Clutterbuck, R.N., commanding Her Majesty's ship "Zephyr," and his officers, for extreme courtesy and kindness, and for the ready assistance given me in carrying out the object of my mission.

I have, &c.
(Signed) D. W. PROWSE.

No. 9.

The Secretary to the Admiralty to Lord Tenterden.—(*Received October* 1.)

My Lord, *Admiralty, October* 1, 1879.

I AM commanded by my Lords Commissioners of the Admiralty to transmit, for the information of the Secretary of State for Foreign Affairs, a copy of a letter dated the 17th ultimo, from the commanding officer of Her Majesty's ship "Druid," the Senior Officer of Her Majesty's ships and vessels employed on fishery duties on the coasts of Newfoundland, stating that there have been no disputes with the Americans since the "outrage" complained of at Smith's Sound, Trinity Bay; and also reporting the orders hs had issued to the commanding officers of the "Plover" and "Zephyr" to act with the utmost caution in dealing with any questions which may arise out of the proceedings of American fishermen.

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

P.S.—A copy of this despatch has been sent to the Colonial Office.

R. H.

Inclosure in No. 9.

Captain Kennedy to Vice-Admiral Sir E. Inglefield.

Sir, "*Druid*," *at St. John's, Newfoundland, September* 17, 1879.

I HAVE the honour to inform you that there have not been any disputes with the Americans since the "outrage" complained of at Smith's Sound, Trinity Bay, which the "Zephyr" was sent to investigate, and the particulars of which was forwarded by last mail.

* See Inclosure 3 in No. 11. † See Inclosure 2 in No. 11.

There is no doubt, however, that collisions are likely to arise from time to time with the American fishermen, who are not disposed to abide by such Colonial laws as have been made subsequent to the Treaty of Washington; in this they are supported by the United States' Government, and the question will have to be settled by the Home authorities.

In the meanwhile, I have directed Captain Stewart and Lieutenant Clutterbuck to act with the utmost caution in dealing with any questions of this nature, and to take care that the acknowledged rights of the Americans are not infringed, and to warn all persons who interfere with them that they will have to answer for the same.

It seems not to be generally known along the coast that the Americans have, since the payment of the Halifax Award, "the right to participate in the Newfoundland inshore fisheries, and to procure bait for the prosecution of the bank and deep-sea fisheries"; this, coupled with the fact that they ignore all local laws, which the Newfoundlanders are forced to acknowledge, is calculated to irritate the latter, and to drive them to retaliatory measures, which it will be my duty to suppress.

I have, &c.
(Signed) W. R. KENNEDY.

No. 10.

Mr. Bramston to Lord Tenterden.—(*Received October* 2.)

My Lord, *Downing Street, October* 2, 1879.

WITH reference to your letter of the 28th August last respecting the case of the schooner "Mist," and to the letter in reply from this Department of the 3rd ultimo, I am directed by the Secretary of State for the Colonies to transmit to you, for the information of the Marquis of Salisbury, a copy of a despatch from the Governor of Newfoundland, to whom a copy of your letter was forwarded, stating that investigations will be made into the case, and that, on the receipt of the depositions, a full Report will be transmitted.

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

Inclosure in No. 10.

Governor Sir J. Glover to Sir M. Hicks Beach.

Sir, *Government House, Newfoundland, September* 17, 1879.

I HAVE the honour to acknowledge the receipt of your despatch of the 2nd instant, with inclosures, relating to the alleged forcible interference with United States' fishermen in Conception Bay, Newfoundland, in July 1878.

I have submitted the case to my Government, who are taking steps to investigate it, and, on the receipt of the depositions, I will furnish you with a full Report.

I have, &c.
(Signed) JOHN H. GLOVER.

No. 11.

Mr. Bramston to Lord Tenterden.—(*Received October* 6.)

My Lord, *Downing Street, October* 4, 1879.

WITH reference to the letter from this Department of the 26th ultimo, inclosing a copy of a despatch from the Governor of Newfoundland relating to the alleged opposition offered to the American fishing schooner "Howard Holbrook" at Smith's Sound, Trinity Bay, I am directed by the Secretary of State for the Colonies to transmit to you, for the information of the Marquis of Salisbury, a copy of a further despatch from the Governor, inclosing the depositions promised in his previous communication.

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

Inclosure 1 in No. 11.

Governor Sir J. Glover to Sir M. Hicks Beach.

Sir, *Government House, Newfoundland, September* 11, 1879.

WITH reference to paragraph 6 of my despatch of the 28th August, I have now the honour to transmit, for your information, the inclosed copy of the depositions taken by Mr. Prowse, Q.C., Judge of the District Court, St. John's, when investigating the circumstances attending the alleged interruption of American fishermen at Smith's Sound, Trinity Bay.

I have, &c.
(Signed) JOHN H. GLOVER.

Inclosure 2 in No 11.

Statement of Martin Ryan.

MARTIN RYAN, of Torbay, fisherman, sworn, who, upon his oath, saith:—On Tuesday, 12th August, 1879, I left Torbay in the American banking schooner "Howard Holbrook," Daniel McFaden master; we went first to Portugal Cove, Conception Bay, looking for squids for bait.

On Wednesday following we anchored in Smith's Sound; the next day, Thursday, we went to Aspey Cove, and I got the seine in the dory and was going to seine; I spoke to a very stout man named John Cooper, who was on the beach with his two servant men preparing to get their breakfast; I said I was a Newfoundlander belonging to near St. John's, and I said that I could seine bait; he said I could not, I said that if I saw a chance I would; he, Cooper, said "You had better try;" the only talk was between Cooper and me; we rowed off then, and that was all that passed between us.

The master of the banker, Daniel McFaden, did not say a word to Cooper, and Cooper did not say a word to him. We then went down to Lower Lance, shot our seine, and got some herring in it. We remained in Smith's Sound from that time up to Monday morning getting squids, jigging them, and buying them from the Newfoundland fishermen. There was another American banker there getting squids, buying them, and jigging them; a Nova Scotia banker, and two Fortune Bay schooners, also getting squids. None of us got full fares of squids, we only got about 5,000 squids there, and got more squids in Torbay.

On Sunday evening we spent the evening, the two American captains and myself, in the house of a man named Leate; we did not mention a word about the obstruction to him. There was not the least obstruction to us by any one except what I have referred to about John Cooper.

The people of Smith's Sound were only too glad to sell bait to us, and were most civil and obliging to the Americans. In several places we offered money for hospitality afforded to us, and it would not be received. We only paid 25 cents for most of our squids, some 30 cents.

It is not the practice in this Colony to seine for squids, and in my opinion it would not succeed; generally the squids do not approach sufficiently close to the shore to make seining successful; jigging seems to have no effect in driving away squids, but rather collects them together; and the best places for squids in my experience in Torbay is where we have constantly jigged for years. For some cause, which I cannot explain, the squids always seem to frequent particular places in the harbours.

I consider that if a seine were shot any way near where the fishermen were jigging squids, it would certainly have the effect of driving the squids away, at any rate for some time, and probably would spoil the place as a jigging-ground. After my twenty-five years' experience, I consider jigging the best method of getting squids for bait; I would not approve of seining for squids, it would be ruinous to the fishery.

I consider the affair with Cooper in Smith's Sound has been made too much of; I did not attach the least importance to it. No threats whatever were used, except as I have mentioned, and I did not mind what he (Cooper) said; he may have asked me to breakfast; I don't remember; we were not talking together, Cooper and I, for more than five minutes.

Sworn before me at St. John's, this 27th day of August, A. D. 1879.

(Signed) MARTIN RYAN.

(Signed) D. W. PROWSE,
Justice of the Peace, Newfoundland.

11

Inclosure 3 in No. 11.

Statement of John Cooper.

Northern District, Smith's Sound, Newfoundland.

THE examination of John Cooper, of Smith's Sound, planter, taken upon oath, who saith :—On Thursday, the 14th August, 1879, there were three banking schooners in the Sound, two belonging to the United States, and one to Nova Scotia ; two were in Aspey Cove (opposite to where I live, Rocky Brook, Smith's Sound), and one schooner was in Lower Lance Cove, just below my place on the opposite shore. There were also two schooners belonging to Grand Bank, Newfoundland, in the Sound, looking for bait. The crews of these different schooners were jigging squids, both in Lower Lance Cove and Aspey Cove (places which are resorted to as jigging coves), and the masters of the schooners were buying squids from the Newfoundland fishermen as well as jigging them themselves. No American banker, during their stay in the Sound, made an attempt to shoot a seine in my presence and was prevented from doing so by our fishermen.

A man who told me his name was Martin Ryan, of Torbay, was in Aspey Cove on the Thursday aforesaid. I asked him was he going to haul bait; he said he was a Newfoundlander, a man from Torbay, and he would haul bait when and where he liked. I said to him that I did not think it was lawful for him to haul bait (meaning squids). If it was herring he might get what he wanted; I said we had seines, and we would haul herring for him. Martin Ryan said he would haul it himself. I replied, "You had better try," adding, laughing, "We are going to have some breakfast ; come and have some with us." I never threatened to cut up his seine and break up the dory. Ryan and the master of the schooner went away at once and shot their seine in Lower Lance Cove (another jigging cove), where they got some small herring, which they threw away. No one interfered with them in any way, and if the people had intended to use violence or force they could have stopped Martin Ryan and the master of the American banker from seining. They saw him preparing to seine, and they saw him shoot his seine, and they never interrupted him or came near him, or threatened him in any way. Martin Ryan wanted squids ; he would not take herring.

On the same day that the occurrence took place in Aspey Cove, the master of the American banker and Ryan bought squids from the Newfoundland fishermen around Smith's Sound. There was not enough squid to supply the five vessels with full fares of squid, but all they could jig for themselves and get jigged for them they obtained. We have never hauled squids with a seine, we believed that it was illegal. We would have had no objection to their hauling herring, or hauling herring for them. There were no threats of violence used towards Martin or the master of the United States' banking schooner that was with him. There was no talk whatever about cutting up the American banker's seine, no threats, and no intimidation used towards him by me or by any one in my presence. All my conversation was with Martin Ryan. The master of the American banking schooner may have been in the dory with Martin Ryan and the rest of the dory's crew, but I did not know the master from any one else. I did not address any one in the dory but Martin Ryan. The talk between me and Martin Ryan lasted only a few minutes, This same American schooner remained in the Sound four days after this conversation near my house, and bought and jigged squids, and to my knowledge seined. This whole matter has been magnified, and the facts incorrectly stated by Martin Ryan and Daniel McFaden. The people of Smith's Sound are only too glad for fishermen to come from all parts and buy bait from them, or to assist foreign fishermen to get bait.

(Signed) JOHN COOPER.

Sworn before me at Smith's Sound this 26th day of August, A.D. 1879.

(Signed) D. W. PROWSE,
Justice of the Peace, Newfoundland.

Inclosure 4 in No. 11.

Statement of John Steele.

THE examination of John Steele, of Burgoyne Cove, Smith's Sound, Trinity Bay, fisherman, taken upon oath, who saith :—On Thursday, the 14th August, 1879, I was

over in Lower Lance Cove jigging squids for Ryan and the schooner he was aboard of. I saw some herrings with the crew, which they told me they hauled with the seine. Asked them if they hauled many; said only a few. Ryan wanted squids. They were giving 30 cents a hundred for the squids. There were not enough squids to supply all the bankers then in Smith's Sound looking for bait.

(Signed) JOHN STEELE, his × mark.

Sworn before me at Smith's Sound, this 26th day of August, 1879, having first been read over and explained.

(Signed) D. W. PROWSE,
Justice of the Peace, Newfoundland.

Inclosure 5 in No. 11.

Statement of Peter Willar.

THE examination of Peter Willar, of Rocky Brook aforesaid, fisherman, taken upon oath, who saith:—I was present on Thursday, the 14th August, 1879, when the conversation took place between Martin Ryan and Cooper; I could not hear the words. Cooper spoke to no one but Ryan. Only our three men there—Cooper, Duffett, and myself. Cooper was laughing; heard him invite Ryan to breakfast. We were having our breakfast on the beach at the time. I have heard Ryan's and Daniel McFaden's statements read; they are untrue, no such threats were used. No other men belonging to Smith's Sound were on the beach at the time but us three. I think Ryan had four men with him. I did not know that either of them was the master of the schooner. No one spoke but Ryan.

(Signed) PETER WILLAR, his × mark.

Sworn before me at Smith's Sound, this 26th day of August, A.D. 1879.

(Signed) D. W. PROWSE,
Justice of the Peace, Newfoundland.

Inclosure 6 in No. 11.

Statement of John Leate.

THE examination of John Leate, of Upper Lance Cove, Smith's Sound, Trinity Bay, taken upon oath, who saith:—I remember Thursday, the 14th August instant, when Martin Ryan had the conversation with John Cooper about seining for squids; John Cooper did not speak to any one but Martin Ryan, and he did not use any angry tone or threats. He laughed several times when speaking to Ryan about seining, and he asked Martin Ryan and the dory's crew to come up and have some breakfast. There was no man in Lower Lance Cove or the vicinity in Smith's Sound who threatened any American with violence, and I do not believe there is a person in the Sound who would use violence towards any one about seining. Neither Martin Ryan nor the master of the United States' schooner were driven away from Smith's Sound. They remained for four days after this conversation jigging and buying squids.

On Sunday evening following the masters of the two United States' banking schooners spent the evening at my house in company with Ryan; they did not say one word about being prevented from seining. The only difference whatever was between Martin Ryan and John Cooper. There have been three American bankers in Smith's Sound looking for bait this summer, and there has not been one angry word between them and the people of Smith's Sound. Martin Ryan and the master of the schooner bought and jigged all the squids they could lay hands on. There was not enough for the five vessels; neither of them got a full fare.

This affair is a made-up thing, and the facts stated both by Ryan and Daniel McFaden are untrue.

I am aware that Ryan and the American crew shot their seine in Lower Lance Cove immediately after the conversation with Cooper, and I have been informed that before Ryan came up to Aspey Cove on the 14th August he was cautioned about seining for squids in Lower Lance Cove by a man named Reuben Toop, and told he would be

fined for seining squids, and he did not seine them, but did so the same day, after he left Aspey Cove.

(Signed) JOHN LEATE, his × mark.

Sworn before me at Smith's Sound, this 26th day of August, 1879, having first been read over and explained.

(Signed) D. W. PROWSE,
Justice of the Peace, Newfoundland.

Inclosure 7 in No. 11.

Statement of James Duffett.

THE examination of James Duffett, of Rocky Brook, Smith's Sound, fisherman, taken upon oath, who saith:—I remember Thursday, the 14th August, 1879. I was present in Aspey Cove, in Smith's Sound, opposite to where I live, when Martin Ryan came there with the American banker's crew; they came on the beach; there were only three of us present—Cooper, myself, and Peter Willar. I could not hear the words that passed between Ryan and Cooper; I went away from them a little way eating my breakfast. I saw Cooper laugh several times when talking to Ryan; heard only the last words when Cooper turned round towards me; he called out to Ryan to come and have breakfast; Cooper spoke to no one but Ryan. I do not believe that Ryan was threatened that his seine would be cut and his dories smashed. Ryan went away after the conversation and hauled herrings soon after in Lower Lance Cove; Ryan wanted squids, not herring. We never seine for squids, as we know that it is illegal. Ryan remained here four days gathering up squids, jigging them themselves, and getting them jigged by the people of Smith's Sound.

(Signed) JAMES DUFFETT.

Sworn before me at Smith's Sound, this 26th day of August, 1879.

(Signed) D. W. PROWSE,
Justice of the Peace, Newfoundland.

No. 12.

The Marquis of Salisbury to Sir E. Thornton.

Sir, *Foreign Office, October* 11, 1879.

I TRANSMIT to you herewith, for your information, copies of correspondence, as marked in the margin,* in regard to alleged disturbances at Trinity Bay in August last.

I am, &c.

(Signed) SALISBURY.

No. 13.

Mr. Herbert to Sir J. Pauncefote.—(Received October 16.)

(Extract.) *Downing Street, October* 16, 1879.

WITH reference to your letter of the 28th August last, with its inclosures, from the United States' Minister at this Court respecting the alleged forcible interference with United States' fishermen in Conception Bay, I am directed by the Secretary of State for the Colonies to transmit to you, for the information of the Marquis of Salisbury, a copy of a despatch, with its inclosures, from the Governor of Newfoundland, reporting the results of a judicial investigation which was made into the circumstances of the case.

I am to request that this Department may be furnished with a copy of any note which his Lordship may address to the United States' Minister in relation to this subject.

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* Nos. 8, 9, and 11.

14

Inclosure 1 in No. 13.

Governor Sir J. Glover to Sir M. Hicks Beach.

Sir, *Government House, October* 1, 1879.

I HAVE the honour to acknowledge the receipt of your despatch of the 2nd September, with inclosures (two), respecting the alleged interference with United States' fishermen in Conception Bay in July 1878.

My Government have caused a judicial investigation to be made into the circumstances attending the several visits of the American schooner "Mist" to Broad Cove and its neighbourhood during the years 1877, 1878, and 1879. The inquiry was conducted by Mr. Prowse, one of the Judges of the District Court of St. John's, copy of whose Report I inclose, together with the depositions of the several witnesses taken upon oath, from which it would appear that some discussion took place relative to the taking and purchase of squid, between Newfoundlanders, on board the schooner "Mist," on behalf of the master of that vessel, and some Newfoundlanders in boats near the schooner, on or about the 8th or 9th July, 1877, and not during 1878 as sworn to by John Cozzens.

I have, &c.

(Signed) JOHN H. GLOVER.

Inclosure 2 in No. 13.

Mr. Prowse to the Colonial Secretary.

Sir, *St. John's, Newfoundland, September* 19, 1879.

HAVING been requested by the Government to examine into and report upon the claim of Mr. John Cozzens, master of the schooner "Mist," of Gloucester, Massachusetts, I have the honour to state, for the information of his Excellency the Governor, the following is a correct statement of the facts as well as I could ascertain them:—

The schooner "Mist" was piloted into Broad Cove by a fisherman belonging to the place, Daniel Tucker, about the 8th or 9th July, 1877, in the evening. The schooner was anchored in a part of the cove where squids are generally jigged. Cozzens next morning early began jigging for squids and was getting them fast. The fishermen of Broad Cove were also about the same ground in their boats jigging. About 7 A.M. one of the boats in which were George Tucker and Henry Tucker came alongside the schooner to sell their squids; they could not agree upon a price with Cozzens; Cozzens then said he would not buy, he would jig his own bait. Henry Tucker said if he would not buy he should not jig. Daniel Tucker and his friends who were aboard the "Mist," or whose boats were fastened to her, took Cozzens' part, and said Cozzens should jig; Henry Tucker then called out to Cozzens' crew, "Men, haul in them jigs." Angry words also passed between George Tucker (who was in the boat with Henry), and Daniel Tucker, who was aboard the "Mist," and the principal disturbance was between these two. The fishermen of the cove thought Daniel Tucker would not let Cozzens buy bait from any one but his friends.

Daniel Tucker and his brother Richard, who side with Cozzens, both say that some one in the boats called out, "Cut his cable;" the other witnesses deny this, but, at any rate, if it was said, it was only an empty threat, as all agree that no attempt was made either to board the schooner or to do her any injury. The dispute lasted a short time, and the fishermen soon went ashore to their breakfasts.

Cozzens and his crew continued their jigging and were catching squids very fast, as is proved, first, by the master's own statement that he had caught 3,000 squid; secondly, by the evidence of George Reginald Tucker, who, when he came alongside just after breakfast, found the crew so busy hauling in squids that they could not attend to him, and told him to come by-and-bye; towards the afternoon the squids became scarcer, and then Cozzens began to buy from the people at 20 cents per 100; his crew, however, continued jigging each day, and, finally, obtained a large quantity, according to the statement of Benjamin Squires, to whom Cozzens showed what he had caught, 10,000 squids. This the witness Bernard Curtis, master of the banker "J. W. Roberts," proves to be as large a quantity of squids as he ever knew a banking schooner's crew to jig. All the evidence goes to prove that the bankers generally buy their squids, for the obvious reason that it would take the crew too long to jig their own bait. Mr. Cozzens' claim is based on the fact of his having been prevented from catching bait on this trip in July 1877, but it is clearly shown that, so far from being prevented, he actually, on that trip, caught a larger

quantity than any other banker for the season. Mr. Cozzens' statement as to being surrounded by sixty boats is contradicted by the fact that there are, according to the last census, only forty-three boats in the place; also as regards the wind being on shore, this statement is directly contradicted by all the witnesses, and I should consider that very little weight ought to be attached to the evidence of one who, as is shown by Mr. Tulk, the Preventive Officer's, evidence, attempted to pass off a forged receipt on him for his light dues.

Broad Cove is a very small place, the people are very peaceable, industrious, and thrifty; all this dispute arose from jealousy because some were making more out of the stranger than others; it was a petty local squabble.

I have, &c.
(Signed) D. W. PROWSE

Inclosure 3 in No. 13.

Statement of Benjamin Squires.

To wit, *Central District, Broad Cove, Newfoundland.*

THE examination of Benjamin Squires, of Broad Cove, fisherman, taken upon oath, who saith:—I remember the American schooner "Mist," Cozzens master, being in Broad Cove in July 1877. When Cozzens came in he bought squids from some of the people and not from others; some of the people said he ought to buy from all hands, if he would not buy from all he should not jig. Cozzens said he would not buy his bait, he would jig it. On the first morning after he came in he did jig his bait; he also jigged bait on the two other days he remained in the cove. No one interfered with him or prevented him from jigging. No one offered him any violence, or injured his jiggers or any other part of his fishery gear. The dispute principally arose amongst the people themselves. Some of the Broad Cove men who had sold squids to Cozzens remained aboard, and were jigging from his vessel, and it was only from those who were aboard of his schooner, and jigging for him, that he would buy. The fishermen in the boats said he should buy from all hands. Those aboard the schooner said he should not. Afternoons, Cozzens bought from all hands, and jigged a large quantity himself. Not much the first day, bait was scarce, except in the morning; but he did well on the second and third days. Cozzens came into Broad Cove again that summer, after, and bought and jigged his bait as he did before. He was also in Broad Cove this summer getting bait. On neither occasion did he say one word about being injured or interfered with by the Broad Cove people. No one in Broad Cove prevented Cozzens from jigging what bait he liked. I was aboard of his schooner and saw the crew jigging each day. They jigged about 10,000 squids themselves. I saw the tubs on deck, and could tell what they caught. Cozzens showed me what his crew had jigged; he did not buy more than 20,000 squids. The wind was not on the shore, it was south south-west, and off the land; it was blowing a good breeze. Cozzens' crew on that trip jigged as much squids as any other banker which was in Broad Cove that summer. Generally the crews don't trouble themselves to jig, they prefer buying their bait, and the crew walk about ashore. Cozzens only arrived early on that morning, and he could not have taken 500 squids when the dispute arose. Mr. Tulk did not arrive until 4 in the afternoon, and Cozzens then had all the squids that were caught that day bought. At the time of the dispute there were about ten boats around the schooner, and most of these were single-handed. There are only forty boats in Broad Cove.

(Signed) BENJAMIN SQUIRES.

Sworn before me at Broad Cove, this 17th day of September, A.D. 1879.
(Signed) D. W. PROWSE,
Stipendiary Magistrate.

Inclosure 4 in No. 13.

Statement of Henry Tucker.

THE examination of Henry Tucker, of Broad Cove, fisherman, taken upon oath, who saith:—I remember going to Cozzens' schooner "Mist" about the 8th July, 1877, to sell him squids; it was about 7 A.M. There were some Broad Cove fishermen aboard jigging squids from the stern of the schooner. Cozzens would buy no squids from me; he would only buy from those who were aboard of his vessel, or fastened on to her. I asked him to

buy our squids. He said no, he was going to jig. We said if he would not buy our squids he should leave the place, or haul in his jiggers. Notwithstanding this he kept jigging away. Daniel Tucker and George Tucker began to jaw. Daniel was aboard the schooner; George was in the punt with me. Dan Tucker and the other Broad Cove men aboard the schooner said he should jig. There were then about ten boats about the schooner, some single-handed, some with two hands. All left the schooner then and came ashore. We did not go near the schooner again until Mr. Tulk came in the afternoon about 4 P.M. I believe Cozzens was jigging all that day. Squids were scarce that day except in the morning. We went aboard after Tulk came and sold Cozzens our squids; he gave us 20 cents a hundred. No one prevented Cozzens getting squids as much as he liked, and I believe he jigged a great deal of his squids. There was no disturbance nor any row, except what I have mentioned. No one offered any violence to Cozzens, or injured his jiggers or his gear. Cozzens came in again to Broad Cove for bait on that same summer, and was also in Broad Cove this summer. The wind was south-south-west, and not on the land; it was off the shore. The crew of the bankers generally don't jig much, they mostly buy all their bait, and generally walk about ashore when they come in.

(Signed) HENRY TUCKER.

Sworn before me at Broad Cove, this 17th day of September, A.D. 1879.
(Signed) D. W. PROWSE,
Stipendiary Magistrate.

Inclosure 5 in No. 13.

Statement of Daniel Tucker.

THE examination of Daniel Tucker, of Broad Cove, fisherman, taken upon oath, who saith:—I remember piloting in the American schooner "Mist," Cozzen master, into Broad Cove in July 1877. As soon as I anchored the vessel I came ashore. Went out again to her pretty early next morning, the 8th July, or thereabouts. I went aboard the schooner; the crew of the schooner were jigging. My brother, Richard Tucker, and my cousin, Joseph Tucker, came with me, and I believe they tied on to the schooner and jigged squids. In the morning a number of boats were near the schooner jigging squids. Henry Tucker came with George Tucker to the side of the schooner; they asked Cozzens to buy their squids. He said what would they ask, they said 25 cents a hundred. He said that he would give 15 cents; they said they would not give them for that. Cozzens then said he would jig them. Henry Tucker said if he would not buy he should not jig himself. Henry Tucker called out to Cozzens' crew, "Come, men, haul in them jigs." Cozzens said he would jig. George Tucker said to me, "Why did you bring this man in here that would not buy bait?" I said I only showed him the way the vessel brought me here. My brother and my cousin came aboard the ship; there were about twenty boats about the schooner. I heard some one in the crowd say, "Cut his cable." No one of the boats' crews, however, about the schooner made any attempt to do any injury to the vessel or to her fishing gear. Cozzens told them that the first man would cut the cable he would fall. The principal talk was between me and George Tucker. I took Cozzens' part. I had to had to go to Portugal Cove, and I left the vessel when the row was over. It did not last very long, and was all talk; and it did not prevent Cozzens from getting his bait. Cozzens came into Broad Cove again that same summer; he also came in last year, and was into Broad Cove this year. He never said one word to me about any damages that he had sustained on account of the row in 1877, and he did not sustain any damage. The bankers nearly always buy their squids. They jig a few, but their principal supply is bought from the fishermen. It would take too much time for a banker's crew to catch their squids on jigs.

(Signed) DANIEL TUCKER.

Sworn before me at Broad Cove, this 19th day of September, A.D. 1879.
(Signed) D. W. PROWSE,
Stipendiary Magistrate.

Inclosure 6 in No. 13.

Statement of Richard Tucker.

THE examination of Richard Tucker, of Broad Cove, fisherman, taken upon oath, who saith :—I was aboard of Cozzens' schooner "Mist" on the 8th July, 1877. I know that Cozzens jigged squids, some before the row and after the row, and he was not prevented from getting his bait, for he both jigged and bought his bait both before and after the row. I was aboard the schooner when the row commenced. Henry Tucker was the first man who asked Cozzens to buy bait; they could not agree on the price; Cozzens said if he did not get the bait for his price he would jig himself. Henry said he should not jig, and he called out to Cozzens' crew, "Haul in them jigs." There were some words then between my brother Daniel and George Tucker. Heard some talk about cutting the cable, but no one in the fishing boats made an attempt to come aboard the schooner, or to commit any injury, and it soon ended, and was all talk, no one struck, and nothing injured. I came ashore to my breakfast. When I went out again to the schooner after my breakfast, Cozzens and his crew were jigging, and were too busy getting their squids to buy, and they told John Tucker's son, George Reginald Tucker, to come by-and-bye, they were catching them so fast then.

(Signed) RICHARD TUCKER, his × mark.

Sworn before me at Broad Cove, this 19th day of September, A.D. 1879, having first been read over and explained.

(Signed) D. W. PROWSE,
Stipendiary Magistrate.

Inclosure 7 in No. 13.

Statement of George Reginald Tucker.

THE examination of George Reginald Tucker, of Broad Cove, fisherman, taken upon oath, who saith :—I went aboard schooner "Mist" just after breakfast on the day the row occurred. Asked some of the crew to buy my squids; they said they were too busy, and could not take them them, to come by-and-bye and they would take them. They were jigging squids at the time.

(Signed) GEORGE REGINALD TUCKER, his × mark.

Sworn before me at Broad Cove, this 19th day of September, A.D. 1879, having first been read over and explained.

(Signed) D. W. PROWSE,
Stipendiary Magistrate.

Inclosure 8 in No. 13.

Statement of Bernard Curtis.

THE examination of Bernard Curtis, master of the banking schooner "J. W. Roberts," upon his oath, saith :—I have been engaged in the banking business for seven years. For one year I sailed out of Province Town, Massachusetts. In all my experience I have never known the crew of a banking schooner to jig more than 10,000 squids; it would delay the vessel too long for the crew to get their own bait, and the invariable practice for all the bankers, both British and American, is to buy their bait; it is obtained in that way so much more speedily, and is fresher and in better condition.

(Signed) BERNARD CURTIS.

Sworn before me at St. John's, this 19th day of September, A.D. 1879.

(Signed) D. W. PROWSE,
Stipendiary Magistrate.

Inclosure 9 in No. 13.

Statement of George Tucker.

THE examination of George Tucker, of Broad Cove, fisherman, taken upon oath, who saith:—I remember when the American schooner "Mist," Cozzens master, came into Broad Cove in July 1877. I went out to the schooner in the morning before breakfast to sell squids. Henry Tucker was in the boat with me. Cozzens would not buy our squids. Daniel Tucker, of Broad Cove, was aboard of the schooner jigging squids, and the crew of the schooner were also jigging squids. Cozzens said he was going to jig his own squids, and he would not buy from us. There were a good many boats fastened on to the schooner jigging squids for him. Henry Tucker told the men in the schooner to haul in their jigs. I spoke to Daniel Tucker, who was aboard the schooner, said, "You are the first man that ever brought these Americans here to jig for themselves." He gave me impudence, and I replied. The people in the schooner went on jigging away. All the boats that came off with us went ashore then. The whole dispute arose because Cozzens would only buy from some who were there jigging for him fastened on to his schooner or aboard, and not from the people of the cove generally. The whole dispute amounted only to some angry words, and principally was between Daniel Tucker and me. Cozzens and his crew jigged a great deal of squids; they were anchored right on the jigging ground. They only bought 20,000 squids from the people of the cove, and that was the most amount; the rest, 10,000 squids, their own crew jigged. Cozzens' crew jigged more squids for themselves that summer on that trip than any other American banker that came into Broad Cove. Cozzens came in again to Broad Cove that summer and got squids; he was also in several times last summer. There was nothing whatever done by the people of Broad Cove to prevent Cozzens from jigging; no injury to him, and no one threatened to cut his cable or destroy his gear. After Mr. Tulk came at 4 o'clock, Cozzens bought squids from all of us at 20 cents a hundred. The wind that day was off the land, the schooners bow was towards the beach. Generally speaking, the American bankers buy most of their squids; sometimes they jig a little. Unless squids were very plenty, it would take a banker's crew a week to get their squid. Generally, the bankers take a very short time to bait, and it suits them best to buy. There would be too much delay to jig for themselves. All the Newfoundland bankers buy their bait, and so do all the other banking schooners.

(Signed) GEORGE TUCKER, his × mark.

Sworn before me at St. John's, this 17th day of September, A.D. 1879, having first been read over and explained.

(Signed) D. W. PROWSE, *Stipendiary Magistrate,*
Judge, Central District Court.

Inclosure 10 in No. 13.

Statement of William Tulk.

THE examination on oath of William Tulk, Preventive Officer of Her Majesty's Customs at Portugal Cove, Newfoundland, who saith:—On the 8th July, 1877, saw an American schooner going into Broad Cove, and I went down there to collect light dues from her. I went aboard of Cozzens' schooner "Mist," and he paid me his light dues. Cozzens did not say one word to me concerning any dispute with the Broad Cove fishermen about bait. I never advised him to buy bait from the Broad Cove fishermen, nor do I remember having any conversation with Cozzens about squids. The whole dispute, as I understand it, arose from a man named Daniel Tucker, of Broad Cove, who piloted Cozzens into Broad Cove, advising him to buy his squids only from him, Daniel Tucker, and his friends who were aboard the schooner with Cozzens jigging. This created a jealousy on the part of the other people in the cove, from whom Cozzens refused to buy any squid. I believe Cozzens jigged a great deal of his squids, about 10,000; the other 20,000 he bought. I have never known any banking schooner's crew to jig so large a quantity as 10,000 before, 2,000 or 3,000 is generally the quantity, often less. I have never known more than 10,000 squids to be jigged by the crew of a banking schooner. Bankers almost invariably buy their bait; it is a much more convenient way of getting it. If a crew had to jig their bait it would, except under very favourable circumstances, take from ten to fifteen days to get their necessary quantity of bait. The wind that day was south-south-west, and off the land.

Cozzens came into Broad Cove again in the summer of 1877. He made no complaint to me about the way that the Broad Cove people had treated him. Next year (1878) paid me his light dues again, when he visited Broad Cove; made no complaint. This spring he came again, put into Portugal Cove. I asked if he had paid his light dues; he said yes, produced receipt purporting to be signed by Vavasour, Preventive Officer, St. Lawrence, Newfoundland. I said the receipt was not correct, and Cozzens admitted to me afterwards it was a forgery, and he paid me his light dues. I do not believe any of Cozzens' statement to be correct.

(Signed) WILLIAM TULK.

Sworn before me at St. John's, this 17th day of September, A.D. 1879.
(Signed) D. W. PROWSE,
Stipendiary Magistrate and District Judge.

No. 14.

Mr. Lister to Mr. Herbert.

(Extract.) *Foreign Office, November* 5, 1879.

I AM directed by the Marquis of Salisbury to acknowledge the receipt of your letter of the 16th ultimo, relative to the alleged forcible interference with United States' fishermen in Conception Bay; and I am to state that his Lordship observes with satisfaction that the evidence adduced in the course of the judicial inquiry into the case, a copy of which is inclosed in your letter, appears to furnish a sufficient answer to the claim; and I am to add that the reply to the United States' Representative at this Court, which is in course of preparation, will be submitted to Sir M. Hicks Beach prior to its being dispatched to its destination.

No. 15.

Mr. Lister to Mr. Herbert.

Sir, *Foreign Office, November* 8, 1879.

WITH reference to my letter of the 5th instant, I am directed by the Marquis of Salisbury to transmit to you the accompanying draft of a letter which his Lordship proposes to address to the United States' Chargé d'Affaires at this Court relative to the case of the American schooner "Mist;" and I am to request that in laying this paper before Her Majesty's Secretary of State for the Colonies, you will move him to inform Lord Salisbury whether he concurs in the terms of the proposed communication.

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

No. 16.

Mr. Herbert to Mr. Lister.—(Received December 12.)

(Extract.) *Downing Street, December* 10, 1879.

I AM directed by the Secretary of State for the Colonies to acknowledge the receipt of your letters of the 5th and 8th November relating to the case of the American schooner "Mist;" and I am to request that you will inform the Marquis of Salisbury that he concurs in the note proposed to be addressed to the United States' Chargé d'Affaires on this subject.

No. 17.

The Marquis of Salisbury to Mr. Hoppin.

Sir, *Foreign Office, December* 17, 1879.

I REFERRED to Her Majesty's Secretary of State for the Colonies Mr. Welsh's letter of the 13th August, together with its inclosure, relative to the case of the American schooner "Mist."

I now have the honour to transmit to you, for communication to your Government, the accompanying copy of a Report upon the case which has been received, through the Colonial Office, from the Governor of Newfoundland, by whose directions a judicial investigation was made into the matter.*

Copies of the depositions of the several witnesses, taken upon oath, are annexed to the Report; and I venture to express, on behalf of Her Majesty's Government, the hope that the United States' Government will share their opinion that there is no foundation for the claim attempted to be set up by the master of the "Mist."

I have, &c.

(Signed) SALISBURY.

No. 18.

Mr. Hoppin to the Marquis of Salisbury.—(Received December 19.)

My Lord, *Legation of the United States, London, December* 18, 1879.

I HAVE the honour to acknowledge the receipt of your Lordship's letter of yesterday, with its inclosures, relative to the case of the American schooner "Mist," and to say that I shall take the earliest opportunity to communicate the same to my Government.

I have, &c.

(Signed) W. J. HOPPIN.

No. 19.

Sir E. Thornton to Earl Granville.—(Received June 5.)

(Extract.) *Washington, May* 24, 1880.

DURING a conversation which I had with Mr. Evarts at the State Department on the 20th instant I spoke to him about the Fortune Bay affair, and expressed some surprise at the step which the President and he had recommended to Congress, to the effect that the import duties upon fish and fish-oil, the produce of the British provinces, should be re-imposed as they existed before the Treaty of Washington. I stated that it appeared to me that this was an unfriendly step, and, if carried out by Congress, would render an agreement upon the question at issue much more difficult than it would otherwise have been. Previously to the transmission of the President's message, I should have had great hopes that an arrangement might have been arrived at; but, when it was attempted to put upon Her Majesty's Government a pressure to which, under similar circumstances, the United States' Government would have certainly objected, it did not seem as if the latter was desirous of finding a solution of the question.

I also pointed out to him that the Colonies of Newfoundland and Prince Edward Island had allowed American fishermen the privilege of fishing in their waters very shortly after the conclusion of the Treaty of Washington, although the Act of Congress relieving fish and fish-oil, the produce of Prince Edward Island, from import duties in the United States, was not passed till the 1st March, 1873, and Newfoundland was not admitted to the same immunity till May 1874, and although United States' citizens had enjoyed the right of fishing in the waters of Prince Edward Island and Newfoundland, their Government had never consented to reimburse the duties which had been paid on the fish and fish-oil imported from those Colonies into the United States during that time.

Mr. Evarts denied emphatically that he had wished to recommend a measure which could be thought to be unfriendly towards Her Majesty's Government; nor did he consider that it was so, or that it could be viewed in that light. He said that he

* Inclosures in No. 13.

had in September 1878 pointed out to Her Majesty's Government that the question was a serious one, and that it was the opinion of the United States' Government that a false construction had been given to the Treaty, to the prejudice of the United States' fishermen. He had maintained from the beginning of the discussion that the right of fishing given by the Treaty was free from all restrictions which might have been imposed upon native fishermen by local laws either anterior or subsequent to the date of the Treaty. He thought that Her Majesty's Government had not sufficiently considered the gravity of the case, had paid but little attention to it, and had unnecessarily delayed replying to the representations of the United States' Government. He asserted that until the season of 1878 no American fishermen had visited the coasts of Newfoundland for the purpose of fishing, and that when they did so, they had met with such a reception that until an answer should be received from Her Majesty's Government they had not ventured to repeat the visit. This answer had now arrived, just as the fishermen were preparing their equipments for this season, and were anxious to know whether they would be allowed to fish on the coasts of Newfoundland. But Lord Salisbury in his note of the 3rd ultimo had maintained that in the affair at Fortune Bay the Americans had violated both the local laws and the provisions of the Treaty, and that the native fishermen were therefore justified in attacking them, and preventing them from pursuing their ordinary mode of fishing. It was therefore impossible that, as the natives were thus encouraged to resist the rights of the Americans, the latter could again expose themselves to such losses as they had suffered in Fortune Bay.

It would have been very different, Mr. Evarts argued, if the authorities had taken the matter in hand, and if the question had been settled by a Court of Justice, but that it could not be that American fishermen should be exposed to the violence of a mob, and he expressed his surprise that Her Majesty's Government should have justified the means which were used for preventing Americans from enjoying their rights under the Treaty.

Under these circumstances, as it appeared that Her Majesty's Government had finally determined to interpret the Treaty in a manner entirely at variance with the expressed opinion of the United States' Government, and to justify the Newfoundland fishermen in taking the law into their own hands and forcibly preventing American fishermen from exercising the rights to which their own Government considered them entitled, Mr. Evarts declared that there was no ground for the charge which I had made, that he was now the first to recommend to Congress a violation of the Treaty. On the contrary, he maintained that it was we who had allowed and sustained an infraction of the Treaty by the Newfoundland fishermen, looking at the interpretation given to it by the United States. There was then nothing left but one of two things: either to protect the American fishermen by the presence of men-of-war, which might have led to a conflict, or to re-impose the duty on fish, the taking off of which had been part of the price paid by the United States for the free enjoyment of the right of fishing.

I asked Mr. Evarts whether he could conscientiously assert that, if British subjects had availed themselves of the privilege of fishing on the United States' coasts, they would have been allowed advantages, either as to the mode or time of fishing, over the native fishermen? He replied that if the former had attempted to take any such advantages, the United States' Government would immediately have recommended that the same rights should be allowed to the natives. "But," I said, "such a step would have led to the entire destruction of the fisheries." This idea Mr. Evarts ridiculed; indeed, it seems to be the firm conviction of those in this country who have most studied the matter, that no amount of catching will lead to any perceptible diminution in the quantity of fish; but that there are other causes, not yet well understood, arising from local circumstances, storms, &c., which occasionally drive the fish away from the points which they have been in the habit of visiting.

Mr. Evarts thinks that there has been unnecessary delay in replying to his representations, and that sufficient attention has not been paid to his arguments; and that Lord Salisbury's note of the 3rd ultimo seemed to imply that the Newfoundland fishermen were justified in their attack upon the Americans, and would be encouraged to a repetition of similar conduct on future occasions.

There is also a strong desire on the part of the United States' Government, in view of the approaching end of the term for which fishing rights were granted by the Treaty, that it should not be supposed that the value which has been assigned to the fisheries by the Treaty and the Halifax Award is one which can ever be admitted or acknowledged by the United States as a precedent for any future arrangement.

I had the honour to transmit copies of the President's Message to Congress, accompanied by Mr. Evarts' Report upon the subject in my despatch of the 18th instant.* The papers which were transmitted with Mr. Evarts' Report have not yet been printed.

I also inclose copies of a Bill which was submitted to the House of Representatives on the 18th instant by Mr. Loring, a member from Massachusetts, which proposes that Collectors of Customs should be instructed to collect on fish and fish-oil the duties imposed before the Act of the 1st March, 1873; and that from the duties so collected the sum of 125,000 dollars should be set apart for the compensation of the United States' fishermen "who were driven from Fortune Bay on the 6th January, 1878." The Bill was referred to the Committee on Foreign Affairs, by which I understand that it has not yet been taken into consideration.

Inclosure 1 in No. 19.

Message from the President of the United States, dated May 17, 1880.

Inclosure 2 in No. 19.

46TH CONGRESS, 2ND SESSION.—H. R. 6242.

A Bill relating to certain Provisions of the Treaty of Washington.

MR. LORING introduced the following Bill:—

"A Bill relating to certain provisions of the Treaty of Washington.

"Whereas, by the provisions of the Treaty of Washington of 1871, the right of inshore fishing along the coasts and shores, and in the bays, harbours, and creeks of all Her Britannic Majesty's dominions in Canada, and of the Island of Newfoundland, were secured to the inhabitants of the United States; and

"Whereas, by the provisions of said Treaty a Commission was appointed to meet at Halifax and award the compensation to be paid by the United States for this grant in addition to the freedom of the fishery in United States' waters, and the remission of all duties upon fish and fish-oil imported into the United States from the said dominions of Her Britannic Majesty; and

"Whereas the said Commission awarded to Her Britannic Majesty the sum of 5,500,000 dollars as such compensation, which has been duly and fully paid; and

"Whereas the fishermen of the United States have been driven by violence from the fishing-grounds in which such freedom of fishery has been granted by said Treaty, and laws in limitation of their rights have been passed by the local Legislatures of said dominions, and Her Britannic Majesty's Government have refused all redress therefor, and have supported the claim of the said dominions to enforce said legislation: therefore

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that section 1 of an Act entitled 'An Act to carry into effect the provisions of the Treaty between the United States and Great Britain, signed in the city of Washington the 8th May, 1871, relating to the Fisheries,' and approved the 1st March, 1873, be, and the same is hereby, repealed.

"Sec. 2. That the Secretary of the Treasury be, and is hereby, authorized and directed to instruct the Collectors of Customs in the various Collection-districts of the United States to collect on all fish and fish-oil imported into the United States from the said dominions of Her Britannic Majesty the duties heretofore imposed thereon by the provisions of section 2504, schedule F, of the Revised Statutes of the United States.

"Sec. 3. That from the amount of duties so collected the sum of 125,000 dollars be, and the same is hereby, set apart for the compensation of the fishermen of the United States who were driven from Fortune Bay, in Newfoundland, on the 6th January, 1878, and that the same be paid into the hands of the Secretary of State, to be by him distributed among said claimants according to the proofs of damages submitted to him in their behalf."

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* See "United States No. 1 (1880)," No 11.

No. 20.

Sir J. Pauncefote to Mr. Herbert.

Sir, *Foreign Office, June* 7, 1880.

I AM directed by Earl Granville to transmit to you, to be laid before the Earl of Kimberley, a copy of a despatch from Her Majesty's Minister at Washington in regard to the Fortune Bay affair.*

I am, &c.

(Signed) JULIAN PAUNCEFOTE.

No. 21.

Mr. Bramston to Sir J. Pauncefote.—(Received June 8.)

(Extract.) *Downing Street, June* 7, 1880.

I AM directed by the Secretary of State for the Colonies to transmit to you herewith, for the information of Earl Granville, an extract of a despatch which has been addressed to the Governor of Newfoundland, communicating to him a copy of Lord Salisbury's note to Mr. Hoppin of the 3rd April last respecting the Fortune Bay affair.

Inclosure in No. 21.

The Earl of Kimberley to Governor Sir J. Glover.

(Extract.) *Downing Street, June* 3, 1880.

WITH reference to previous correspondence respecting the question which has arisen with the United States' Government arising out of the occurrences at Fortune Bay in January 1878, I have the honour to transmit to you, for your information and for that of your Government, a copy of a note addressed by the Marquis of Salisbury to Mr. Hoppin on the 3rd April last upon this subject.†

No. 22.

Earl Granville to Sir E. Thornton.

Sir, *Foreign Office, June* 9, 1880.

I HAD to-day an interview with the United States' Minister at this Court respecting the Fortune Bay affair.

Mr. Lowell stated that there was a much stronger and deeper feeling on the other side of the Atlantic upon this question than was appreciated here. There was, he said, a feeling that a wrong had been done which ought to be redressed.

We agreed that this was a reason why both Governments should try to settle the question.

I observed that the present Government had not their reputation to make as to a wish to act in a conciliatory manner towards the United States, but that we could make no concession which could not be made with perfect justification.

I then asked Mr. Lowell whether he had any suggestions to make. He replied, "none"; that his instructions were to conform his language to that of Mr. Evarts' note. I inquired whether it would not be possible to separate the two questions of the interpretation of the Treaty and of the attack upon the American fishermen. He replied that he feared that it might be too late to do this, but that, at my request, he would be prepared to ask the question.

Mr. Lowell added, not officially, but only as his personal opinion, that there would be no precipitate action on the part of the United States. The President, he said, had power to act, but the moment for doing so was at his own discretion.

* See "United States No. 1 (1880)," No. 11. † "United States No. 1 (1880)," No. 8.

We finally agreed to renew our conversation upon this subject at an early date.

I am, &c.
(Signed) GRANVILLE.

No. 23.

Mr. Lowell to Earl Granville.—(*Received June* 12.)

My Lord, *United States' Legation, London, June* 12, 1880.

REFERRING to my conversation with your Lordship on the 9th instant, I have the honour to acquaint you that I took pleasure in communicating by cable the next day to my Government the friendly sentiments of your Lordship in respect to the differences between the two countries on the Fishery question.

I have this morning received a telegram from Mr. Evarts, by which he desires me to communicate his great gratification at the expression by your Lordship of the friendly disposition of the British Cabinet—a disposition which, he states, he should have been ready to assume from the public character of its members. He adds that the President will be quite ready to entertain any considerations which may be presented to the Secretary of State to relieve the question of the fisheries from its present difficulties, and that the Bill now pending before Congress extends to the President adequate discretionary power to meet an accord between the two Governments respecting the fishery rights of the United States under the Treaty, should such an accord be established during the recess of Congress.

I have, &c.
(Signed) J. R. LOWELL.

No. 24.

Sir E. Thornton to Earl Granville.—(*Received June* 13.)

(Extract.) *Washington, May* 31, 1880.

I HAVE not been able to ascertain that any decision has been arrived at by the Committee on Foreign Affairs with regard to the Bill submitted to the House of Representatives by Mr. Loring, proposing to reimpose import duties upon fish and fish-oil, the produce of the British provinces, nor do I believe that the matter has been considered in that Committee. It is certain that no Report has been made to the House upon the subject.

Neither have the newspapers paid much attention to it.

No. 25.

Earl Granville to Sir E. Thornton.

Sir, *Foreign Office, June* 17, 1880.

I INCLOSE, for your information, copy of a letter from the United States' Minister on the subject of the Fortune Bay affair.*

I am, &c.
(Signed) GRANVILLE.

No. 26.

Sir J. Pauncefote to Mr. Herbert.

Sir, *Foreign Office, June* 17, 1880.

I AM directed by Earl Granville to transmit to you, to be laid before the Earl of Kimberley, the copy of a note from the United States' Minister at this Court* on the subject of the Fortune Bay affair.

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

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* No. 23.

No. 27.

Earl Granville to Mr. Lowell.

Sir, *Foreign Office, June* 18, 1880.

I HAVE the honour to acknowledge the receipt of the letter which you were good enough to address to me on the 12th instant, and in which you communicated to me the substance of a telegram received by yourself from Mr. Evarts in reference to the Fortune Bay question.

I have, &c.
(Signed) GRANVILLE.

No. 28.

Sir E. Thornton to Earl Granville.—(Received June 20.)

(Extract.) *Washington, June* 7, 1880.

WITH reference to my despatch of the 31st ultimo, I have now the honour to transmit herewith printed copies of the correspondence which was forwarded to Congress on the 17th ultimo, together with the message of the President respecting the Fortune Bay affair.

The greater part of the correspondence is already known to the Foreign Office. I beg, however, to call attention to a paragraph in a letter from the United States' Commercial Agent at St. Pierre, Miquelon, to the State Department (p. 16), in which he contradicts the statement that the American fishing schooners were obliged to leave the bay on account of the antagonism of the natives, and says that they remained there for a fortnight or more after the occurrences of the 13th January, using the same seines, except the one which was destroyed.

At p. 93, and following pages, will be found a Report addressed to Mr. Evarts by Messrs. Babson and Foster, who were sent, during the season of 1879, on board of the United States' ship "Kearsarge," to inquire into the conduct of the inshore fisheries by the American fishermen, and the treatment which they received at the hands of the local authorities and population.

These gentlemen did not, however, find much to complain of, and heard of only one instance in which the native fishermen of Whitehead, on the northern part of Cape Breton, refused to allow the Americans to use seines for catching squid for bait. It appears, however, from this Report, that in general there has been a great falling off in the fisheries, and particularly in the mackerel fishery, and it is probably on this account that the American fishermen are of opinion that the relieving of the fish from import duties and the Halifax Award were a high price for the small return which they declare that they have derived from their fishing rights under the Treaty of Washington, and that they would have made a much greater profit if the fish caught on the United States' coasts, and that which in former times they were in the habit of purchasing from the Canadians and importing as their own catch, had been protected by import duties on all other fish.

I understand that Mr. Evarts has been earnestly urging the Committee on Foreign Affairs of the House of Representatives to come to a decision with regard to the recommendation made by the President in his message on the Fortune Bay affair, so that some Act upon the subject may be passed before the closing of the Session. The Committee does not, however, appear to be entirely in accord with Mr. Evarts' views. But I understand that a Bill has been prepared and approved by a majority of the Committee, and will be shortly submitted to the House, perhaps to-day. It is said that it has a long preamble, accusing Her Majesty's Government of having failed to carry out the provisions of the Treaty of Washington.

Section 1 proposes to re-impose the duties on fish and fish-oil coming from Canada and Newfoundland.

Section 2 provides that, whenever an arrangement may have been come to with Her Majesty's Government as to the interpretation and execution of the Fishery Articles of the Treaty, the President may remit the collection of the duties.

Section 3 authorizes the President to prevent American fishermen from fishing on the coasts of the British provinces until the two Governments are in accord on the subject.

Section 4 authorizes the Secretary of State to audit the claims of the sufferers

by the Fortune Bay affair, and appropriates the sum necessary for their payment by him.

Such are the statements made by the newspapers with regard to this Bill, and they are probably more or less correct.

It is added that Mr. Cox, the Chairman of the Committee, is preparing a Report to accompany the Bill and support it. It is also said that the minority of the Committee will present another Report, accompanied by a Resolution to request the President to take steps to obtain indemnity for the sufferers by the Fortune Bay affair, and to secure to United States' citizens their rights under the Treaty, and, failing to accomplish these purposes, to procure the abrogation of the Treaty.

The newspapers generally are paying but little attention to the subject.

Inclosure in No. 28.

Extract from the Message from the President respecting the alleged Outrage at Fortune Bay.

[46th Congress, Second Session: Ex. Doc. No. 84.]

Depositions of James L. Anderson, James D. Norwood, Peter Thibodau, James Challoner, and Charles Dagle, taken in relation to the trouble between the Canadian and American Fishermen at Aspee Bay, Cape Breton.

Gloucester, September 8, 1879.

I, JAMES L. ANDERSON, of Gloucester, Massachusetts, and master of the schooner "Cadet," of Gloucester, do, on oath, depose and say that I left Gloucester on the 7th June, 1879, bound for Aspee Bay, Cape Breton, to take squid. My vessel was fitted and furnished with a seine for the taking of squid, as I considered that, under the provisions of the Treaty of Washington, I had the right to take fish of any kind within 3 miles of the shores of the Dominion, and also to use seines or other apparatus for the purpose. I arrived at Aspee Bay on the 20th June; the American schooner "Bay State," Captain Goodwin, arrived the same day. He was fitted with a seine for the purpose of taking squid. The inhabitants of Aspee Bay came off to my vessel, and seeing the seine on deck, asked me what I intended to do with it. I told them that it was for the purpose of taking squid; they then left my vessel and went on shore. The next morning I went on shore and was met by a fisherman named Gwin, who informed me that the fishermen of the place had consulted together and had made up their minds that no seine should be set in the bay, and if it was attempted they would cut it up and destroy it, and that they would serve me the same.

He gave as a reason for this that they believed the using of the seine would drive away the squid and deprive them of bait for their own fisheries, and ruin their business of jigging squid. I explained to them that squid had been seined in Chebucto for several years, with no more perceptible decrease of the squid than when they were caught by jigs; that the same amount of squid would be taken from the water by the jigs, as there are some 200 men who fish for squid at that place. I found that it was useless to argue, as every time I went on shore the threats were repeated, and that they would be carried out.

I then attempted to compromise by offering to pay them for all the squid I might take in the seine, at the same rate as if they caught them with jigs, and divide the money among them equally. They said that if my seine was used in the bay that it would establish a precedent for seining there, and other vessels would not then be prevented, after one had been allowed to seine. Finding I could not use my seine, and knowing that if it was cut up I should not have it to use in other places, and be deprived of the means of getting my cargo, I felt obliged to give it up. When the squid came into the bay there was a large fleet of bankers, and if I could have used my seine I could have supplied every vessel with bait and have also loaded my own vessel with squid to sell the vessels on the banks. For ten successive days the bay was swarming with squid, but not one would take the hook, and the people could not take any.

All of the vessels lying there were obliged to leave without obtaining any bait, and I left also, for Chetticamp. Failing to find squid there, I returned to Aspee Bay on the 21st July, and found squid in the bay that at that time would take the hook.

I commenced buying of the fishermen, having over sixty boats with 180 men employed. I paid for this lot of squid 561 dollars in cash, getting about two-thirds of a cargo. This cargo I carried to St. Pierre, and sold the squid for 6¼ fr. per 100 to the Jersey fishermen. In a week's time I came back to Aspee Bay, and found squid plenty in the bay, but they would not take the hook. I could have taken all the squid I wanted if I could have used my seine. I remained three days, and finding that I could not obtain any squid, as they would not bite, I left the bay, and I then started for Newfoundland, and in the dense fog the current set the vessel on the Little Miguelon, where she was lost. My loss on being deprived of the use of my seine on my first trip would be 5,000 dollars, as for this season I could have loaded my vessel in three days on the first trip, and would have had them in St. Pierre's at least three weeks ahead of any other baiter, and as the squid failed at St. Pierre this season, I could have got 1 dol. 50 c. per 100 for them. The cargo I carried there three weeks later I got 1 dol. 25 c. per 100 for. I should have been at no expense in buying the squid, as my crew could have set the seine and handled the fish; on my second visit I paid the people 561 dollars for a partial cargo, and the third trip I could have seined my cargo, but was not allowed to, and the squid not biting, I could not purchase from the people.

My third trip, by being so deprived, I suffered a loss of at least 2,000 dollars. The delay, the uncertainty, and the consequent waste of time, and the continued expense of my vessel and crew obliging me to cruize from port to port in search of fish, when I could have realized full cargoes every time I was there, with certain sales, will not be computed in this amount, but simply the cost of the squid to me at Aspee Bay if I could have seined, and the value of the squid at St. Pierre.

In this whole matter no fishery officer or officer of the law forbade my seining; the threats and all demonstrations came from the local fishermen acting independent of all law, and combined together to act as a mob, violence enforced by numbers being their only authority. I told them time and again that under the Treaty of Washington I had a right to seine, as the Government had paid 5,500,000 dollars for this right; they replied that they cared nothing for Treaties or rights; they were going to take care of themselves; the money the Government had got done them no good, but when they got cash for squid it did them some good.

The squid on those shores are about a third grown, and are not mature enough for spawning; they are about 6 inches long, and they grow about 2 inches in a summer; they are the young squid, and every season they come on these coasts, always the young fish; by the use of the seine it makes the catch a certainty, while the hooking process cannot be depended upon.

On this trip my vessel was under a fishing licence, with a permit to touch and trade. I had a few boots and shoes and some cottons, in case I had occasion to trade. On arriving at Aspee Bay I reported to the Customs officer at North-west Harbour, and entered my vessel; the most of my goods I carried to St. Pierre.

(Signed) JAMES L. ANDERSON, *Captain.*

Essex, ss.

Personally appeared the above-named James L. Anderson, who made oath that the above statement by him subscribed is true, before me.

(Signed) ADDISON CENTER, *Justice of the Peace.*

Gloucester, September 12, 1879.

Gloucester, September 10, 1879.

I, James D. Norwood, master of the American schooner "Messina," of Gloucester, do, on oath, depose and say that I left Gloucester for St. Ann's or Aspee Bay, Cape Breton, for a cargo of squid to sell for bait. I had been in these ports in previous years, and knew that the inhabitants would oppose the use of a seine in that bay, and consequently I went prepared to buy my squid.

I stopped at St. Ann's about a fortnight; got no squid, as they would not bite; then went to Aspee Bay and found that the squid would not take the hook, and that the people had opposed the use of any seine by Captain Anderson or any other person. I could have hired a seine and loaded my vessel if I had been allowed what I considered my rights under the Treaty of Washington, but finding the people in such a determined and threatening attitude, I knew it would be useless to try to get my cargo there, and left for Newfoundland. I arrived at Torbay, where I bought 300,000 squid of the local fishermen, paying 900 dollars in cash for them.

The same hostility to Americans taking their own bait with seines exists at Newfoundland as at Cape Breton. The fishermen can make twice the amount of money taking squid for the American bankers and baiters than they can in their usual avocation of cod fishing, and they will not be deprived of this lucrative trade if they can help it. It is cash to them, and the women and boys join with the local fishermen in the light work of taking squid with jigs. The whole community shares in the squid fishery and in the money they receive for them.

In my judgment, full 100,000 dollars is paid annually on these shores for bait alone, and this could all be saved if the Americans could use their seines to take bait; and the bait, if not purchased by the American fleet, would be useless and valueless to the people.

I have been informed that there is a local law against seining squid at Newfoundland. The present mode of taking squid by jigs is a slow process, costing the Americans a great loss of time, when, if the seine could be used, it would save two-thirds the time it now takes to get bait. Each banker now has to spend at least thirty days out of each trip in going around from place to place for bait, as when the squid will not take the hook none can be obtained, and the seine makes the catch a certainty.

(Signed) JAMES D. NORWOOD,
Master of Schooner "Messina."

Essex, ss.

Personally appeared the above-named James D. Norwood, who made oath that the above statement by him subscribed is true, before me.

(Signed) ADDISON CENTER, *Justice of the Peace.*
Gloucester, September 10, 1879.

Gloucester, September 10, 1879.

I, Peter Thibodau, master of the American schooner "Lizzie J. Jones," of Gloucester, do, on oath, depose and say that I left Gloucester in the said vessel on the 3rd June, 1879, for Aspee Bay, Cape Breton, on a trip for squid. I was not fitted with a seine, but was prepared to buy for this season; that the previous year I was at Aspee Bay with Captain Dagle, and knew that the fishermen there would not, under any circumstances, permit a seine to be used there.

I was at Aspee Bay when Captain Anderson, of the schooner "Cadet," tried to use his seine, and Captain Anderson asked me to assist him in using his seine for seining the squid; but the local fishermen, to a man, united in threatening destruction to the seine or any one who attempted to use it in that bay.

I am perfectly sure that the seine would have been destroyed, as the people warned me from having anything to do with it, and were constantly on the watch to see if Anderson attempted to use it, and were prepared to attack him on the first demonstration on his part. I did not get but 3,000 squid at Aspee Bay. My vessel would take, as a cargo, 500,000.

All of the vessels could have been loaded with squid, could the seine have been used; the bay was swarming with them.

I told the people that Americans had the right to take these squid with seines, and they said they cared nothing for that; they should and would protect themselves; if they allowed seining it would ruin their business of jigging squid, and then they thought the seining would drive away the squid from the bay.

At this place the local fishermen have no money, except what they get from the Americans for squid, and they say if this trade is taken from them they will have no money to pay their taxes, &c.

They usually receive from the local traders goods and groceries for the fish they take during the season, while the Americans pay cash for the squid and bait they buy.

I was obliged to leave Aspee Bay, as I could not obtain any squid, as they would not bite.

I then went to Newfoundland to Conception and Trinity Bays, where I bought my squid of the local fishermen.

The feeling is the same at Newfoundland as at Aspee Bay aganst seining.

No American will be allowed to use a seine to take squid in any of the bays or coves of Newfoundland under penalty of destruction of the seine. I have heard

the people say this over and over again, and know that it is impossible to obtain what we consider our rights in this respect under the Treaty of Washington.

(Signed) PETER THIBODAU,
Master of the Schooner "Lizzie J. Jones."

Essex, ss.

Personally appeared the above-named Peter Thibodau before me, and made oath that the above statement by him subscribed is true.

(Signed) ADDISON CENTER, *Justice of the Peace.*
Gloucester, September 10, 1879.

White Point, Br. Vic., August 17, 1879.

James Challoner, of White Point, Aspee Bay, being duly sworn, do depose and say that about the 20th July, 1879, Captain Anderson, of the schooner "Cadet," of Gloucester, came to see me, and said that his vessel, the previous season, had done very well with squid, which they had purchased here and had sold at St. Pierre Miquelon; and that there were ten vessels this year engaged in the same business, and eight of them did come to this bay for the purpose of getting squid and carrying them to the banks for sale to the bankers, and remained here until about the 16th July. Captain Anderson and Captain Goodwin of the "Bay State," had a seine for the purpose of seining squid in the bay, and did not attempt to use it, because the fishermen would not allow them to do so; they threatened to cut the seine if they placed it in the water; there never has been but one seine cast in this bay, and had Captain Anderson thrown his seine he would have swept the whole school of squid in the cove, and the fishermen would have been deprived of all their bait for the season. Last season the Americans purchased their squid, giving 20 cents per 100, and this, when the squid are plenty, is a source of profit and a large part of the business of the inhabitants. Captain Anderson could have purchased all he wished, but if the fishermen had allowed him to seine they would have lost the money paid for the squid by the cod fishermen from the banks. No opposition was made to Captain Anderson's catching squid by hook and line.

American and French bankers come here every summer for bait, and if Captain Anderson had taken all the squid by his seine the bankers would have been forced to purchase of him instead of the native fishermen, of whom there are about 150. I am not aware of any Colonial law against securing squid. The only reason the inhabitants threatened Captain Anderson was that he would ruin their squid catch. The only fishery officer lives at Fragnish, down the coast. Some Newfoundlanders living near here attempted, a little while ago, to use seines for taking caplin, but the natives would not permit them to do so. I have been a resident here for thirty years, and engaged in the business of purchasing fish.

(Signed) J. A. CHALLONER.

Subscribed and sworn to before me this 17th day of August, 1879.

(Signed) J. H. SEARS, *Ensign, United States' Navy,*
United States' Ship "Kearsarge."

Charles Dagle, captain of the schooner "Joseph Story," being duly sworn, doth depose and say that he was at Aspee Bay, Cape Breton, in the latter part of June, 1879, for the purpose of purchasing squid to carry to St. Pierre for bait for the French bankers; that while he was there Captain Anderson, of the schooner "Cadet," of Gloucester, Massachusetts, who came for the purpose of catching squid at that place, and squid not being obtained in sufficient numbers by jigging, attempted to use a squid seine for the purpose of catching the squid, which schooled in great numbers, but would not bite at the jig. The inhabitants of Aspee Bay threatened that if he set his seine they would cut it, and there would be trouble, as selling squid was their only way of making money during the summer season, and if a seine was used in the cove all the squid would be taken or driven away, and they would lose all their summer's employment, as squid was the only bait they could obtain for catching cod. They were willing that Captain Anderson should jig his squid or purchase of them. Captain Anderson left the bay without a trip of squid, while if he had used his seine he would probably have filled his vessel.

That I have just come back from Torbay, Newfoundland, near St. John, with 94,000 squid, which were all purchased of the inhabitants there. That there is a law in force in Newfoundland against seining squid, which forces us to purchase of the natives, as we have no time to take them by the slow process of jigging.

(Signed) CHARLES DAGLE.

Sworn to before me at St. Peirre, Miquelon, this 19th August, 1879.

(Signed) W. F. McLaughlin, *Vice-Commercial Agent, United States of America.*

No. 29.

Sir E. Thornton to Earl Granville.—(*Received June* 27.)

(Extract.) *Washington, June* 14, 1880.

WITH reference to my despatch of the 7th instant, I have the honour to inclose copies of the Bill with regard to the fishery clauses of the Treaty of Washington, of which I gave a synopsis in that despatch.

I also inclose copies of the Report submitted to the House of Representatives, together with the Bill from the Committee on Foreign Affairs.

It will be seen that the language of the Report is not moderate; its principal argument is, that Her Majesty's Government gave by the Treaty full right of free fishing on the sea coasts and shores of the British provinces without being in any way subject to their local laws. It ignores altogether that the stipulation was that the inhabitants of the United States should have, in common with the subjects of Her Majesty, the liberty to take fish on those coasts and shores.

The last paragraph of page 5 of the Report intimates that, if the Dominion choose that a Commission should be organized to consider questions with regard to reciprocal trade, its demands with regard to fish and all other articles might be listened to.

But the Resolution reported by the Committee with regard to such a Commission has not been passed by Congress.

It is said that, although a joint Resolution passed by the two Houses has decided that the Session shall be finally adjourned on the 16th instant, the inclosed Bill will be taken into consideration by the House, perhaps to-day, and passed before the close of the Session. I cannot, however, conceive that the Senate will have time to take it up before that date, nor till Congress shall meet in December next, so that it is not likely to become law till then.

I also inclose copies of a Resolution submitted to the House on the 9th instant by Mr. Rice, a member from Massachusetts, and once Governor of that State, proposing that the President should take measures for securing indemnity on account of the Fortune Bay affair, and to procure the early abrogation of the fishery Articles of the Treaty. The Resolution was accompanied by a Report from the Committee on Foreign Affairs, copies of which are likewise inclosed.

The newspapers have made but few comments upon the subject.

Inclosure 1 in No. 29.

46TH CONGRESS, 2ND SESSION.—HOUSE OF REPRESENTATIVES, 6453.

[REPORT No. 1746.]

A Bill relating to certain provisions of the Treaty of Washington.

MR. COX, from the Committee on Foreign Affairs, reported the following Bill as a substitute for H. R. 6242 :—

"A Bill relating to certain provisions of the Treaty of Washington.

"Whereas by the provisions of the Treaty of Washington of 1871 the liberty of inshore fishing on the sea-coasts and shores, and in the bays, harbours, and creeks of

all Her Britannic Majesty's dominions in Canada, and of the Island of Newfoundland, without being restricted to any distance from the shore, was secured to the inhabitants of the United States; and

"Whereas by the provisions of said Treaty a Commission was appointed to meet at Halifax and award the compensation to be paid by the United States for this grant, in addition to the freedom of the fishery in United States' waters and the remission of all duties upon fish and fish-oil imported into the United States, being the produce of the fisheries of said dominions of Her Britannic Majesty; and

"Whereas the said Commission awarded to the Government of Her Britannic Majesty the sum of 5,500,000 dollars as such compensation, which has been paid by this Government; and

"Whereas the fishermen of the United States have been driven by violence from fishing grounds in which such freedom of fishery has been granted by said Treaty, and Her Britannic Majesty's Government have refused all redress therefor, and in justification thereof support the local legislation of said dominions restrictive of such liberty, notwithstanding said provisions of said Treaty; and

"Whereas the Government of the United States and the Government of Her Britannic Majesty are not in accord as to the interpretation and execution of said provisions of the Treaty of Washington; therefore

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that the duties on fish-oil and fish, being the produce of the fisheries of the Dominion of Canada (including Prince Edward's Island) and of the Colony of Newfoundland, imported into the United States, as such duties were imposed by law before the fishery Articles of the Treaty of Washington came into operation, and before the passage of the Act of the 1st March, 1873, entitled 'An Act to carry into effect the provisions of the Treaty between the United States and Great Britain, signed in the City of Washington the 8th May, 1871, relating to the fisheries,' be, and the same are hereby, reimposed, and shall be collected to the same effect as they were in force before the passage of the said Act of the 1st March, 1873; said duties hereby imposed being as to such fish at and after the rate mentioned in Schedule F, and as to such fish oil at and after the rate mentioned in Schedule M of section 2504 of the Revised Statutes:—Provided, however, that such duties shall not be imposed or collected upon such fish or fish-oil unless the same shall be imported on or after the 1st July, 1880.

"Sec. 2. That whenever and as soon as the Government of the United States and the Government of Her Britannic Majesty shall be in accord as to the interpretation and execution of the fishery Articles of the Treaty of Washington as respects the liberty of the inshore fishery of the said Dominion of Canada and of the Colony of Newfoundland, as conceded by said fishery Articles, and in respect of the exercise of that liberty by the inhabitants of the United States, it shall be lawful for the President of the United States to issue his Proclamation to that effect, and to remit the collection of duties under or by virtue of this Act from and after such date as in and by such Proclamation he shall designate for such remission.

"Sec. 3. That the President is hereby authorized and empowered at any time while the duties reimposed by the provisions of this Act are in force and required to be collected, if in his discretion he shall think the public interests so require, to issue his Proclamation restraining, in such manner and degree as he may see fit, the inhabitants of the United States from the exercise of their liberty of fishing within three miles of the coasts and shores of Her Britannic Majesty's said dominions, or any parts thereof, until the Government of the United States and the Government of Her Britannic Majesty shall be in accord as to the interpretation and execution of the fishery Articles of the Treaty of Washington as respects the said liberty of the inshore fishery of the said Dominion of Canada and of the Colony of Newfoundland as conceded by said fishery Articles, and the same to revoke, and from time to time to reissue, as in his discretion the public interests may seem to require.

"Sec. 4. That the Secretary of State be, and he is hereby, authorized and empowered to examine into and audit the claims of our fishermen for loss and injury sustained by and from the interruption of their exercise of the liberty of the inshore fishery at Fortune Bay in January 1878, and their expulsion from said fishery; and that the sum necessary to compensate said fishermen for such loss and injury, to be paid and distributed to them under the direction of the Secretary State, be, and the same hereby is, appropriated out of any money in the Treasury not otherwise appropriated."

Inclosure 2 in No. 29.

46TH CONGRESS, 2ND SESSION.— HOUSE OF REPRESENTATIVES.

[REPORT No. 1746.]

Fishery Provisions of the Treaty of Washington.

MR. COX, from the Committee on Foreign Affairs, submitted the following Report: (To accompany Bill H. R. 6453).

The Committee on Foreign Affairs, to whom was referred the message from the President of the United States communicating certain correspondence with the Government of Great Britain in regard to the alleged outrages on the American fishermen at Fortune Bay and the Province of Newfoundland, and also House Bill 6242, "relating to certain provisions of the Treaty of Washington," introduced by the Hon. Mr. Loring, of Massachusetts, report the accompanying substitute for said Bill, for which they ask the favourable consideration of the House.

The preamble of the Bill has five several recitals. As to these there can be no controversy.

The first recites the provisions of the Treaty of Washington of 1871 as to the liberty of inshore fishing. The second recites the meeting of the Commission at Halifax, and the object thereof under said Treaty. The third recites the award to Her Britannic Majesty of 5,500,000 dollars, as compensation paid by the United States for the freedom of the fishery. The fourth asserts the fact that the fishermen of the United States were driven by unlawful force from the fishing-grounds in which such freedom of fishery had been granted, and asserts the refusal of redress therefor. It recounts the pretended justification thereof in the local legislation of the Province of Newfoundland, restrictive and violative of such liberty, notwithstanding the plain provisions of the Treaty. The last recital indicates the discord between the two Governments which celebrated the Treaty.

The enactments of the Bill are intended to provide the best remedy now possible for the wrongs inflicted. These remedies consist in the imposition of duties on fish-oil and fish produced by the fisheries of the Dominion, including Prince Edward Island and Newfoundland. The 2nd section of the Bill provides for a discontinuance of such duties in case an accord be established between the two Governments. The 3rd section provides for a Presidential Proclamation to restrain our citizens from the exercise of their right to fish until the accord be established. The 4th section provides for a proper audit of the claims of fishermen by reason of the violence at Fortune Bay on the 6th January, 1878, and appropriates money therefor.

The Committee refer to the message of the President and the accompanying letter of the Secretary of State, as well as to the documents accompanying the President's communication to the House of Representatives in reply to their Resolution of the 27th April, 1880, for a detailed Statement of this vexed question.

This Committee has already reported to the House a Resolution for the abrogation of the fishery clauses of the Treaty of Washington. This abrogation may, in one regard, be accomplished by the mode prescribed by the Treaty. Notice is required to be given, and by the provisions of the Treaty it cannot be annulled formally until 1885.

This remedy seems to be too remote, inconsequential, and almost futile to remedy the wrongs which our fishermen have suffered. By a bold, violent, and outrageous infraction of the terms of the Treaty, as illustrated in the repulse of twenty of our vessels, the destruction of their seines, and the loss of their ventures at the Fortune Bay in January 1878, the advantages of the Treaty, for which we paid and are paying so much, have been nullified.

It is evident from the facts that a new adjustment of the fishery relations under the Washington Treaty is necessary. But before that adjustment can be had by cancelling that part of the Treaty itself, certain other measures are indispensable. They should be promptly taken by Congress in aid of the President's vigorous and patriotic remonstrance. This Congress will be responsible if we fail thus to vindicate our undoubted rights and dignity.

The rights conceded by this Treaty in the XVIIIth Article are as follows :—

"That 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 bays, harbours, and creeks of the Provinces of Quebec, Nova Scotia, and New Brunswick, and the Colony of Prince Edward Island, and of the several islands thereto adjacent, without being restricted to any distance from the shore, with permission to land upon the said coasts and shores and islands, and also 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 and private property, or with British fishermen, in the peaceable use of any part of the said coasts in their occupancy for the same purpose. It is understood that the above applies solely to the sea fishery."

From the terms of this Article it will be seen that the liberty to take fish of every kind, except shell-fish, is conceded to our people on the sea-coasts and shores, as well as the bays, harbours, and creeks of the provinces. No more comprehensive language can be used to give an undivided interest to the inhabitants of the United States along and equal with those of Great Britain in this adventurous and hazardous business. Every interpretation of these rights in the Halifax Commission and in the correspondence, including the "Case" made by Her Majesty's Government, confirms the views of our Administration—that without such permission to fish on the "shores" the practical use of the fisheries is impossible. Without such permission, we paid for nothing. We bought back what we unwisely relinquished or failed to defend in 1818, and the delivery has been withheld.

For reasons not necessary here to state, the equal participation in the fisheries, which was conceded to us by the sovereign power of Great Britain, was considered at Halifax to be so immensely valuable, that 6,000,000 dollars was claimed from us for it. Of this 20 per cent. was estimated as net profit on 1,200,000 dollars. It was urged at Halifax, as one reason for the enormous award which our Government was in too great haste to pay, that not only had we in the present an enormous advantage, but in the future a splendid prospect, by which our enterprise might be aggrandized and our wealth and industries increased.

What, then, was the surprise of the American Congress and people when, after appropriating and paying the 5,500,000 dollars on this dubious Award, made under circumstances which require close diplomatic scrutiny and urgent demand, that we had paid our money and mitigated our Tariff for Dominion fish, only to receive no returning consideration. True, the British Minister, Lord Salisbury, just before he received our millions, was exceedingly complaisant. He signified, in no ambiguous style, that British sovereignty, as regards these matters, was only limited in its scope by the engagements of the Treaty of Washington, and that these engagements could not be modified or affected by any municipal legislation. But as soon as the money was paid a different tone prevailed. A new interpretation, as the concomitant and justification of violence, pervaded the British correspondence.

It is a singular fact connected with this affair, that while the occurrence of Fortune Bay was in January, 1878, and while in March of that year our Government demanded an explanation and asserted its rights, the British Government did not respond until the 4th September of the same year.

What, then, was their answer? Upon this answer depends the reason for the legislation proposed by the Committee. The grounds were that our fishermen infracted a law of Newfoundland as to fishing on Sunday, which was passed subsequent to the Treaty of Washington; that they used seines to take herring contrary to a law of that province, which prescribed the methods of fishing for six months of the year between October and April; and that they had the audacity to use seines in a manner prohibited by provincial statute, or by a codification of all their provincial laws made after the Treaty. The English Minister justified the violence against the American fishermen by a charge that they had committed three distinct breaches of a law of that province.

If it had been the provincial Government or that of the Dominion which was the Treaty-making Power, or if the Treaty had recognized the existing provincial laws or the right to enact such fishery laws thereafter, it might have changed the logic and situation. But it was the sovereign Government of Great Britain which made the Treaty, without reservation as to local legislation, by which was justified this wanton violence. Our Treaty relations are, therefore, made to depend on provincial restraints, regulations, and statutes, not only in force at the time of the Treaty, but those enacted afterwards; and, by a similarity of reasoning, by all statutes, rules, and regulations enactable at the pleasure of the provinces. This cannot be tolerated.

In these particulars, therefore, our fishermen were denied their rights under

the Treaty. These rights consisted in an enjoyment with the British inhabitants, authenticated by a common or joint authority which was supreme above provincial law.

The Committee believe that no power, not even the British Imperial authority, could thus wrongfully restrain the rights acquired under the Treaty. So believing, they report that so much of the consideration not yet given by the United States for the benefits and privileges of that Treaty shall be withheld until the two supreme Governments are agreed as to the interpretation of the Treaty.

Without discussing the failure and lack of consideration paid for our fishery freedom, which in Treaties as in private contracts unbinds the injured party, it will be conceded that, in addition to the 5,500,000 dollars paid in money, equivalent rights were granted to the British inhabitants for fisheries on our own coasts; and, second, an exemption of the provincial fish products from duties, giving to the Dominion an absolutely free market for fish and fish-oils in the United States. If it be said that the Bill reported by the Committee is a violation of the fishery clauses of the Treaty, which allows free fish to come into the United States, it may be answered that the violent infraction of that Treaty at Fortune Bay destroys the very object for which these immense considerations were granted and paid. Since it is not possible, except by diplomacy, to recover the 5,500,000 dollars paid to the British Government for the now valueless concession; since we do not propose to take away the concession to the British inhabitants who desire to fish on our shores; one thing remains to be done by this Congress, which is entirely consistent with international law and the decisions of our Supreme Court.

The decisions of our highest Law Tribunal go so far as to say that in all matters within the purview of Congress, as, for instance, the Tariff, as on hemp in the case of Tyler *v.* Morton (Curtis' Reports, vol. ii, p. 454), no Treaty should intervene to prevent the action of the Federal legislation as to imposts on foreign articles.

The question as to the right of the Treaty-making power to affect duties on imports is not a new question. The Constitution in delegating such a power did not, however, interfere with that of Congress to regulate commerce and to impose duties. It is not necessary to discuss here and now how far Congress may participate in the matter of reimposing duties on fish, which were made free by the Washington Treaty, as whatever power the Federal Government had to make the Treaty as to imposts may of right be controlled by Congress. This part of our constitutional duty it is now proposed to assume by the Bill reported. No one can question the power of Congress to control the revenues to be derived from fish and fish-oil.

As to international law, the violence by which the Treaty was boldly broken at Fortune Bay, as well as the antagonistic legislation of the provinces by which it was justified, would be a serious complication, if not a *casus belli*. In the absence of reparation and harmony, no other relief is possible for such infraction, except by reprisal, letters of marque, or *via facti*, known to the law of nations.

"The violation of any one Article of the Treaty is a violation of the whole Treaty; for all the Articles are dependent on each other, and one is to be deemed a condition of the other. A violation of any single Article abrogates the whole Treaty, if the injured party so elects to consider it. This may, however, be prevented by an express stipulation that if one Article be broken, the others shall nevertheless continue in full force. If the Treaty is violated by one of the Contracting Parties, either by proceedings incompatible with its general spirit, or by a specific breach of any one of its Articles, it becomes not absolutely void, but voidable at the election of the injured party. If he prefers not to come to a rupture, the Treaty remains valid and obligatory. He may waive or remit the infraction committed, or he may demand a just satisfaction."—(Lawrence's "Wheaton," Part 4, Chap. iv, p. 887.)

Vattel, in his chapter (xv) on the "Faith of Treaties," after considering their sacredness, says, however, that they are no better than empty words if nations do not consider them as respectable engagements—as rules which are to be inviolably observed by Sovereigns, and held sacred throughout the whole earth. Upon this observance depends the safety and repose of nations; and, as a conclusion, he remarks that he who violates his Treaties violates at the same time the law of nations. He who makes sport of such solemn sanctions is to be treated, not as an enemy merely of the injured party, but of the human race.

Phillimore holds that it has been made a matter of dispute with respect to Treaties whether a change of circumstances subsequent to the Treaty does not operate to the defeasance of the Treaty itself. If so, *à fortiori*, a violent change, a disruption

of such relations provided in any Article of the Treaty which defeats its object, leaves the Treaty itself voidable at the election of the injured party.

The Committee do not propose that this country, after paying so much, should waive or remit the infraction; but it proposes that not only should there be a claim presented for the return of the 5,500,000 dollars, and a demand for the satisfaction of the losses at Fortune Bay, but that there should be a prompt reimposition of the duties on fish and fish-oils, which all countries except the dominion have continued to pay into our Treasury.

The Committee have not thought proper to consider such ultimate and protentous means and issues as look to reprisal or collision. All they propose is what their Bill proposes: that in the absence of agreement between the two Governments as to the interpretation of the Treaty and as to the effect of these provincial Statutes and Regulations, the great boon given to Dominion fishermen of a free market to the United States for their fish or fish-oils should be withheld. In ordinary cases, perhaps, the Committee on Foreign Affairs would not increase the revenues of the Government by any additional Tariff on any commodity, and much less when that commodity, which is a source of food, may be enhanced in price. It is not a matter in question whether fish will be cheaper or dearer by reason of the re-enactment of the tax on fish from the Dominion. It is a matter of patriotic respect and interest, when great advantages were given to the Dominion and the immense sum of 5,500,000 dollars paid, and the great exceptional privilege given to bring their fish into our market free, that the object for which we paid this sum and bestowed these privileges shall not now be allowed to turn to ashes. It would be a national humiliation, for which there is no material or moneyed equivalent, to allow such an audacious infraction by mob violence, under the cover or colour of mere provincial legislation, backed by British Imperial authority, without our using every remedy.

The United States can no more deal with these provinces than Great Britain can deal with New York or Massachusetts. They know only one party to the Treaty of Washington, namely, the Imperial Government. When the Imperial Government made this Treaty, everything inconsistent with that Treaty, either provincial Regulations or Statutes, were annulled by the Treaty, and everything possible to be enacted after the Treaty were to be subordinate to the clauses of the Treaty. When, therefore, our fishermen lost 103,000 dollars in the destruction of their seines and their venture, it is not only a case for reclamation against the British Government, but it is a case which puts us on our best endeavour to prevent any possible recurrence of such outrage. In fine, the circumstances make it the indispensable duty of our Government to withhold every consideration possible, not yet completed, in order to bring the Dominion or the British Government to the observance of the Treaty.

It may be that a restoration and even monopoly of the domestic market for the products of our own fish industry will do something to aid our own fisheries. Of that the Committee does not propose to take any account.

When Great Britain or the Dominion choose a Commission organized to consider the questions as to the reciprocal trade between the United States and the Dominion, such as this Committee have reported, it will be time to listen to their demands as to fish and all other articles. Thus, mutuality in the commerce of the two countries may have more prompt attention and relief.

The issue, as stated by the Secretary of State, between the two Governments, is this: shall there be provincial sovereignty over our fishery relations under the Treaty, after the exclusive sovereignty of that subject has been parted with by the Government of Great Britain.

The United States having acquired a participation in such fishery by paying the consideration fixed by the Treaty, how can the British Government claim, as Lord Salisbury did on the 3rd April, 1880, that these provincial regulations which were in force at the time of the Treaty still remain in full force; and especially, how can they make such claim when the very Minister himself acknowledged "the incompetency of the Colonial or even Imperial Government to remit by subsequent legislation the advantages secured by the Treaty to the subjects of another Power."

The freedom for which we have paid should neither be curtailed nor burdened. What we acquired from Great Britain under the Treaty was neither subject to the will of the provinces nor to the will of Great Britain. Having been fixed by Treaty, it should not be arbitrarily and forcibly annulled. If Great Britain had the power to dispose of her right, then we had from her the privilege of the shore fisheries. Our right is then equal to hers. There is no power except brute violence

to despoil us of that privilege which we have so abundantly and inordinately paid for.

The power of Great Britain over this subject was plenary. That plenary power was exercised not merely to obtain an immense sum of money which she has distributed among the provinces, and 1,000,000 of which was received by Newfoundland itself, but by the same authority we were made coparceners in the advantage of this freedom to fish on her sea coasts and shores.

Our citizens being, therefore, debarred from the enjoyments of the rights to which they were entitled under the Treaty of Washington, not only have they a just claim for redress to the amount of their damages which our Bill proposes to ascertain, but we have a right to withhold any one of the considerations which we yielded for the advantages thus denied. As nothing is given for the advantages we supposed we had received, so nothing should be left undone to rescue whatever we can from the grasp of these provincial law and Treaty breakers. The Committee therefore submit the accompanying Bill, and recommend its passage.

Inclosure 3 in No. 29.

46TH CONGRESS, 2ND SESSION.—HOUSE OF REPRESENTATIVES, 324.

[REPORT No. 1275.]

Joint Resolution relating to the Termination of Articles XVIII and XXI of the Treaty of 1871 with Great Britain relating to the Fisheries.

MR. RICE, from the Committee on Foreign Affairs, reported the following joint Resolution:—

Joint Resolution relating to the termination of Articles XVIII and XXI of the Treaty of 1871 with Great Britain relating to the fisheries.

"Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, that the President be, and he is hereby, respectfully requested to take such measures as will secure indemnity to our citizens for the damages sustained by them from past unlawful violence committed against them by the inhabitants of Newfoundland, and protection from any repetition of such violence, and to procure the early abrogation or termination of the Articles in the Treaty of 1871 relating to the fisheries."

Inclosure 4 in No. 29.

46TH CONGRESS, 2ND SESSION.—HOUSE OF REPRESENTATIVES.

[REPORT No. 1275.]

Relating to the Fisheries.

MR. RICE, from the Committee on Foreign Affairs, submitted the following Report:—

The Committee on Foreign Affairs, to whom were referred the Resolutions of the Legislatures of Maine and Massachusetts, relating to the termination of Articles XVIII and XXI of the Treaty of 1871 with Great Britain, having had the same under consideration, submit the following Report:—

The following Resolutions of the Legislature of the State of Maine were referred to the Committee on Foreign Affairs of this House:—

Joint Resolutions relating to the termination of Articles XVIII and XXI of the Treaty of 1871 with Great Britain.

"Resolved by the Senate and House of Representatives in Legislature assembled, that justice to fishermen and to the fishing interests of the country require that Articles XVIII and XXI of the Treaty concluded between the United States and Great Britain on the 8th May, 1871, should be terminated at the earliest possible period.

"Resolved, that we respectfully instruct our Senators and request our Representa-

tives in Congress to use all honourable means to accomplish the purposes indicated by the foregoing resolve.

"Resolved, that the Secretary of State be required to transmit a copy of these resolves to each of our Senators and Representatives in Congress, and also a copy to the President of the United States."

Similar Resolutions of the Legislature of the State of Massachusetts were referred at the same time to the Committee. Articles XVIII and XXI referred to in the foregoing Resolutions are as follows:—

"Article XVIII. It is agreed by the High Contracting Parties that in addition to the liberty secured to the United States' fishermen by the Convention between the United States and Great Britain, signed at London on the 20th October, 1818, of taking, curing, and drying fish on certain coasts of the British North American Colonies therein defined, the inhabitants of the United States shall have, in common with the subjects of Her Britannic Majesty, the liberty, for the term of years mentioned in Article XXXIII of this Treaty, to take fish of every kind, except shellfish, on the sea-coasts and shores, and in the bays, harbours, and creeks of the Provinces of Quebec, Nova Scotia, and New Brunswick, and the Colony of Prince Edward's Island, and of the several islands thereunto adjacent, without being restricted to any distance from the shore, with permission to land upon the said coasts, and shores, and islands, and also upon the Magdalene Islands, for the purpose of drying their nets and curing their fish: provided that, in so doing, they do not interfere with the rights of private property or with British fishermen in the peaceable use of any part of the said coasts in their occupancy for the same purpose.

"It is understood that the above-mentioned liberty applies solely to the sea-fishery, and that the salmon and shad-fisheries, and all other fisheries in rivers and the mouths of rivers, are hereby reserved exclusively for British fishermen.

"Article XXI. It is agreed that, for the term of years mentioned in Article XXXIII of this Treaty, fish-oil and fish of all kinds (except fish of the inland lakes and of the rivers falling into them, and except fish preserved in oils, being the produce of the fisheries of the United States, or of the Dominion of Canada, or of Prince Edward's Island, shall be admitted into each country, respectively, free of duty."

Article XIX of the Treaty concedes the same privileges to British subjects as are conceded by Article XVIII to the subjects of the United States. Article XXII of the Treaty provides for a Commission to determine how much shall be paid by the United States to Great Britain for the value of the privileges conceded by the Treaty to the United States by Article XVIII above the value of those conceded to Great Britain by Articles XIX and XXI. The Halifax Commission was duly appointed under the provisions of Article XXII, and awarded the payment of 5,500,000 dollars by the United States to Great Britain. Article XXXIII provides that Articles XVIII to XXV, inclusive, and Article XXX "shall remain in force for the period of ten years from the date at which they may come into operation, and further, until the expiration of two years after either of the High Contracting Parties has given notice to the other of its wish to terminate the same; each of the High Contracting Parties being at liberty to give such notice to the other at the end of the said period of ten years, or at any time afterward."

It was subsequently agreed that the Articles of the Treaty should take effect on the 1st July, 1873. According to the terms of the Treaty, therefore, notice of its termination cannot be given until July 1883, to take effect July 1885. As, however, the Commission awarded a very large sum as the excess of the value of the British concessions over those of the United States, which was not nearly what was claimed by the British counsel, it may be assumed that it ought not to be a difficult piece of diplomacy on the part of the United States to secure the termination of the Articles referred to at an earlier period than is provided by the Treaty itself, as the United States would thereby surrender privileges which were claimed by the British counsel to be of greater value, in exchange for those of less value. With the means, however, by which the result may be accomplished, this Committee have now nothing to do. The question for us to decide is whether we shall recommend the termination of the Treaty provisions relating to the fisheries, as requested by the Resolutions of the Legislatures of Maine and Massachusetts referred to us.

The fisheries have always been regarded as among the most important of our national industries. They furnish for our market a cheap and healthy article of food. They give employment to a large number of men, of a nature peculiarly interesting and advantageous to the country. They have been a nursery for sailors; a training-

school which has supplied experienced and hardy men to defend the flag upon the water in every war. In the colonial times the New England fishermen captured Louisburg under a General born among them, and pre-eminent in the traits of character for which they were, as a class, distinguished. During the Revolution their privateers swarmed the seas, earning wealth for their owners, and glory and advantage for their struggling country. In the war of 1812 they manned our vessels, and, under the motto of "Free trade and sailors' rights," they certainly did their part toward bringing the war to a successful conclusion. It may be that in future wars they may not play so conspicuous a part as in those of the past. Iron and steel are superseding wood and sail, and science fights the naval battle by its own instrumentalities, instead of the daring men who used to sail from the harbours of Gloucester and Marblehead, but still we cannot well anticipate the time when the qualities and experience gained by the fishermen in their adventurous business will not be most profitable to the country, not only in time of war, but in those commercial pursuits which are about to occupy a wider sphere, and enter more intimately into all international relations. This importance of the fisheries has always been recognized by our Government in its Treaty negotiations.

The Treaty of 1783 between Great Britain and the United States recognized the rights of American citizens to the fisheries, as they had been exercised before the Revolution, as fully as it did their rights to the soil within the boundaries of the States. The statesmen of that day would accept nothing less than perfect equality for our fishermen upon any fishing grounds where they might choose to go. John Adams said he would fight the Revolution over again if the fisheries were not secured to us. It was not his fault, or that of his compeers, that the United States have since been reduced to a position of humiliation and disgrace in this respect. In the Treaty by which they obtained recognition of our national existence, they included, as one of our recognized and vested national rights, freedom and equality upon the fishing grounds of the north-east, which had been won from France to England by New England fishermen, under their favourite leader, Sir William Pepperill.

The same freedom and equality would be ours to-day had it not been disgracefully surrendered in later negotiations. After the war of 1812, Great Britain claimed sole jurisdiction of the shore fisheries of her North American dominions, and excluded our fishermen from them on the ground that the Treaty had been terminated by the war, and the right of fishing on British fishing grounds was a Treaty right, not a vested right. In the Treaty of Ghent the subject was not included, the Commissioners of the two Powers avowing opposite views in regard to it. If the American view were the correct one, the right to fish in British water was a vested national right as much as that to the soil of the States, and did not need to be again provided for in the Treaty. If the British view were correct, the right ceased with the old Treaty, and could only be revived by being included in the new Treaty.

It is too late now to argue which of these positions was legally right. England maintained hers by the strong arm. She drove by violence our fishermen from the grounds won by their valour, preserved to them by the Treaty which fixed the national status, which they had done so much to secure, and which their courage and patriotism would have retained had they been sustained by the Government of their country. But this was not the fact.

In the Convention of 1818, the United States acquiesced to a great extent in the British claim. She renounced for ever the liberty before enjoyed of fishing within 3 marine miles of any of the British coasts, excepting the shores of the Magdalen Islands, the north, south, and west shores of Newfoundland, and the shores of Labrador. A pusillanimous provision was inserted into the Treaty that American fishermen should be allowed to enter British bays and harbours for the purpose of shelter and repairing damages, of purchasing wood and obtaining water, and for no other purpose whatsoever. But a judicious system of bounties, and the superior energy and skill of our fishermen, enabled them to survive even this treacherous betrayal of their interests. From 1825 to 1854 the fishing business of Massachusetts constantly and regularly increased. In 1825 the fishing fleet from Gloucester consisted of 154 vessels, of 6,000 tons burden; in 1847, of 287 vessels, of 12,000 tons; and in 1854, of 300 vessels, of over 20,000 tons. The business of the other fishing towns increased in similar proportion.

In 1854, our diplomacy struck another blow at the fishing interests by the Reciprocity Treaty. This Treaty gave to American fishermen the right to British inshore fisheries, and the same right to British fishermen in American waters north of the 36th parallel. It also opened the markets of each country to fish of the other, free

from duty. The greater demand in the American market made this concession of great value to British fishermen; they at once enlarged their fleets, and when the reverses of our civil war drove our vessels from the fishing grounds they pressed their advantages, and supplied our market with free fish, while our fishermen were engaged in the navy in the war, or were, by force of circumstances, excluded from participation in the business which had supplied themselves and their ancestors for generations. It will be noticed, by reference to the prices current, that the price of fish was not varied to the American consumer. The hardy toiler on the seas was depressed—the bread was taken from him; but there was no compensating advantage to any one except the British fisherman and the market middlemen.

In 1866, the Reciprocity Treaty was terminated, against the wishes of the Canadians, who were but too eager to continue a system which brought them many dollars for every one it took from them; they then sold licences to American vessels to fish in their waters, raising the price of the licence year after year from 50 cents to 2 dollars a ton, until at the last price American fishing vessels disappeared from British waters.

The provisions of the Treaty of 1871 relating to the fisheries have already been stated. The fishermen of New England, through their representatives in Legislature assembled, now ask that these provisions be terminated. They admit that they would derive some advantages from the free and undisturbed enjoyment of the privileges accorded them in these provisions, but they say that the disadvantages are vastly greater than the advantages, and that while they are subjected to the disadvantages in full force, they are deprived of the paltry advantages by local prejudice and annoyances, culminating in mob violence, not hindered by the local authorities, and now apparently sustained by the Home Government.

It was claimed by the American counsel before the Halifax Commission, and supported by what seems to be the strongest testimony, that the value of the American concessions was equal to that of the British concessions, and that no balance, or at least but a very small one, should be awarded against the United States.

It is useless here to discuss the character of the testimony by which this claim was controverted, or of the Tribunal by which it was coolly and peremptorily disregarded. After payment of the award, the men most interested in the subject justify the claim of our counsel by offering to resign what they get for what they give, less the 5,500,000 dollars award, which we must be content to pay for our experience of the result of friendly arbitration with Great Britain—they only ask to be restored to the ante-Treaty status, and they will trust to their own resources for future protection against Canadian competition. Their claim in substance is, that the privileges they gain may be estimated in money value, pretty accurately, by the highest amount which could be derived by the Canadian Government from licences between 1866 and 1871, before the price was raised to the prohibitory point, which was less than 40,000 dollars a-year, while, on the other hand, the duty on the fish which the Canadians import free into our markets would average 350,000 dollars a-year: they complain that the Treaty discriminates against them in favour of the Canadians, that they fish in vessels and with apparatus whose price is increased by the duty imposed upon the materials of which they are made, while the British fish in smaller, less expensive, and untaxed vessels. They are far from home; the British are along their own shores, near their supplies, and the catch of both is equally free to enter our markets. They profess a confidence in their own ability to overcome by superior skill and energy the other disadvantages, excepting those growing out of their heavier taxation at home, but they claim that while they sustain their share of the burdens of their own country by payment of duties and taxes they should be protected, as are other industries, against the competition of those who are not subjected to these burdens; they claim that they should be allowed to fish in untaxed vessels, or should be protected against their competitors who fish in untaxed vessels. Handicapped by this indirect discrimination, they claim that it is only a question of time when their business will be ruined, and the fisheries so highly prized by the early statesmen, so important in many respects to the country, be given over to their British competitors; they complain still further that they are deprived of the small advantages which they might derive from the Treaty, and for which this country has paid so dearly by colonial legislation and by illegal action by the British fishermen, and thus far without redress or protection. And they give proof of the sincerity of these complaints by asking for the abrogation of these Treaty provisions.

It is easy to understand the advantages derived by the British fishermen from the freedom of our markets. Statistics show that their business is increased and ours diminished by the operation of these provisions.

After the abrogation of the reciprocity Treaty in 1866 to the Treaty of 1871, the tonnage of United States' vessels over 20 tons, engaged in the fisheries, increased 27,418 tons. Since the Treaty it has decreased in Massachusetts alone 12,709 tons.

During the last period the Canadian tonnage has steadily and rapidly increased. From 1871 to 1877 (we have not the statistics for the subsequent years) this increase was 35,580 tons in 645 vessels, manned by 11,181 fishermen. These figures tell the story of the results of the Treaty upon the fishing interests of the two countries. Is it any wonder that our fishermen ask to be relieved from the results of diplomacy and friendly arbitration, and to be left once more to their own resources unaided by the advantages of British concessions ?

But it is not necessary to rely wholly upon these statistics. A brief consideration of the fishery business as at present conducted will enable us to understand why the so-termed Treaty concessions are of so little value to our fishermen.

The Atlantic fisheries, as pursued by American fishermen, comprise the cod, halibut, mackerel, and herring fisheries. The cod fishery is unqualifiedly an ocean fishery, extending from 10 to 100 and more miles from the shore ; the most prolific grounds are the banks on the inner edge of the Gulf Stream, from Hatteras to Cape Race, thence north indefinitely, following the Arctic and Greenland currents. None of these banks are under British jurisdiction, but are the common property of all nations. No cod of any consequence are taken by American vessels within 3 miles of British territory. The concession of in-shore fishing, so far as this branch of the fisheries is concerned, is of no considerable value.

Halibut are now taken by American fishermen in the deepest water upon the ocean banks ; they have been taken at particular seasons in the Gulf of St. Lawrence, but never continuously, and of late years not to any considerable extent at any time. The American fishermen are content to take the halibut from the same localities where they take the cod. In-shore halibut fishing in British waters is of no value to them.

The habits and grounds of the mackerel are more uncertain and varying. They make their appearance off Hatteras in April, and apparently move north. In June they are found off Massachusetts and Maine, and at nearly the same time in the Gulf of St. Lawrence. From the time of their appearance in April, until November, they are found at all these points, varying in quantity and quality at different times, and at from 1 to 100 miles from shore. Even of the small proportion of the entire catch taken by American fishermen in the Gulf of St. Lawrence not more than one-quarter is taken within three miles of the shore. The quality of these is inferior to that of those taken off our own shores, especially of late years. In the present condition of this much-changing and uncertain fishery, our fishermen may, about as well as not, keep entirely out of British waters ; certainly the benefit of entering them is very small. The trade to the inhabitants of the provinces and islands from our fishermen, and the advantages they would derive from observation of their superior methods, would alone be ample compensation for this advantage. It certainly is no object for us to retain this petty privilege to be practised in the midst of a jealous and hostile population.

The herring fishery, different from the others, is almost wholly a shore fishery. They are taken on the shores of Massachusetts and Maine, and of nearly all the British provinces and islands. But the Americans have heretofore not been accustomed to use British waters for taking herring in such a way as to make it an American fishery. They have either hired the boats and apparatus of the British fishermen, or bought their herring from them to be sold in our market or used as bait in the cod fishery. The least valuable of all the fisheries, the profit is scarcely large enough to engage the attention of our fishermen. While it is admitted to be of some advantage to them to have the right to fish for herring in British inshore waters, and to be the one concession in the Treaty which is of the greatest value to them, yet it is by no means an indispensable advantage. The right to fish can be wholly abandoned, and the commercial right of purchase from British fishermen, now very largely used, be the sole dependence. It is worth something, but a mere trifle compared with what is paid for it.

All the above statements of the value of these fisheries to our fishermen were

made by our counsel before the Halifax Commission, and sustained by testimony. The British counsel, on the other hand, claimed that they were of immense value, amounting in their claim, in the aggregate, to 12,000,000 dollars. We now prove the honesty of our claim by the offer to terminate, without consideration, the Treaty provisions which concede these privileges. It is probably too much to anticipate that British sincerity will bear an equal test.

But there is another branch of this subject which demands our consideration. Without reviving old recollections, forgetfulness of which is most conducive to the kindly feeling we desire to entertain towards Great Britain, we can at least assume that we now deal with her on equal terms. Never second in anything tending to promote such an intercourse as should exist between Christian nations of kindred blood and instincts, we shall not fail to exact for our citizens the same treatment which we accord to others under Treaty or International Law, and to demand and obtain restitution for all violation of these laws and obligations toward our citizens. It smacked a little of the old spirit when the British counsel at Halifax deemed worthy of consideration the privilege of our fishermen to put into their bays and harbours for shelter and trade. These are common international privileges.

It seems to this Committee that what we receive in this respect we return; that it is not necessary to provide in a Treaty that the vessels of a friendly Power are to have the privilege of shelter and trade in our ports, but that the enforcement of this common privilege can safely be left to the operation of charity and mutual interest.

Scarcely had the heavy price been paid, rather as a tribute to national honour than because it was due on any principle of equity or fair dealing, when the jealousy of the British fishermen and the ingenuity of provincial legislators was set at work to devise means of depriving us of the paltry privileges of mackerel and herring fishing, and of trade and shelter, which we had so dearly bought. Legislative measures were proposed, and some of them enacted, the result of which would be to restrict and hamper us in the exercise of our Treaty privileges.

Legislation restricting the sale of bait and of ice for packing to American fishermen were discussed in the Newfoundland Legislature. A Statute was enacted April 1876 prohibiting the taking of herring and other fish used for bait on Sundays. It may well be argued that any restrictive legislation in conflict with the Treaty concessions would not be applicable to American fishermen. In the discussions before the Halifax Commission, the British concessions were rated at full price, as without restriction, and whatever local laws might be made, the Treaty stipulations should override them as to American fishermen. The inshore herring fishery, as has been seen, was almost the only concession of the Treaty worth anything to Americans. By it they could catch their own herring instead of buying them from the British fishermen.

But to make this privilege worth anything they must do their fishing in their own way; they are at a distance from home; the British live on shore in sight of the fishing grounds; they must use vessels built strongly and of the best material, fitted to withstand the roughest ocean weather; these vessels are from 50 to 150 tons burthen, and cost from 5,000 to 10,000 dollars a-piece; the British fish in boats worth perhaps 100 dollars a-piece. Under these circumstances, the Americans must fish at the most advantageous times and in the most expeditious manner. They have but a few days for their season's work, while the British have nothing else to do the year round. As a consequence, the Americans use seines in the herring fishery of much larger capacity than those used by the British. By use of them they can catch herring enough in a day, when they appear, to load an entire fleet. With these preliminary statements we can better understand the events which took place at Fortune Bay, Newfoundland, 6th January, 1878. We give the statement of the owners of two of the American vessels made to the Secretary of State, which is as follows :—

"To the Hon. William M. Evarts, Secretary of State.

"Respectfully represent John Pew, Charles H. Pew, and John J. Pew, all of Gloucester, county of Essex, and commonwealth of Massachusetts, co-partners under the firm-style of John Pew and Son, that they are American citizens, and engaged in the fishing business at said Gloucester, and were and are owners and fitters of fishing vessels; that they are the sole owners of the American fishing schooners 'Ontario' and 'New England,' of said Gloucester, and were such owners in the months of November, December, and January last past; that both of said schooners were fitted

for the herring fisheries in the month of November, 1877, and for voyages to Newfoundland, and provided with seines for catching herring; that said schooner 'Ontario,' whereof Peter McAulay was master, sailed on the 1st day of December, 1877, from said Gloucester, and the said schooner 'New England,' whereof John Dago was master, on the 28th day of November, 1877; that both schooners had a full supply of men and outfits for said voyage; that said schooner 'Ontario,' when she sailed from said Gloucester on said voyage with her outfits and seine, was worth the sum of 7,500 dollars, and the said 'New England,' with her outfits and seine, was then and there of the value of 8,500 dollars; that said schooners both returned to said Gloucester from said voyage on the 17th day of February without any herring, except that the said 'Ontario' had about fifty barrels purchased by her.

"And we further represent that we are informed by the masters and crews of said schooners, and believe the same to be true, that the reason why they returned without any herring, and made disastrous voyages, is that they arrived at Long Harbour, Fortune Bay, Newfoundland, on or about the 16th day of December, 1877, and found herring scarce, and were unable to obtain any considerable quantity of herring, and that the masters and crews of said schooners waited at said Long Harbour until the 6th day of January, 1878, to catch or purchase herring, as they might be able to do; that on said 6th day of said January, the 'signs for herring being good,' the masters and crews of both of said schooners joined their purse seines, thereby making a double seine, which was the value of at least 1,400 dollars, and making a seine of about 2,400 feet long, and 150 feet deep; that the masters and crews of said schooners threw said double seine at said Long Harbour, and caught and secured therein a very large quantity of herring, amounting to at least 2,000 barrels of herring, and more than sufficient to load both of said schooners; that at about 4 o'clock of said 6th day of said January, some 200 men who belonged about Fortune Bay, and had gone ashore from English vessels in said Long Harbour, made a warlike demonstration against the masters and crews of said schooners, and seized hold of said double seine, tore it in pieces, and carried it off, and thereby freed all of said herring, and prevented the masters and crews of said schooners from obtaining them, and thereby destroyed all hope of their obtaining a cargo for either of said vessels; that of said 200 men some sixty took hold of said seine and destroyed it, and the others were participating in the destruction of the seine by inciting and encouraging those who were destroying it; that the masters and crews of said schooners were pursuing their business of catching herring at said Fortune Bay in a lawful manner, and were not in any manner or form interfering with the rights of any party or parties at said Newfoundland, and that the action of said parties in destroying said seine was a most wanton destruction of the property of said firm, and was without the least justification in law or good conscience, and was intended to be a warlike demonstration against the American vessels, their owners, masters, and crews, and to intimidate them and prevent them from prosecuting the herring fisheries in the waters of Newfoundland by catching herring, and thereby compel them to buy herring of the inhabitants of Newfoundland, if they would obtain them, at such prices as said people of Newfoundland might ask for them; that all the American vessels at said Newfoundland on said 6th day of said January were from said Gloucester, and were there for herring, and among them were the schooners 'Moses Adams,' 'Herbert M. Rogers,' 'John W. Bray,' 'F. A. Smith,' 'Hereward,' 'William E. McDonald,' 'Moro Castle,' 'Ed. E. Webster,' 'Bonanza,' 'Wildfire,' 'Bunker Hill,' and 'Isaac Rich;' that said schooners 'Ontario' and 'New England' were, by reason of the destruction of said seine and the freeing of the herring therein, both prevented from obtaining cargoes for said schooners.

"That, after the destruction of said seine, as above set forth, the said parties who had destroyed the same returned to their vessels, and on the evening thereafter, to wit, on the evening of the 6th day of said January, they made a jubilant demonstration, blowing horns, firing guns, and shouting as if celebrating a victory, to impress upon the masters and crews of the American vessels in said harbour that they were prepared to stand by and justify what had been done, and that the Americans might expect to be treated in future in the same manner should they attempt to catch herring in Newfoundland waters. And we further respectfully represent that, in view of the treatment of the American fishermen by the British subjects at said Newfoundland, it is wholly unsafe for American vessel owners to fit vessels for and send them to Newfoundland waters to catch herring, and that it is unsafe for American fishermen to attempt to catch fish in said waters, and that the demonstration against the American fishing-vessel owners, masters, and crews is of such a character as to make it a public violation of the rights of the citizens of the United States wishing to catch herring and

attempting to catch herring there. That the loss to said firm by reason of the warlike demonstration of the people of Newfoundland hereinbefore set forth, and the destruction of said seine in the voyages of said two schooners 'Ontario' and 'New England,' amounts to at least the sum of 6,700 dollars. In verification of the facts herein set forth, we beg leave to refer to the affidavits of the masters and crews of both of said schooners 'Ontario' and 'New England,' herewith submitted.

"Wherefore we respectfully ask that your Department will cause our said damage to be paid by the British Government, and such action to be taken as will secure to American ship-owners and fishermen the rights to which they are justly and legally entitled by the laws and Treaties of the United States. And as in duty bound will ever pray.

(Signed) "John Pew.
"Charles H. Pew.
"John J. Pew."

American fishermen had been in the habit of purchasing herring from the British rather than of taking them themselves. This was the source of a profitable trade to the Newfoundlanders; the loss of this trade by the concession of inshore fishing to the Americans was made one of the points of damage to be paid for by the British counsel at Halifax.

It was also made a farther point that the Americans, taking their herring under the circumstances already referred to, would use large seines, and thus not only do their work more speedily than the British, but, perhaps, to such an extent as to reduce the supply. Both these points were considered, if anything was considered, in making up the Award. For the first time after the Treaty the attempt to catch herring under its provisions was made on any considerable scale. Twenty-two vessels went from Gloucester to Fortune Bay, for the purpose of taking herring, in the winter of 1877-78; they waited there from the 15th December until the 6th January, awaiting the arrival of the expected schools of herring. On Sunday, the 6th January, these schools arrived. The Americans at once proceeded to improve the opportunity they had so long waited for. They got out their boats and seines, and commenced proceedings. Had they been permitted to proceed, they claim that they could have taken herring enough on that day to load all their vessels. But they were attacked by a large and violent mob of the Newfoundlanders, their seines were injured or destroyed, and they were compelled to desist. They made no further attempts to fish, and most of them went home in ballast. This wholesale outrage was but the culmination of a long series of petty annoyances by which American fishermen, seeking to avail themselves of the Treaty privileges, had been harassed after the ratification of the Treaty. Thus were they deterred by local prejudice, culminating in mob violence, from enjoying the petty privileges for which this Government had opened our markets to British fishermen and paid in addition 5,500,000 dollars. The Secretary of State made complaint to the British Government of the outrages at Fortune Bay. The 23rd August, 1878, Lord Salisbury replied. He excused the inhabitants of Newfoundland, on the ground that the American fishermen had, on that occasion, committed three distinct breaches of the law:—

1. They had used seines for catching herring.
2. They were catching herring on Sunday.
3. They were barring the herring.

The first and third of these points were correct, if the local law superseded the Treaty provision; but that would seem to be settled in our favour by the 28th section of the Statute in which the prohibitions were contained, which is as follows:—

"§ 28. Nothing in this chapter shall affect the rights and privileges granted by Treaty to the subjects of any State or Power in amity with Her Majesty."

The Sunday law was created subsequently to the Treaty. This construction of the territorial law, which we understand to be insisted upon by the British Government in a late despatch, and the inferred approval of the hostile action against our fishermen, deprives us of all the privileges which the British Government priced so highly and for which we paid their price.

As the matter now stands, we got but little by the Treaty, and that little is taken from us by unlawful violence apparently sustained by the British Government. We gave a great deal in return, part of which has already been finally paid and is beyond our recall; but a portion of the consideration is in the opening of our markets to the British fishermen free of duty. That privilege they are still enjoying, to their great gain and our great loss. In view of the position assumed by the British Government

in regard to the outrages at Fortune Bay, it would seem proper for our Government to declare the Treaty terminated for violation of its provisions by the other Contracting Party, and for Congress to sustain such action. Such a course would seem almost the only one consistent with proper national self-respect. But, whatever may be deemed the wisest course in this respect, it would not seem a debateable question that our Government should take measures to terminate the fishery Articles of the Treaty at the earliest possible moment. The Committee, therefore, recommend the adoption of the following joint Resolution :—

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

"Resolved, that the President be and he is hereby respectfully requested to take such measures as will secure indemnity to our citizens for the damages sustained by them from past unlawful violence committed against them by the inhabitants of Newfoundland, and protection from any repetition of such violence; and to procure the early abrogation or termination of the Articles in the Treaty of 1871 relating to the fisheries."

No. 30.

Mr. Herbert to Sir J. Pauncefote.—(*Received September* 18.)

(Extract.) *Downing Street, September* 17, 1880.

I AM directed by the Earl of Kimberley to transmit to you, to be laid before Earl Granville, the accompanying copy of a despatch from the Governor of Newfoundland, transmitting a Report by Commander Hall, R.N., of Her Majesty's ship "Flamingo," on an alleged case of obstruction offered to some American bait-vessels at Job's Cove, Conception Bay, on or about the 3rd August.

Attached to the Report is a copy of the deposition of Loren B. Naus, of the American schooner "Moro Castle," the vessel interfered with by the Newfoundland fishermen.

Inclosure 1 in No. 30.

Governor Sir J. Glover to the Earl of Kimberley.

My Lord, *Government House, Newfoundland, September* 2, 1880.

I HAVE the honour to transmit, for your Lordship's information, six printed copies of the Report of Commander Hall, R.N., Her Majesty's ship "Flamingo," whom I desired to inquire into a case of obstruction offered to some American bait-vessels at Job's Cove, Conception Bay, on or about the 3rd August.

2. On the 10th August I heard that some obstruction had been offered to certain vessels at the before-named place, and I at once placed myself in communication with Commander Hall, in order that immediate steps might be taken to investigate the case

3. I also transmit, attached to the Report, a copy of the deposition taken upon oath, of Leven B. Naus, of the American schooner "Moro Castle," the vessel interfered with, from which your Lordship will observe that no injury was done to himself, his crew, or his vessel.

4. I will report further on this case by the next mail.

I have, &c.

(Signed) JOHN H. GLOVER.

Inclosure 2 in No. 30.

Captain Kennedy to Governor Sir J. Glover.

"*Druid*," *at St. John's, August* 24, 1880.

SUBMITTED for the consideration of his Excellency the Governor of Newfoundland, observing that the original and duplicate Reports have been forwarded to the Commander-in-chief.

(Signed) W. R. KENNEDY.

Commander Hall to Captain Kennedy.

Sir, "*Flamingo*," *at St. John's, August* 23, 1880.

I have the honour to inform you that on the 16th instant I received two telegrams from his Excellency the Governor of Newfoundland, requesting me to inquire into the obstruction offered to some American bait vessels at Job's Cove, Conception Bay, about the 3rd instant.

2. I proceeded to Job's Cove on the 18th instant, and made the necessary inquiry, and beg to forward herewith a report of the same.

3. I took the depositions, on oath, of five of the inhabitants of the cove.

4. Two happened to be on shore when I landed, and the others came in from fishing later on.

5. I examined each man separately, and I am satisfied they had no opportunity of consulting together during the inquiry, and agreeing as to what should be said.

6. It will be noticed that four of the men examined are named English; this, I was informed, is a very common name at Job's Cove, nearly the whole population being more or less related to one another.

7. The facts of the case appear to be as follows:—

8. About the beginning of this month several American and British bankers came to Job's Cove for squid.

9. The former anchored in the middle of cod nets laid down by the Job's Cove people, one vessel anchoring on top of a net belonging to one of the men examined; the latter (the British vessels), anchored nearer the shore and clear of the nets.

10. The day was fine, with but little wind or sea, and the nets were all marked by large buoys, which were distinctly visible.

11. The same afternoon the Americans commenced to jig for squid from their vessels.

12. Upon seeing this the Newfoundland fishermen, comprising men from Job's Cove and several of the neighbouring settlements, from 200 to 400 in number, including four of the five men examined, who were jigging for squid from boats nearer the shore, the usual squid grounds, pulled off to the American vessels and told the crews they must not jig for squid there, as it was in the middle of their nets and their best fishing ground, and they would draw the squid out of the bight into the tide, when they would be swept away.

13. They further told them they should either bring their vessels nearer the shore where the British bankers were anchored, or else come into the bight in their dories and jig for squid, where they could do so without any hindrance.

14. On being told this the Americans ceased jigging, and the Newfoundland fishermen returned to the bight.

15. The next morning, observing that the Americans had resumed jigging from some of their vessels, they (the Newfoundland fishermen) went off alongside them, and told them the same thing again, upon which the Americans ceased jigging.

16. On the Newfoundland fishermen returning to the bight they observed jigging going on again from some of the American vessels, and went off alongside one or more of them for the third time, and told the same thing they had said on the two previous occasions.

17. The Americans again ceased jigging, but recommenced as soon as the Newfoundlanders left.

18. On seeing this the Newfoundlanders went off for the fourth time to one of the vessels they had spoken to before, and about thirty to forty jumped on board.

19. These men then told the captain that if he did not stop jigging there they would heave his anchor up, and they again told him to come into the bight if he wanted

squid, either in his vessel or his boats, and offered to pilot him in, or to another good squid ground nearer the shore, and about half a mile off, which offers were declined.

20. They also told him he must cast off the punts made fast to his vessel, in which some Newfoundlanders were jigging for squid.

21. The captain replied that he would leave when he was ready.

22. Shortly after (one witness said while they were actually on board), a strong breeze sprung up from the westward, blowing right into the cove, obliging all the vessels, British as well as Americans, to weigh at once and leave the anchorage.

23. The British bankers anchored further to windward under the land on the squid ground before mentioned, and the Americans proceeded to Northern Bay, about 2½ miles to the westward.

24. The next day several of the Americans came to Job's Cove in their dories, and bought bait, and amongst them was the captain of the vessel which had been boarded.

25. One of the men examined stated that when he took up his net the day after the American vessels had left he found it almost destroyed, and believes it was damaged by the American vessels which anchored on top of it

26. One of the American vessels is also stated to have dragged about her own length when the breeze sprung up.

27. I have been unable to obtain any information relative to the specific complaint made by the Americans, and am therefore not in a position to say whether the inquiry has been sufficiently comprehensive.

28. By the Treaty of Washington of 1871, the provisions and stipulations of which, as regards Articles XVIII to XXV inclusive, have been extended to the Colony of Newfoundland, Americans have, in common with British subjects, the liberty to take fish of every kind, except shell-fish, on the sea coasts and shores of this Colony without being restricted to any distance from the shore; but this liberty cannot be exercised to the detriment of British subjects.

29. In this case the anchoring of the American vessels in the midst of cod nets set by British subjects, marked by easily-seen buoys, the significance of which is known to all engaged in fishing operations, was, in my opinion, detrimental to the owners of these nets, as one net was damaged by one of the vessels.

30. The anchoring of these vessels amongst their nets, and on their best fishing ground, naturally annoyed the Job's Cove fishermen, and this annoyance was increased when they found their remonstrances unheeded.

31. Although they boarded one vessel with the avowed intention of weighing her anchor if she did not stop the practice complained of, jigging from this vessel, not any the others left in consequence of this threat, but because the strong westerly wind which sprung up, blowing right into the cove, obliged all the vessels anchored there to weigh.

32. With regard to the Americans, it seems to me that, in anchoring in the midst of well-marked nets, they were interfering with and impeding British subjects in the free exercise of their rights of fishing, which they were not justified in doing by the terms of the Treaty of Washington.

33. As regards the proceedings of the Newfoundland fishermen, their proper course would appear to have been to complain to the nearest magistrate, if there was no man-of-war at hand, when they found their remonstrances were unheeded, and invoke the aid of the law; but on this point there is something to be said on their side.

34. The nearest magistrate, I understand, resided at Old Perlican in Trinity Bay, 7 miles in a straight line by land, and 23 miles by water, from Job's Cove, and whoever went to him would lose his fishing for the time being, for which he would receive no compensation; moreover, immediate action was considered absolutely necessary to prevent the squid being driven out of the bight and swept away by the tide, a result which is stated to have actually occurred in consequence of the Americans' proceedings.

35. I believe the Newfoundland fishermen acted mainly from ignorance of the law, as I was several times asked whether the Americans had any right at all to come to Job's Cove; and I have, during my cruize round the coast, found the fishermen, as a rule, always willing to abide by the law when it has been explained to them by some one of authority.

36. I understand the bankers come to the coast chiefly in the latter end of May and beginning of June for caplin; and again the latter end of July and beginning of August

for squids; and that as a rule they all come together at the same time and to the same place each year.

37. At Carbonear this year forty-five bankers arrived in one day.

38. The recurrence of these disputes may, I believe, be prevented by informing the inhabitants of the outlying settlements, which are frequented by bankers, in clear language, of the right of the Americans, under the Treaty of Washington, and warning them that in the event of their having any complaints against any bankers, whether foreign or British, they are at once to make them known to the nearest magistrate, or British man-of-war if one is at hand, who will be instructed to make immediate inquiry into such complaints, and by further warning them that they are on no account to take action themselves.

39. In order to facilitate communication with the magistrates, I would further suggest that when the bankers arrive on the coast the magistrates of the districts visited be at hand in some central settlement and give notice to the inhabitants of the respective settlements under their jurisdiction that they are there, and that if there is any cause of complaint against any of the bankers, it is at once to be made known to them, and they will proceed immediately to inquire into it, and that they are on no account to take action themselves.

40. I believe if this course can be adopted it will effect the desired end. (Copies of depositions inclosed.)

I have, &c.
(Signed) W. H. HALL.

The deposition of Philip English, taken upon oath, and who saith :—That about the beginning of August about five or six American vessels came here for squid, and anchored about three-quarters of a mile off the bight. One of them anchored right on top of a net I had down, the position of which was shown by large wood buoys. As soon as they anchored they commenced to jig for squid from the vessels. In the bight, about halfway between the American vessels and the shore, the Newfoundland fishermen, from Job's Cove, Gull Island, Northern Bay, Burnt Point, including myself, about 300 or 400 in all, were jigging for squid on their usual ground. We went off the afternoon they anchored alongside one vessel and told them they mustn't jig there, as they would bring the squid out of the bight into the tide and they would be swept away. We also told them that where they were was our best fishing ground then, and we hailed the other vessels and told them the same. They then knocked off jigging, and we returned to the bight. The next morning the Americans went on jigging again, and we went off alongside the same vessel again and told them the same thing again. They knocked off jigging then, and we returned to the bight. They then went on jigging again from the vessels. We went alongside the same vessel the same morning the third time, and told them that if they did not come in the proper bight and jig, we would haul their anchors up. We returned to the bight and then they went on jigging again. Then we went off a fourth time alongside the same vessel, and went on board her, and told the captain he mustn't jig squid there, but that we would pilot him into the bight, where several Newfoundland vessels were anchored, or he must come into the bight in his dories and jig, otherwise we would haul his anchor up. Shortly afterwards it blew hard from the westward, and they all left, Newfoundland vessels as well. Some of the Newfoundland vessels returned next day. The Americans went to Northern Bay. The next day the captain of the American vessel we boarded came over in a dory and bought squid in Job's Cove. Since the American vessels left the squid have all disappeared from the bight.

The evening after the American vessels left I hauled up my net, and all I found was a bit of twine in one end of it, and the foot-rope broken in three or four places. I believe this was done by the vessel that anchored on top of it. The net was two years old, and made of three-thread caplin twine, and was in thorough good order when I laid it down.

We offered no violence, nor were any threats used towards the Americans.

(Signed) PHILIP ENGLISH, his × mark.

Sworn before me, at Job's Cove, the 18th day of August, 1880.

(Signed) W. H. HALL, *Commander, H.M.S. "Flamingo," and Justice of the Peace for Newfoundland.*

The deposition of Richard English (son of Edward English), taken upon oath, and who saith that about a fortnight ago, one afternoon, four or five American vessels (bankers) came here for squid, and anchored from ½ to ¾ of a mile off the bight, one of them inside three of my nets and outside of one, about 150 yards from them; these were large bottom cod-nets with wooden buoys. The Americans commenced to jig squid from their vessels. In the bight, about midway between the Americans and the shore, Newfoundland fishermen from Job's Cove, Burnt Point, Gull Island, and Northern Bay, about 200 in all, including myself, were jigging for squid, that being the usual squid ground. We all went off alongside three of the Americans, and told them it was not allowed here to jig squid on our fishing ground, they should come in their dories into the Bight where we were jigging. We told them that where they were jigging was our prime fishing ground; they knocked off jigging then. The next morning the Americans went on jigging from three of their vessels. We all went alongside one of these vessels, the first one visited the day before, and told them again it was not allowed to jig squid there, and that if they wanted squid they must come in their dories and jig squid in the bight. They stopped jigging then, and we returned to the bight. They then went on jigging again from the vessels, and we went off a third time to another of the three vessels visited before, and told them they should either bring their vessels into the Bight or go in their dories there for squid. They knocked off jigging then, and we offered to pilot their vessels into the bight, where four Newfoundland vessels were anchored, for squid, or else to pilot them to another good squid-jigging ground, about ½ a mile away; but they refused these offers, and we returned to the bight. The Americans went on jigging again from their vessels, and then we all went off to one of the vessels, the last one we had seen jigging, and a good many, including myself, went on board. We told them we would heave their anchors up if they did not knock off jigging there, and cast off all the punts which had come from other places, and were made fast to her, jigging. The captain said he should leave "When he'd see his own time when he would be ready." While we were on board it came on to blow hard from the westward, and all the schooners, both American and Newfoundland, had to get under weigh, and one of the latter had to slip her chain and the Newfoundlanders anchored on the jigging ground before mentioned. The Americans went to Northern Bay, but came back in their dories the same evening and next day, and bought squid from us. We offered no violence, nor were any threats used towards the Americans.

(Signed) RICHARD ENGLISH, his × mark.

Sworn before me, at Job's Cove, this 18th day of August, 1880.

(Signed) W. H. HALL, *Commander, H.M.S. "Flamingo," and Justice of the Peace for Newfoundland.*

The deposition of Patrick Kinsella, taken upon oath, and who saith that about a fortnight since several American vessels came here for squid, and anchored between ½ to ¾ mile off the bight. They anchored inside some cod-nets and outside others. I had three bottom-nets down, buoyed by large wood buoys, and two of these were outside and one inside them. One of the vessels was within 70 yards of one of my outside nets, and about the same distance from the inside one, There was very little wind when they came, and the buoys could be readily seen. In the evening the Americans commenced to jig squid from their vessels. Newfoundland fishermen, about 200 in number, myself included, were jigging in the bight for squid, about half-way between the American vessels and the shore, the usual squid ground. We went off alongside one of the vessels and told them it was our best fishing ground, and they must not jig there, and told them they must either bring their vessels into the bight where some Newfoundland vessels were anchored, or else come in the bight in their dories and jig for squid. They knocked off jigging then. The next morning they commenced jigging again, and we went alongside the same vessel and told them the same thing. They stopped jigging then, and we returned to the bight. They commenced jigging again, and we went off alongside several of the vessels and told them the same thing again. They stopped jigging then, and we returned to the bight. They then commenced jigging again. We went off and boarded one vessel, and told the captain we would pilot him into the bight, or else to another good squid ground under the land about ½ a-mile off. He refused these offers, and then we told him if he didn't stop jigging there, we would heave his anchor up. Shortly after it came on to blow hard from the westward, and they all left, Newfoundlanders as well; the latter went to the

other squid ground before mentioned, and the Americans went to Northern Bay. The next morning the Americans came here in their dories and bought squid. The squid, since the Americans left, have all gone, and we have been without squid since. We offered no violence, nor were any threats used towards the Americans.

(Signed) PATRICK KINSELLA.

Sworn before me, at Job's Cove, the 18th day of August, 1880.
(Signed) W. H. HALL, *Commander, H.M.S. "Flamingo," and Justice of the Peace for Newfoundland.*

The deposition of Richard English (son of James English), taken upon oath, and who saith that about a fortnight ago several American vessels came here for squid, and anchored about ½ a-mile from the bight, right among the nets, and inside two of my bottom cod-fish nets, marked by two large buoys. There was very little wind when they came in, and the buoys could be very readily seen. The American vessels commenced to jig squid. About 200 of us were jigging squid about half-way between the American vessels and the shore, our usual squid ground. We went off alongside two of the vessels and told them to knock off jigging squid, as they were on our best fishing ground, and they were amongst our nets. We also told them they were drawing the squid out of the bight, and we should get no more for bait. We told them to come in in their dories into the bight and jig for squid, and there would be no hindrance to them. They stopped jigging then. Next morning they commenced jigging again, and we went off alongside the same vessel and told them the same thing, and that if we had to come the third time they should either leave or we should have to drive them away. They stopped jigging then, and we were scarcely back in the jigging bight when they commenced jigging again. We then went alongside the same vessel again, and told them for the third time to knock off jigging. They stopped again and we went back to the bight. They commenced jigging again, and we then went alongside one of the same two vessels, and about thirty of us, myself amongst them, went on board. We told the captain to get under weigh and leave, as he wouldn't do what he was told, and he said he would go when he was ready. Shortly after it came on to blow hard from the westward, and they all left, Newfoundlanders as well, one of the latter having to slip her chain. The vessel we were on board of, when the wind sprung up from the westward, dragged about the length of herself, and then brought up again. Some of the Newfoundlanders went under the land to another good squid ground. The Americans went to Northern Bay, and the same evening and next day the captain of the vessel we boarded came here and bought squid. I spoke to him when he came here, and he made no complaint about having to leave, nor did he seem annoyed when we were on board. When we were on board when he was heaving up, a gust of wind came down, and we all had to jump into our boats, and we offered to pilot him into smooth water under the land.

(Signed) RICHARD ENGLISH, his × mark.

Sworn before me, at Job's Cove, the 18th day of August, 1880.
(Signed) W. H. HALL, *Commander, H.M.S. "Flamingo," and Justice of the Peace for Newfoundland.*

The deposition of Patrick James English, taken upon oath, and who saith that about three weeks since several American bankers came to Job's Cove for squid, and anchored between ½ to ¾ mile from centre of the bight; there were bottom cod-nets set all round them; they were there when they anchored. They commenced to jig for squid from the vessels. The Newfoundland fishermen, who were jigging for squid from punts from a ¼ mile off to close in shore, the usual ground for jigging squid, went out to the American vessels and told them to knock off jigging for squid where they were, as they would bring the squid out of the bight into the tide, where they would be swept away, and told them to come into the bight and jig as much as they liked, which they did not do, but went on jigging from the vessels the next morning. That day the Newfoundland fishermen, consisting of men from Job's Cove, Burnt Point, Gull Island, Northern Bay—about 300 in number—went alongside the American vessels and told them they were spoiling the fishing ground altogether, and must knock off jigging there and come in their dories in the bight and jig, but the Americans still continued

jigging from their vessels. Finding that they were going on jigging from the vessels, the Newfoundland fishermen went off a third time the same morning, and, I believe, told them they must leave the bight. About an hour after, finding there were no sign of them going, the Newfoundland fishermen went off to one vessel which was going on jigging, and went on board her. I don't know what happened then, but shortly afterwards all the American vessels left. There were several St. John's vessels in the jigging bight. I believe there were no nets interfered with or damaged by the Americans. Since the American vessels left the squid have all left the bight.

(Signed) P. J. ENGLISH.

Sworn before me, at Job's Cove, this 18th August, 1880.

(Signed) W. H. HALL, *Commander, H.M.S. "Flamingo," and Justice of the Peace for Newfoundland.*

Northern District, Carbonear, to wit.

The examination of Loren B. Naus, of the schooner "Moro Castle," belonging to Gloucester, United States of America, taken upon oath before Israel L. McNeil, Esq., one of Her Majesty's Justices of the Peace for the said district, this the 23rd day of August, in the year of our Lord 1880, who saith that on the 4th day of the present month I anchored my vessel at Job's Cove, in the district of Bay de Verd, for the purpose of purchasing squid bait; I succeeded in purchasing a quantity from the inhabitants who came off in boats. On the following day, about 8 olclock, A.M., I left my schooner and went toward Northern Bay, to ascertain if bait was to be got there. When about two-thirds of a mile from my vessel I noticed my mainsail being hoisted, and suspecting something to be wrong I immediately turned back and found a large body of men had gone on board my vessel and taken charge of her, and stated they intended running her on shore for having seen parties jigging squid from boats alongside, and from her deck. When I boarded my vessel the anchor was just breaking ground, and she was drifting towards the shore. I heard some one say, "Cut away the jib." I ordered them to leave the vessel, which they accordingly did, after getting a promise from me to take my vessel away. I and my crew, after using great exertions, succeeded in getting the vessel out of danger, and proceeded on my voyage to the banks, and continued to prosecute the fishery, there being no injury done to myself, my crew, or my vessel. I had secured from 17,000 to 19,000 of squids at the time of leaving Job's Cove.

(Signed) LOREN B. NAUS.

Taken and sworn and subscribed to, at Carbonear, the day and year above written, before me,

(Signed) ISRAEL L. MCNEIL, *J.P.*

No. 31.

Mr. Wingfield to Sir J. Pauncefote.—(Received October 2.)

Sir, *Downing Street, October* 1, 1880.

WITH reference to the letter from this Department of the 17th respecting the alleged case of obstruction offered to American bait-vessels at Job's Cove, Conception Bay, Newfoundland, I am directed by the Earl of Kimberley to transmit to you, to be laid before Earl Granville, a copy of a further despatch from Sir John Glover in corroboration of the statement contained in Commander Hall's Report as to the cause of the "Moro Castle" and other vessels having put to sea on the occasion referred to.

I am, &c.

(Signed) EDWARD WINGFIELD.

Inclosure in No. 31.

Governor Sir J. Glover to the Earl of Kimberley.

My Lord, *Government House, Newfoundland, September* 15, 1880.

WITH reference to paragraph 4 of my despatch of the 2nd instant, relating to the alleged obstruction offered to some American bait-vessels at Job's Cove, Conception Bay, I would observe that the report of meteorological observations taken at St. John's shows that on the day in question the wind, which was originally gentle from the south-west, freshened in the course of the morning, causing a strong wind to blow right into the Cove, and thus corroborating the statement in paragraph 22 of Commander Hall's Report as to the cause of all the vessels, British as well as Americans, weighing and leaving the anchorage.

The "Moro Castle," like the rest of the vessels in the anchorage, put to sea in consequence of this strong wind, and if there had been any intention on the part of those on board to run the vessel on shore they would not have set the mainsail, but rather the jib.

I have, &c.
(Signed) JOHN H. GLOVER.

No. 32.

Mr. Drummond to Earl Granville.—(Received October 3.)

My Lord, *Newport, September* 20, 1880.

I HAVE the honour to bring to your notice the inclosed extract from one of the daily papers, from which it appears that two American fishing-vessels, on the 3rd and 4th ultimo, were prevented from catching squid in Conception Bay, Newfoundland, and it is stated that violence was used by the natives on both occasions.

The cause appears to be the old complication growing out of the difference between the inshore fishing rights guaranteed by the Treaty of Washington and the Municipal Fishing Regulations of Newfoundland.

Remarks on this present fishery trouble are being made in the press. One paper gives as its opinion that "the proper mode of settlement would seem to be upon the plan of as absolute freedom to the fisheries as is at all compatible with the enforcement of necessary laws to prevent the fish and fisheries from being destroyed."

It will be of great benefit both to Great Britain and the United States when arrangements can be made of such a character as will for ever prevent future controversies of this nature arising, which, although having the appearance of no great importance, become irritating to both countries, and thereby cause dissensions between them.

I have, &c.
(Signed) VICTOR DRUMMOND.

Inclosure in No. 32.

Newspaper Extract.

VIOLATIONS OF THE FISHERY TREATY.—The schooner "Morro Castle," Captain J. B. Naus, which arrived at Gloucester from a Grand bank cod-fishing trip this morning, reports that on Wednesday, the 4th August, she anchored near Job Cove, about a mile from the shore, in Conception Bay, Newfoundland, for the purpose of procuring bait. After purchasing squid, left during the absence of Captain Naus, Thursday morning, the crew attempted to catch a few squid with jigs, when the vessel was boarded by two or three hundred natives, who drove the crew into the cabinway and forecastle, and attempted to get the vessel under way. Captain Naus returned and found the Newfoundlanders very threatening, but as the vessel began drifting on the rocks, they were frightened and left. The vessel came very near going ashore. The day previous the schooner "Victor," of Gloucester, was boarded in a similar manner, and violence used to prevent her fishing. The Newfoundland Government's objection to Sunday fishing and use of the seine does not hold in this case, as the crew of the "Morro Castle" were line fishing, and had taken but ten or a dozen squid.

Boston, September 16, 1880.

No. 33.

Sir J. Pauncefote to Mr. Herbert.

Sir, *Foreign Office, October* 11, 1880.

I AM directed by Earl Granville to transmit to you, to be laid before Her Majesty's Secretary of State for the Colonies, for his consideration, the accompanying draft of a letter which his Lordship proposes to address to the United States' Minister relative to the Fortune Bay question,* and I am to request that in laying this paper before Lord Kimberley you will move his Lordship to cause Lord Granville to be informed whether it meets with his concurrence.

I am, &c.

(Signed) JULIAN PAUNCEFOTE.

No. 34.

Sir J. Pauncefote to Mr. Wingfield.

(Extract.) *Foreign Office, October* 11, 1880.

I AM directed by Earl Granville to acknowledge the receipt of your letter of the 1st instant, inclosing a copy of a further despatch from Sir John Glover, relative to the alleged case of obstruction offered to American bait-vessels at Job's Cove, Conception Bay, Newfoundland. I have to express Lord Granville's hope that Lord Kimberley will move the Colonial Government to adopt without delay the measures recommended by Commander Hall, R.N., in paragraphs 38 and 39 of his Report, a copy of which was inclosed in your letter of the 17th ultimo.

No. 35.

Sir J. Pauncefote to Mr. Wingfield.

Sir, *Foreign Office, October* 12, 1880.

WITH reference to my letter of the 11th instant, I am directed by Earl Granville to transmit to you, to be laid before the Earl of Kimberley, a copy of a despatch from Her Majesty's Chargé d'Affaires at Washington, respecting the dispute at Job's Cove.

I am, &c.

(Signed) JULIAN PAUNCEFOTE.

No. 36.

Mr. Wingfield to Sir J. Pauncefote.—(*Received October* 20.)

Sir, *Downing Street, October* 19, 1880.

I AM directed by the Earl of Kimberley to acquaint you, for the information of Earl Granville, that he concurs in the draft, inclosed in your letter of the 11th instant, of a letter which Lord Granville proposed to address to the United States' Minister respecting the Fortune Bay question.

I am, &c.

(Signed) EDWARD WINGFIELD.

No. 37.

Mr. Wingfield to Sir J. Pauncefote.—(*Received October* 25.)

Sir, *Downing Street, October* 23, 1880.

I AM directed by the Earl of Kimberley to acknowledge the receipt of your letters of the 11th and 12th instant, respecting an alleged case of obstruction offered to American bait-vessels at Job's Cove, Conception Bay, Newfoundland.

* See No. 39.

Lord Kimberley concurs in the course proposed in the first letter under acknowledgment, and in accordance with the suggestion contained therein he has instructed the Governor of the Colony to move his Government to adopt, with as little delay as possible, the measures recommended by Commander Hall, R.N., in paragraphs 38 and 39 of his Report.

I am to inclose a copy of a further despatch from Sir J. Glover on the same subject.

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

Inclosure 1 in No. 37.

Governor Sir J. Glover to the Earl of Kimberley.

My Lord, *Government House, Newfoundland, September* 28, 1880.

WITH reference to my despatches of the 2nd and 15th instant respectively, relating to the alleged obstruction offered to some American bait-vessels at Job's Cove, Conception Bay, I have now the honour to transmit, for your Lordship's information, an extract from the St. John's "Evening Telegram" of the 24th instant, in which a report of this case is reprinted from the American newspaper "The Cape Ann Advertiser."

I have, &c.
(Signed) JOHN H. GLOVER.

Inclosure 2 in No. 37.

Extract from the "Evening Telegram" of September 24, 1880.

ANOTHER NEWFOUNDLAND RIOT: TWO GLOUCESTER FISHING SCHOONERS DRIVEN FROM THE FISHING-GROUNDS.—Under the above startling heading the "Cape Ann Advertiser" of Friday last makes what looks like a very serious charge against the people of Job's Cove, Conception Bay. If it can be proved that the statements of the "Advertiser" are correct, if the "outrages" complained of were actually committed, why, then, we shall probably have a renewal of the fishery difficulties, and possibly the Premier may ere long see another opportunity of earning a "big fee" in connection with the "Commission business."

Here is what our Cape Ann contemporary says about the matter:—

Schooner "Moro Castle," Captain Loren B. Naus, arrived from a Grand Bank cod-fishing voyage yesterday, bringing information of further riotous proceedings on the part of the Newfoundland fishermen, and the forcible prevention of Gloucester fishing vessels taking squid for baiting purposes.

The "Moro Castle" had been on the Grand Bank trawl fishing, and having exhausted her bait, went to Newfoundland to procure a supply of squid. She anchored in Conception Bay, in Job or Devil Cove, on the afternoon of Wednesday, the 4th August, about a mile from the shore. That afternoon Captain Naus purchased of the natives 18,000 squids at 60 cents per 100, paying them 108 dollars. The next morning (Thursday) Captain Naus left the vessel in a dory to go in search of more bait, having learned that some could be procured at a neighbouring cove. While absent he saw the mainsail of the schooner start, and knowing that something must be wrong, hurried back, and found his vessel surrounded by boats, and that some 200 or 300 Newfoundlanders had boarded and taken possession of her. He ordered the intruders to leave the vessel, but they took no notice of him, and being all alone, his crew, mostly of Nova Scotians, having been frightened and taken refuge in the cabin and forecastle, he was without the means of enforcing his orders. The natives were very threatening, and the captain feared for his life if he attempted unaided to regain control of the schooner. These men had come on board because some of the crew had been seen jigging for squid, although they had taken only ten or a dozen. The squid were plenty, and it would have been easy to have secured a sufficient supply for bait if the crew had been allowed their rights to free fishing without intimidation. The invaders had broken the anchor from bottom and put the schooner under mainsail and jib, and she was fast drifting towards the rocks. Seeing that there was danger of the vessel being wrecked, the invaders became frightened, and hurriedly took their departure, and she was rescued from shipwreck with considerable difficulty.

Captain Naus reports that on the previous day, Wednesday, the 4th August, the schooner "Victor," of this port, engaged in the Grand Bank cod-fishery, was prevented by violence from securing a supply of bait.

These outrages cannot be justified by the Newfoundland Government on the ground of their objection to Sunday fishing or the use of seines, as both assaults occurred on week days, and the men were engaged in line fishing.

Even had there been a violation of Treaty rights, or of local laws, there can be no justification of the resort to mob law. We trust that these additional outrages upon unoffending American fishermen will result in some authoritative settlement of the meaning of the Treaty stipulations, and, unless suitable redress is promptly made, to the abrogation of the Fisheries Treaty.

No. 38.

Mr. Wingfield to Sir J. Pauncefote.—(*Received October* 25.)

Sir, *Downing Street, October* 23, 1880.

WITH reference to my letter of this day's date, I am directed by the Earl of Kimberley to transmit to you, for communication to Earl Granville, a copy of a despatch from the Governor of Newfoundland, with its inclosures, respecting another case of obstruction alleged to have been offered to an American vessel by the people of Conception Bay.

It will be observed that Sir J. Glover has directed that inquiries should be made into the facts of the case.

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

Inclosure 1 in No. 38.

Governor Sir H. Glover to the Earl of Kimberley.

My Lord, *Government House, Newfoundland, September* 30, 1880.

I HAVE the honour to transmit, for your Lordship's information, an extract from the St. John's "Evening Telegram" of the 27th instant, stating that Captain Mackenzie, of the schooner "Minnesota," of Provincetown, Massachusetts, had forwarded to the Washington authorities a report of another case of obstruction alleged to have been offered by the people of Conception Bay.

2. This paragraph was the first intimation I had received of such an occurrence, and I at once directed inquiries to be made into the facts of the case.

3. My Government have directed a magistrate to proceed to Spout's Cove to investigate the matter, and the depositions taken will be forwarded to your Lordship as soon as possible.

4. I inclose a copy of the deposition of Thomas Goss, of Torbay, the pilot referred to, who corroborates to some extent the statement of Captain McKenzie, or McIntyre.

I have, &c.
(Signed) JOHN H. GLOVER.

Inclosure 2 in No. 38.

Extract from St. John's "Evening Telegram" of September 27, 1880.

MORE FISHERY TROUBLE. CAPTAIN MCKENZIE AND THE SPOUT'S COVE "OUTRAGE."—We are informed that Captain McKenzie, of the schooner "Minnesota," of Provincetown, Massachusetts, has forwarded to the Washington authorities a report of another "outrage" alleged to have been committed by the people of Conception Bay. Captain McKenzie says: "I was prevented from using seine to procure caplin bait at Spout's Cove, near Small Point, on the 21st ultimo. Thomas Goss, of Torbay, was pilot of my vessel, and his seine was hired by me. The people would not allow me to shoot the seine, telling me that I should purchase bait from them. One man named John Trickett demanded 4 dollars for the privilege of using the seine, which sum was paid."

At present we are not in a position to say how far the captain's version of this "outrage" agrees with the facts of the case. It may be true in its entirety, or it may not. We hope, however, to be in a position in a day or two to lay before our readers "the other side of the story," with such comment as the case may warrant.

Inclosure 3 in No. 38.

Deposition of Thomas Goss.

Central District, St. John's, to wit.

THE examination of Thomas Goss, of Torbay, in the said Central District, planter, who saith: On or about the 20th day of June last I hired a boat and seine to one John McIntyre, captain of the United States' schooner "Minnesota," in order to obtain bait for his use to carry on the fishery. I went with him as pilot in his vessel, leaving Torbay at 11 o'clock in the morning, and anchored at 4 o'clock the same evening at Upper Small Point, on the north shore of Conception Bay. We put the seine in boat, went into the beach, where there was abundance of caplin, shot the seine, and hauled a big lot of caplin, and were in the act of dipping them in from the seine into the boat, when five or six big boys attacked us with stones from the cliff, and we had to throw away the caplin in the seine and leave the place. A boat came from the bay as we were going off, and came alongside of our boat. I asked the man in the boat, who appeared to have charge of her, "What was up that we would not be allowed to haul caplin?" He said "There was no one allowed to haul caplin here unless they bought them from the people."

Captain McIntyre said to me, "What are we going to do now for bait?" I asked the man in the boat what was his name. He said "Trickett," and he said he would go with us in our boat and try and prevent them from throwing stones, and further would go with us to Spout's Cove, about a quarter of a mile distant, to obtain bait, we agreeing to give him 9 dollars. Captain McIntyre took him into his boat, and we hauled bait, and had sufficient on board at 4 o'clock. Paid Cricket and he went off, and we returned to Torbay the next morning early.

(Signed) THOMAS GOSS.

Sworn before me, at St. John's, this 13th day of September, 1880.

(Signed) J. G. CONROY, *Justice of the Peace for Newfoundland.*

No. 39.

*Earl Granville to Mr. Lowell.**

Sir, *Foreign Office, October* 27, 1880.

HER Majesty's Government have carefully considered the correspondence which has taken place between their predecessors and the Government of the United States respecting the disturbance which occurred at Fortune Bay on the 6th January, 1878, and they have approached this subject with the most earnest desire to arrive at an amicable solution of the differences which have unfortunately arisen between the two Governments on the construction of the provisions of the Treaties which regulate the rights of United States' fishermen on the coast of Newfoundland.

In the first place, I desire that there should be no possibility of misconception as to the views entertained by Her Majesty's Government respecting the conduct of the Newfoundland fishermen in violently interfering with the United States' fishermen, and destroying or damaging some of their nets. Her Majesty's Government have no hesitation in admitting that this proceeding was quite indefensible, and is much to be regretted. No sense of injury to their rights, however well founded, could, under the circumstances, justify the British fishermen in taking the law into their own hands, and committing acts of violence; but I will revert by and by to this feature in the case, and will now proceed to the important question raised in this controversy, whether, under the Treaty of Washington, the United States' fishermen are bound to observe the fishery regulations of Newfoundland in common with British subjects.

Without entering into any lengthy discussion on this point, I feel bound to state that, in the opinion of Her Majesty's Government, the clause in the Treaty of Washington which provides that the citizens of the United States shall be entitled, "in common with British subjects," to fish in Newfoundland waters within the limits

* Already laid before Parliament. See "United States No. 1 (1881)."

of British sovereignty, means that the American and the British fishermen shall fish in these waters upon terms of equality; and not that there shall be an exemption of American fishermen from any reasonable regulations to which British fishermen are subject.

Her Majesty's Government entirely concur in Mr. Marcy's Circular of the 28th March, 1856. The principle therein laid down appears to them perfectly sound, and as applicable to the fishery provisions of the Treaty of Washington as to those of the Treaty which Mr. Marcy had in view. They cannot, therefore, admit the accuracy of the opinion expressed in Mr. Evarts' letter to Mr. Welsh of the 28th September, 1878, "that the fishery rights of the United States conceded by the Treaty of Washington are to be exercised wholly free from the restraints and regulations of the Statutes of Newfoundland," if by that opinion anything inconsistent with Mr. Marcy's principle is really intended. Her Majesty's Government, however, fully admit that, if any such local Statutes could be shown to be inconsistent with the express stipulations, or even with the spirit of the Treaty, they would not be within the category of those reasonable regulations by which American (in common with British) fishermen ought to be bound; and they observe, on the other hand, with much satisfaction, that Mr. Evarts, at the close of his letter to Mr. Welsh of the 1st August, 1879, after expressing regret at "the conflict of interests which the exercise of the Treaty privileges enjoyed by the United States appears to have developed," expressed himself as follows:—

"There is no intention on the part of this [the United States'] Government that these privileges should be abused, and no desire that their full and free enjoyment should harm the colonial fishermen.

"While the differing interests and methods of the shore fishery and the vessel fishery make it impossible that the regulation of the one should be entirely given to the other, yet if the mutual obligations of the Treaty of 1871 are to be maintained, the United States' Government would gladly co-operate with the Government of Her Britannic Majesty in any effort to make those regulations a matter of reciprocal convenience and right, a means of preserving the fisheries at their highest point of production, and of conciliating a community of interest by a just proportion of advantages and profits."

Her Majesty's Government do not interpret these expressions in any sense derogatory to the sovereign authority of Great Britain in the territorial waters of Newfoundland, by which only regulations having the force of law within those waters can be made. So regarding the proposal, they are pleased not only to recognize in it an indication that the desire of Her Majesty's Government to arrive at a friendly and speedy settlement of this question is fully reciprocated by the Government of the United States, but also to discern in it the basis of a practical settlement of the difficulty; and I have the honour to request that you will inform Mr. Evarts that Her Majesty's Government, with a view to avoiding further discussion and future misunderstandings, are quite willing to confer with the Government of the United States respecting the establishment of regulations under which the subjects of both parties to the Treaty of Washington shall have the full and equal enjoyment of any fishery which under that Treaty is to be used in common. The duty of enacting and enforcing such regulations, when agreed upon, would, of course, rest with the Power having the sovereignty of the shore and waters in each case.

As regards the claim of the United States' fishermen to compensation for the injuries and losses which they are alleged to have sustained in consequence of the violent obstruction which they encountered from British fishermen at Fortune Bay on the occasion referred to, I have to state that Her Majesty's Government are quite willing that they should be indemnified for any injuries and losses which upon a joint inquiry may be found to have been sustained by them, and in respect of which they are reasonably entitled to compensation; but on this point I have to observe that a claim is put forward by them for the loss of fish which had been caught, or which, but for the interference of the British fishermen, might have been caught by means of strand fishing, a mode of fishing to which, under the Treaty of Washington, they were not entitled to resort.

The prosecution by them of the strand fishery being clearly in excess of their Treaty privileges, Her Majesty's Government cannot doubt that, on further consideration, the United States' Government will not be disposed to support a claim in respect of the loss of the fish which they had caught, or might have caught, by that process.

I am, &c.

(Signed) GRANVILLE.

No. 40.

Earl Granville to Mr. Drummond.

Sir, *Foreign Office, October* 28, 1880.

I TRANSMIT to you herewith, for your information, a copy of a letter which I have addressed to the United States Minister at this Court in regard to the Fortune Bay question.*

I have, &c.
(Signed) GRANVILLE.

No. 41.

Mr. Lowell to Earl Granville.†—(*Received October* 29.)

My Lord, *Legation of the United States, London, October* 28, 1880.

I HAVE the honour to acknowledge the receipt of your Lordship's letter of yesterday, in relation to the disturbance which occurred at Fortune Bay on the 6th January, 1878, and to acquaint you that I shall forward a copy of the same to Mr. Evarts by the earliest opportunity.

I have, &c.
(Signed) J. R. LOWELL.

No. 42.

Mr. Drummond to Earl Granville.—(*Received October* 31.)

My Lord, *Washington, October* 18, 1880

WITH reference to my despatch of the 20th ultimo, bringing to your Lordship's attention extracts from certain American papers, mentioning complaints made by United States' fishermen of the treatment which they had received from Newfoundland fishermen, I have the honour to inclose herewith an extract from the "New York Herald," which shows that the Governor of Newfoundland has taken notice of these complaints, and that the deposition of the pilot on board one of the United States' fishing vessels which suffered has been taken. The "New York Herald" has a leading article on this occurrence, herewith inclosed, which I consider shows that later, when Congress meets, the soreness still continuing on account of the Fortune Bay difficulty, the question will again be brought forward with a view to the greater protection of United States' fishermen from the apparent lawlessness of the Newfoundland fishermen.

I have, &c.
(Signed) VICTOR DRUMMOND.

Inclosure 1 in No. 42.

Extract from the "New York Herald" of October 5, 1880.

AMERICAN FISHERMEN ATTACKED.—The notice of the Newfoundland authorities has been directed to some complaints made by Gloucester fishermen of ill-treatment at the hands of Newfoundland fishermen and an interference with the just rights of United States' fishermen in British waters. The Governor of Newfoundland accordingly sent for Mr. Thomas Goss, of Torbay, the only trustworthy witness that so far can be procured. Goss acted as pilot in Conception Bay for Captain MacEntyre, of the Gloucester schooner "Minnesota." Before Judge Conrey Goss deposed that he started from Torbay on Monday, the 20th June, in the capacity of pilot on the "Minnesota." They reached Upper Small Point, where they had discovered that bait was plentiful; here they commenced to operate, and while taking the caplin on board their boats they were attacked by the people on shore and furiously pelted with showers of stones. Men, women, and children were engaged in the assault. The Americans immediately

* No. 39.

† Already laid before Parliament. See "United States No. 1 (1881)."

withdrew to their vessel, their lives being every moment imperilled. A man named Trickett offered his services to Captain MacEntyre to procure bait if paid the sum of 4 dollars. Trickett brought him to Spout Cove, near his own home, and for half the sum first asked the "Minnesota" obtained all her required bait, and then, having landed the pilot, proceeded to the banks. The deposition of Goss has been transmitted by the Governor of Newfoundland to the Secretary of State for the Colonies, and the other cases will be investigated and brought under imperial notice as soon as evidence can be obtained.

Inclosure 2 in No. 42.

Extract from the "New York Herald" of October 5, 1880.

THE FISHERY OUTRAGES.—At last, after a great deal of delay, the Newfoundland authorities have felt compelled to take some notice of the outrageous misconduct of their people toward our American fishermen. The "Herald" correspondent at St. John's relates that the Governor recently sent for a Newfoundland pilot, Thomas Goss, "the only reliable witness who can so far be procured," he adds, and took his testimony. Goss, it seems, was engaged as pilot by the master of the American schooner "Minnesota," and while he was so acting the schooner came upon the ground where, under the Treaty, Americans are allowed to take bait. Our people began to catch bait, whereupon Goss—a Newfoundland man himself—testifies that the Americans were set upon by a furious crowd from the shore, men and women, who pelted them with "showers of stones," so that our people had difficulty in reaching their vessel alive. They had gone out in boats to take the bait.

Having been thus prevented from exercising their rights under the Treaty, and violently driven off, a Newfoundland man came along and offered to procure what bait the "Minnesota" needed near his own home for the sum of 4 dollars, and the captain of the "Minnesota," being a practical as well as a peaceable man, accordingly paid for his bait and went on his way to the fishing banks.

No. 43.

Mr. Meade to Sir J. Pauncefote.—(Received November 5.)

Sir, *Downing Street, November* 4, 1880.

WITH reference to the letter from this Department of the 23rd ultimo, respecting a case of obstruction alleged to have been offered to an American vessel at Spout's Cove, Conception Bay, Newfoundland, I am directed by the Earl of Kimberley to transmit to you, for the information of Earl Granville, a copy of a further despatch from the Governor of the Colony on the subject, together with one of a despatch which Lord Kimberley has addressed to Sir J. Glover in reply.

I am, &c.

(Signed) R. H. MEADE.

Inclosure 1 in No. 43.

Governor Sir J. Glover to the Earl of Kimberley.

My Lord, *Government House, Newfoundland, October* 13, 1880.

IN reference to my despatch of the 30th ultimo, on the subject of an alleged case of obstruction offered to American fishermen from the schooner "Minnesota," of Provincetown, Massachusetts, at Spout's Cove, Conception Bay, I have the honour to inform your Lordship that the depositions taken by the local magistrate are of so illusory a character as to be quite worthless, and I trust I may induce my Government to undertake legal proceedings against the offenders.

2. Had one of Her Majesty's vessels been available, as in the case of obstruction at Job's Cove, Conception Bay, referred to in my despatch of the 2nd September, I am of opinion that sufficient evidence would have been obtained by the officer commanding, in his judicial capacity, as would have led to the conviction of the

people who threw stones at the Americans, and I am hoping that such result may yet be obtained.

3. I would respectfully suggest that one of Her Majesty's vessels of the fishery squadron be detailed especially to visit the coast between Cape Bonavista and Fortune Bay. The bays, harbours, and coves comprised between the above-named points being those visited by the Americans during the bait season, such vessel need never be for more than three or four days without being in telegraphic communication with St. John's, as there are various telegraph stations between the points mentioned.

4. I have represented to my Government that they should cause the people of the parts of the coast visited by the Americans to be made aware of the rights which the Americans have paid for, and that we are bound to secure them in the exercise of a right for which we have received from them a money award.

I have, &c.
(Signed) JOHN H. GLOVER.

Inclosure 2 in No. 43.

The Earl of Kimberley to Governor Sir J. Glover.

Sir, *Downing Street, November* 1, 1880.

I HAVE the honour to acknowledge the receipt of your despatch of the 13th ultimo, containing observations on the alleged case of obstruction offered to American fishermen at Spout's Cove, Conception Bay.

I have to convey to you my approval of the representation you have made to your Government with regard to the desirability of acquainting the people on the parts of the coast visited by the Americans with the rights which the Americans possess.

With respect to your suggestion that one of Her Majesty's vessels of the fishery squadron should be detailed especially to visit the coast between Cape Bonavista and Fortune Bay, I should be glad to be informed of the exact time of the year at which it is desired that the vessel should visit this particular locality.

I have, &c.
(Signed) KIMBERLEY.

No. 44.

Sir J. Pauncefote to Mr. Herbert.

Sir, *Foreign Office, November* 8, 1880.

WITH reference to the letter from this Office of the 12th of October, I am directed by Earl Granville to transmit to you, to be laid before Her Majesty's Secretary of State for the Colonies, the accompanying copy of a further despatch from Her Majesty's Chargé d'Affaires at Washington, together with its inclosures, relative to fishery disputes on the coast of Newfoundland.*

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

No. 45.

Earl Granville to Mr. Drummond.

Sir, *Foreign Office, November* 9, 1880.

I TRANSMIT to you herewith, for your information, a copy of a letter from the Colonial Office respecting the Spout's Cove obstruction case.†

I am, &c.
(Signed) GRANVILLE.

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* No. 42.

† No. 43.

No. 46.

Mr. Bramston to Sir J. Pauncefote.—(*Received November* 29.)

(Extract.) *Downing Street, November* 27, 1880.

I AM directed by the Earl of Kimberley to transmit to you, for the information of Lord Granville, the accompanying copy of a despatch from the Governor of Newfoundland, inclosing a Report of a second magisterial inquiry into the case of stone-throwing at Americans at Spout's Cove, together with Mr. Justice Pinsent's address to the Grand Jury at Harbour Grace.

Inclosure 1 in No. 46.

Governor Sir J. Glover to the Earl of Kimberley.

My Lord, *Government House, November* 9, 1880.

IN reference to my despatch dated the 13th October last, I have the honour to transmit, for your Lordship's information, a copy of the Report of a second magisterial inquiry into the case of stone-throwing at Americans at Spout's Cove, Conception Bay.

This, together with Mr. Justice Pinsent's address to the Grand Jury at Harbour Grace, a copy of which is inclosed herewith, will, I trust, have a salutary effect in checking, for the future, attempted interruptions to Americans when in search of bait.

I trust this will meet with your Lordship's approval.

I have, &c.

(Signed) JOHN H. GLOVER.

Inclosure 2 in No. 46.

Mr. McNeill to Sir W. V. Whiteway.

Sir, *Carbonear, October* 28, 1880.

I HAVE the honour to report that Inspector Canty, accompanied by one of the police force from this station, proceeded to Spout Cove and Small Point, distant 10 miles from here in the Bay de Verde district, on Wednesday, the 26th instant, and succeeded in finding the boys (four in number) charged with having thrown stones at the crew of the United States' schooner "Minnesota," McIntyre master, while engaged hauling caplin at Small Point in June last.

The four boys were brought before me yesterday. The youngest, Stephen Hayden, being a mere child 8 years of age, I dismissed; and after a careful inquiry into the case, in presence of Thomas Goss, who was pilot of the "Minnesota" at the time the affair took place, and having the evidence of Edward Trickett, of Spout Cove, fisherman, who was employed by the master of the "Minnesota" in hauling bait for that vessel, the three boys were convicted of rolling and throwing stones down the cliff at Small Point, where the men of the "Minnesota" were engaged hauling caplin, but they all maintained they were ignorant of the presence of men on the beach under them until they noticed some boats going off from the beach.

From the evidence taken in the case, I am satisfied the boys had no malicious intention in the act; and, further, I find it is a common practice with the boys along the shore, after school hours, to amuse themselves in throwing or rolling stones over the steep cliffs (at places some hundreds of feet in height from the beach), and often to the annoyance and danger of their own neighbours who may happen to be on the beach under.

In order to put a stop to such practices, I sentenced the eldest boy, John Hayden, who is 14 years of age, to pay a fine of 5 dollars and costs; and the other two, John King and William Short, who are about 12 years of age, to a fine of 3 dollars each. The mothers of the boys Hayden and King were present in Court during the trial, and paid the fines. The widowed mother of the boy Short, being a pauper, I shall not exact the fine in his case. I reprimanded the boys severely, and pointed out to them that the possible consequence of the habit of rolling stones down the cliff might, if continued, at some time cause the loss of life or limb.

I believe the result of the punishment inflicted in this case will have a salutary effect in putting a stop to such practices, not only in the neighbourhood of Small Point

and Spout Cove, but also on the whole range of shore between here and Island Cove, at the entrance of the bay.

I beg to transmit herewith copy of proceedings in the case; also the examination of the pilot, Thomas Goss.

I have, &c.
(Signed) ISRAEL L. McNEILL, *J.P.*

Inclosure 3 in No. 46.

Deposition of Thomas Goss.

Northern District, Carbonear, to wit.

THE examination of Thomas Goss, of Torbay, in the Central District, planter, taken upon oath before Israel L. McNeill, Esq., one of Her Majesty's Justices of the Peace for the said northern district, the 27th October, in the year of our Lord 1880, who saith:—That on or about the 20th June last I hired a boat and seine to one John McIntyre, master of the United States' fishing schooner "Minnesota," for the purpose of procuring bait for his use at the fishery. I also went with him as pilot in his vessel. We left Torbay at 11 o'clock on the morning of that day, and anchored at 4 o'clock the same evening at Upper Small Point, on the north shore of Conception Bay, we put our seine in the boat and went to the beach, where there was abundance of caplin; we shot out the seine and hauled a quantity of caplin, and were in the act of dipping them in from the seine into our boat, when five or six big boys attacked us with stones from the cliff, and we had to throw away the caplin we had hauled and leave the place. A boat from the bay came up as we were going off, and when alongside of our boat I asked a man in the boat, who appeared to have charge of her, "What was up that we would not be allowed to haul caplin?" He made answer that no one was allowed to get bait there unless they bought it from the people. I said to him, "This is my own vessel, and I think it hard not to be allowed to get bait for her, and that I had got bait in that place forty years ago, and that my mother was born at Broad Cove, near Small Point." I also said I had plenty of friends on the north shore. Captain McIntyre then said to me, "What are we going to do for bait now?" I asked the man in the boat to whom I had been talking what was his name. He answered "Trickett," and he said he would go with us in our boat and try and prevent the boys throwing stones at us, and further, if we wished, he would go with us to Spout Cove (about a quarter of a mile distant) and assist us in getting bait, having agreed to give him 4 dollars for his services. Captain McIntyre took him into his boat and we hauled bait, and having taken sufficient on board by 9 o'clock that night paid Trickett, who went off, and we returned to Torbay early the following morning. The interference of the boys throwing stones at us did not cause a delay to us of more than an hour at furthest. We met with no further annoyance while the vessel remained at Spout Cove. We were very fortunate in procuring our bait that evening at Spout Cove; otherwise we should have been obliged to proceed to Carbonear for that purpose.

Taken and sworn at Carbonear aforesaid, the day and year within written.
Before me,
(Signed) ISRAEL L. McNEILL, *J.P.*

Inclosure 4 in No. 46.

Police Office, Carbonear, October 28, 1880.

Before ISRAEL L. McNEILL, Esq., J.P., Stipendiary Magistrate.

Thomas Goss, Complainant, *v.* John Hayden, William Short, John King, and Stephen Hayden, Defendants.

Complaint: Assault.
Defendants severally plead not guilty.

EDWARD TRICKETT, sworn and examined, saith:—I was on the bank at Spout Cove, where I reside, one afternoon last summer, during the caplin school; cannot

remember the exact date. I noticed a vessel come in and anchor at Small Point. I went off to her in my boat, but before I got alongside I noticed some boats had left her and gone to the beach. I saw some boys on the cliff over the beach where the boats had gone; among them I recognized Stephen Hayden and William Short (two of the boys now at the bar). The boys were throwing stones over the cliff, or, rather, rolling stones down. I noticed one or two of them throwing stones at times. I heard the men who were on the beach sing out to the boys to cease throwing stones; there were four boys on the cliff; I did not know the other two. I also called out to them to knock off throwing stones. The men left the beach in their boats and came off to the vessel. Thomas Goss, now present in Court, was with the crew of the vessel; I did not know where the vessel belonged. Goss agreed to give me 4 dollars to go with them and help them haul bait for the vessel. I consented, and went with them in their boat to Spout Cove, where we hauled sufficient caplin for their use; they then paid me the 4 dollars agreed upon between us, and I got into my boat and went to my bultows, and some time during the same night the schooner left Spout Cove.

For the defence:—

John Hayden (a boy about 14 years of age), sworn, saith:—I was in company with my brother Stephen, John King, and William Short one afternoon in June last, on the bank near Small Point; we were rolling stones down the cliff to the beach; did not see any boat or men on the beach. There was a schooner at anchor in the bight. I saw some men go off in two boats from the shore or beach, and when we saw them we stopped rolling stones down the cliff. From the top of the cliff to the beach is about 100 fathoms, and it is very steep, so that I would not venture out to the edge of the cliff to look down. Cannot say whether any of the stones struck the men who were going off in the boats. They went over to Spout Cove when they left the beach. No person told us to throw stones at the men or down the cliff. I may have thrown two or three stones, but not with the intention of hurting any one. There were no other boys present at the time but us four, whom I have named and who are now present. We were not rolling stones down the cliff. There was no man or men near us on the cliff, and no one told us to throw stones.

William Short and John King each admitted they were with John Hayden and Stephen Hayden rolling and throwing stones on the occasion. Stephen Hayden, being a boy under 10 years of age, was admonished and discharged.

Judgment.

John Hayden, convicted of assault upon complainant and others by throwing stones at them, and being the oldest boy of the four, was sentenced to pay a fine of 5 dollars and costs; and John King and William Short, being convicted of the same offence, were each sentenced to pay a fine of 3 dollars and costs.

(Signed) ISRAEL L. McNEILL, *J.P.*

Inclosure 5 in No. 46.

Extract from Mr. Justice Pinsent's Charge to the Grand Jury.

THE Judge then referred to a letter he had just received from Mr. McNeil, the Magistrate at Carbonear, excusing his non-attendance at the Court to-day on the ground that he was engaged in trying some lads belonging to Small Point charged with throwing stones at the crew of an American fishing vessel last summer. The Government was prosecuting, and the Inspector of Police was then in Carbonear on the business. His Lordship said he greatly regretted to hear of such interference not only on account of the offence itself, but as the national honour was involved in the peaceable recognition and observance of the rights accorded to Americans by the Treaty of Washington and by the Local Enactment which gave effect to it in this colony. However obnoxious to some persons in some localities this cession of fishing rights might be, it would nevertheless have to be borne in mind that the law must sustain the rights possessed by fishermen of the United States with as much vigilance and effect as it does those of British subjects. He wished this to be clearly understood and attended to.

No. 47.

Mr. Herbert to Sir J. Pauncefote.—(*Received December* 9.)

Sir, *Downing Street, December* 8, 1880.

WITH reference to the letter from this Department of the 4th ultimo, inclosing a copy of a despatch from the Governor of Newfoundland, in which it was suggested that one of Her Majesty's vessels of the fishing squadron should be detailed especially to visit the coast between Cape Bonavista and Fortune Bay, I am directed by the Earl of Kimberley to transmit to you, for the information of Earl Granville, a copy of a further despatch from Sir J. Glover on the subject, together with one of a letter which his Lordship has caused to be addressed to the Admiralty in connection with it.

I am, &c.

(Signed) ROBERT G. W. HERBERT.

Inclosure 1 in No. 47.

Governor Sir J. Glover to the Earl of Kimberley.

My Lord, *Government House, Newfoundland, November* 24, 1880.

WITH reference to your Lordship's despatch of the 1st instant, requesting to be informed of the exact time of the year at which it is desired that one of Her Majesty's ships of the fishery squadron should be detailed especially to visit the coast of Newfoundland between Cape Bonavista and Fortune Bay, I have the honour to state that as French and American vessels usually visit the latter district about the 25th April, when the bait season commences, I consider it desirable that the ship detailed should arrive at Fortune Bay by that date, and that it should be employed on that part of the coast previously referred to until the 25th September.

This does not imply that the remainder of Her Majesty's ships forming the fishery squadron are required before the usual time, viz., on or about the 24th May.

I have, &c.

(Signed) JOHN H. GLOVER.

Inclosure 2 in No. 47.

Mr. Herbert to the Secretary to the Admiralty.

Sir, *Downing Street, December* 8, 1880.

I AM directed by the Earl of Kimberley to transmit to you, to be laid before the Lords Commissioners of the Admiralty, copies of two despatches from the Governor of Newfoundland,* suggesting that one of Her Majesty's vessels of the fishing squadron should be detailed especially to visit the coast between Cape Bonavista and Fortune Bay annually during the fishing season during the period specified.

Lord Kimberley would be glad if the other requirements of the service should admit of their Lordships giving instructions for a compliance with Sir J. Glover's application.

I am, &c.

(Signed) ROBERT G. W. HERBERT.

No. 48.

Sir E. Thornton to Earl Granville.—(*Received December* 21.)

My Lord, *Washington, December* 7, 1880.

WITH reference to that part of the President's Message which speaks of the Fortune Bay affair, I have the honour to inform your Lordship that Mr. Evarts tells me that the correspondence relating to that matter does not accompany the President's Message, but that in all probability it will be called for by Congress, in which case he

* Inclosure 1 in No. 43, and Inclosure 1 in No. 47.

will transmit it to to that body, including your Lordship's note of the 27th October last.

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

No. 49.

Mr. Bramston to Sir J. Pauncefote.—(*Received January* 10.)

Sir, *Downing Street, January* 7, 1881.

WITH reference to the letters from this Department of the 4th November and the 8th December last respecting the suggestion of the Governor of Newfoundland that one of Her Majesty's vessels of the fishing squadron should be detailed especially to visit the coast between Cape Bonavista and Fortune Bay for a certain time of the year, I am directed by the Earl of Kimberley to transmit to you, for the information of Earl Granville, a copy of a letter from the Admiralty upon the subject.

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

Inclosure in No. 49.

The Secretary to the Admiralty to Mr. Herbert.

Sir, *Admiralty, December* 14, 1880.

I HAVE laid before my Lords Commissioners of the Admiralty your letter of the 8th instant, inclosing copies of two despatches from the Governor of Newfoundland, suggesting that one of Her Majesty's vessels employed on the Newfoundland fisheries should be detailed to visit the coast between Cape Bonavista and Fortune Bay from the 25th April to the 25th September.

2. In reply, my Lords desire me to acquaint you, for the information of the Earl of Kimberley, that they concur in the opinion of Sir John Glover, that it is important one of Her Majesty's ships should be on the part of Newfoundland indicated at the commencement of the bait season, viz., 25th April, when practicable. With regard, however, to the proposal to station a man-of-war within the limits mentioned during the whole of the fishing season, my Lords consider that the Senior Officer employed in the protection of these fisheries must be left to direct the movements of vessels under his orders. He will be ordered to arrange that frequent visits are to be made to those ports where American fishermen procure bait, especially Fortune Bay, and out-of-the-way ports where there are no resident magistrates or any Government officials.

3. I am to add that it would seem to be the duty of the Colonial Government, by the location of magistrates or otherwise, to endeavour to prevent the breaches of the peace and of the fishery laws, which appear to be only too frequent in the localities mentioned, and not to rely entirely upon Her Majesty's ships for that purpose.

I am, &c.
(Signed) E. N. SWAINSON.

No. 50.

Mr. Wingfield to Sir J. Pauncefote.—(*Received January* 15.)

Sir, *Downing Street, January* 14, 1881.

WITH reference to the letter from this Department of the 23rd October last, and to previous correspondence respecting the alleged case of obstruction offered to American bait vessels at Job's Cove, Conception Bay, Newfoundland, I am directed by the Earl of Kimberley to transmit to you, for the information of Earl Granville, a copy of a despatch from the Governor of the Colony, stating that his Government are prepared to take steps to notify to the inhabitants of outlying settlements frequented by the Americans the rights which the latter have under the Treaty of Washington.

The Governor has been requested to furnish the Secretary of State with copies of any notice which may be issued pursuant to this decision.

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

Inclosure in No. 50.

Governor Sir J. Glover to the Earl of Kimberley.

My Lord, *Government House, December* 21, 1880.

WITH reference to your Lordship's despatch of the 20th October, requesting me to move my Government to carry into effect, with as little delay as possible, the suggestions made by Commander Hall, R.N., Her Majesty's ship "Flamingo," in paragraphs 38 and 39 of his Report, dated the 23rd August last, I have the honour to inform your Lordship that, in order to prevent as far as possible a recurrence of disputes between Newfoundland and American fishermen, my Government are prepared to take steps to notify to the inhabitants of outlying settlements frequented by the Americans the rights which the latter have under the Treaty of Washington.

I trust these measures will meet with your Lordship's approval, and have the effect of preventing for the future any further disputes of this nature.

I have, &c.

(Signed) JOHN H. GLOVER.

No. 51.

Mr. Bramston to Lord Tenterden.—(Received January 15.)

THE Under-Secretary of State presents his compliments to Lord Tenterden, and is directed by the Earl of Kimberley to transmit to him, for the information of Earl Granville, copies of despatches addressed to the Governor of Newfoundland on the 20th October, 1880, the 4th and 10th January, 1881, on matters connected with the rights of fishery of United States' citizens under the Treaty of Washington and the Fortune Bay question.

Colonial Office, January 15, 1881.

Inclosure 1 in No. 51.

The Earl of Kimberley to Governor Sir J. Glover.

Sir, *Downing Street, October* 20, 1880.

I HAVE the honour to acknowledge the receipt of your despatches of the 2nd, 15th, and 28th September respectively, respecting an alleged case of obstruction offered to certain American bait-vessels at Job's Cove, Conception Bay.

With the view of preventing, if possible, the recurrence of disputes of this nature, I request that you will move your Government to carry into effect, with as little delay as possible, the suggestions made by Commander Hall, R.N., in paragraphs 38 and 39 of his Report, copies of which were inclosed in your despatch of the 2nd ultimo.

I have, &c.

(Signed) KIMBERLEY.

Inclosure 2 in No. 51.

The Earl of Kimberley to Governor Sir J. Glover.

Sir, *Downing Street, January* 4, 1881.

WITH reference to your despatch of the 24th November last, and to previous correspondence respecting the proposal that one of Her Majesty's vessels of the fishing squadron should be detailed especially to visit the coast between Cape Bonavista and Fortune Bay for a certain time of the year, I have the honour to transmit to you, for the information of your Government, a copy of a letter from the Admiralty on the subject.*

I have, &c.

(Signed) KIMBERLEY.

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* Inclosure in No. 49.

Inclosure 3 in No. 51.

The Earl of Kimberley to Governor Sir J. Glover.

Sir, *Downing Street, January* 10, 1881.

I HAVE the honour to acknowledge the receipt of your despatch of the 21st ultimo, informing me that your Government are prepared to take steps to notify to the inhabitants of outlying settlements, frequented by the Americans, the rights which the latter have under the Treaty of Washington.

I have learnt with satisfaction this intention on the part of your Government, and I should be glad if you would be so good as to furnish me with copies of any notice which may be issued by them pursuant to this decision.

I have, &c.
(Signed) KIMBERLEY.

No. 52.

Earl Granville to Sir E. Thornton.

Sir, *Foreign Office, January* 15, 1881.

WITH reference to my despatch of the 11th ultimo, I inclose, for your information, copy of a letter, as marked in the margin,* on the subject of Newfoundland fisheries.

I am, &c.
(Signed) GRANVILLE.

No. 53.

Mr. Herbert to Sir J. Pauncefote —(*Received January* 28.)

Sir, *Downing Street, January* 27, 1881.

WITH reference to previous correspondence respecting the claims of the United States' fishermen for compensation in respect of injuries and losses sustained by them on the occasion of the disturbances at Fortune Bay in January 1878, I am directed by the Earl of Kimberley to acquaint you, for the information of Earl Granville, that his Lordship has informed the Governor of Newfoundland, by telegraph, that it is proposed that an inquiry should be held by a Representative of Her Majesty's Government and a Representative of the United States, with a view to the assessment of compensation to which American fishermen may be reasonably entitled on account of such injuries and losses. The Governor has been asked to ascertain as soon as possible whether his Government will abide by the decision which may be arrived at in the matter by Her Majesty's Government and that of the United States.

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

No. 54.

Mr. Herbert to Sir J. Pauncefote.—(*Received January* 28.)

(Extract.) *Downing Street, January* 27, 1881.

WITH reference to previous correspondence respecting the Fortune Bay case, I am directed by the Earl of Kimberley to transmit to you, to be laid before Earl Granville, the accompanying copy of a despatch from the Governor of Newfoundland, inclosing extracts from the "Royal Gazette" and other Newfoundland newspapers relative to Earl Granville's letter upon the subject, addressed to Mr. Lowell on the 27th October last.

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* No. 49.

Inclosure in No. 54.

Governor Sir J. Glover to the Earl of Kimberley.

(Extract.) *Government House, Newfoundland, January* 10, 1881.

I HAVE the honour to acknowledge the receipt on the 29th ultimo of your Lordship's despatch of the 1st December, 1880, transmitting a printed copy of a letter addressed by Earl Granville to Mr. Lowell upon the subject of the Fortune Bay Fishery disputes.

2. Your Lordship will observe by the inclosed extracts from the "Royal Gazette" and other newspapers that the letter in question had, previously to the above date, viz., 29th December, been published in the local papers, and, I may add, was read with very general satisfaction.

No. 55.

Mr. Herbert to Sir J. Pauncefote.—(Received February 12.)

Sir, *Downing Street, February* 12, 1881.

WITH reference to previous correspondence respecting the Fortune Bay case, I am directed by the Earl of Kimberley to acquaint you, for the information of Earl Granville, that he has received a telegram from the Governor of Newfoundland, dated the 11th instant, in which it is stated that the Government of the Colony respectfully contend that no American claims can be regarded as admissible except those for damages to fishing gear from the use of excessive force, supposing that such excessive force was used. The Colonial Government consider that the inquiry should be limited to that basis, and also claim the right of Newfoundland to be represented at the proposed inquiry, with full power to investigate, cross-examine, and produce witnesses.

Lord Kimberley proposes, with Lord Granville's concurrence, to address a telegram to Sir J. Glover in reply, stating that it will be impossible to limit the inquiry to the basis suggested, but that every opportunity will be given to his Government to state their case, and that the fullest care will be taken by Her Majesty's Government to guard the interests of the Colony, more particularly as it will be necessary that the Colony should be held ultimately responsible for any damages which, upon a friendly investigation, or, if necessary, an arbitration, may be found due to the United States, as his Government will at once perceive.

I am, &c.

(Signed) ROBERT G. W. HERBERT.

No. 56.

Sir J. Pauncefote to Mr. Herbert.

Sir, *Foreign Office, February* 12, 1881.

IN reply to your letter of this day's date, I am directed by Earl Granville to request that you will inform the Earl of Kimberley that his Lordship concurs in the terms of the telegraphic despatch which it is proposed to address to the Governor of Newfoundland in regard to the proposed Commission for the assessment of the claims connected with the Fortune Bay question.

I am, &c.

(Signed) JULIAN PAUNCEFOTE.

No. 57.

Mr. Evarts to Mr. Lowell.—(Communicated to Earl Granville by Mr. Lowell, February 16.)

Sir, *Department of State, Washington, February* 4, 1881.

THE communication from Her Britannic Majesty's Secretary of State for Foreign Affairs, Lord Granville, of the 27th October, 1880, respecting the disturbance which occurred at Fortune Bay on the 6th January, 1878, was duly received in your despatch of the 28th October, 1880.

As the separation of the questions raised by that occurrence and the method of their solution were general suggestions on the part of Her Britannic Majesty's Government, I had naturally supposed that this despatch would have been followed by such definite propositions as this Government could either accept or decline; the more so, as I had (on the 12th June, 1880), in reply to your telegraphic Report of a conversation with Lord Granville, authorized you to say that "the President will be quite ready to entertain any considerations which may be presented to the Secretary of State to relieve the question of the fisheries from its present difficulties."

If, however, as circumstances would seem to indicate, I am to consider this communication as a preliminary inquiry from Lord Granville for the purpose of learning whether such suggestion would be so favourably received by this Government as to justify the opening of direct negotiation, it becomes my duty to put you in possession of the impressions which this inquiry has made upon the Government of the United States.

As I understand the purport of Lord Granville's communication, Her Britannic Majesty's Government desires to arrange the compensation due to the United States fishermen for the disturbances at Fortune Bay, without the formal consideration or decision of any questions of Treaty construction which the facts of that disturbance might seem to raise, resting the right of compensation solely upon the unlawful violence exercised by British subjects in Newfoundland.

The facts in this case are not complicated, and the calculations are simple. The United States Government does not see in its present condition or character sufficient grounds to require any very elaborate method of decision such as a Commission or the necessity for any protracted inquiry. If Her Britannic Majesty's Government will propose the submission of the computation of damages to the summary award of the Secretary of State of the United States and Her Britannic Majesty's Representative at Washington (this function to be exercised either directly or by such delegation as may seem to them judicious), the Government of the United States will accept the proposition and close this controversy on the basis of that award.

But in signifying to Her Britannic Majesty's Government the willingness of the United States to accede to such a proposition, you will carefully guard against any admission of the correctness of those views of our Treaty rights which are expressed either explicitly or by implication in Lord Granville's communication of the 29th October, 1880.

The views of this Government upon the proper construction of the rights of fishery guaranteed by the Treaty of Washington have been fully expressed in my former despatches, and no reasons have been furnished to induce a change of opinion. The delay in the settlement of the Fortune Bay case has been already too long protracted. It has provoked a not unnatural feeling of irritation among the fishermen of the United States at what they conceive to be a persistent denial of their Treaty rights, while it is to be feared that it has encouraged among the provincial fishermen the idea that their forcible resistance to the exercise of these rights is not without justification in their local law and the construction which Her Britannic Majesty's Government is supposed to have placed upon the provisions of the Treaty.

It is now three years since twenty-two vessels belonging to the United States, and engaged in what by them and their Government was considered a lawful industry, were forcibly driven from Fortune Bay under circumstances of great provocation, and at very serious pecuniary loss. And this occurred at the very time when, under the award of the Halifax Commission, the Government of the United States were about paying to Her Britannic Majesty's Government a very large amount for the privilege of the exercise of this industry by these fishermen. In March of the same year, 1878, this very grave occurrence of January was brought to the attention of the British Government, in the confident hope that compensation would be promptly made for the losses caused by what the United States Government was willing to believe was a local misconstruction of the Treaty, or a temporary, and from ignorance, perhaps, an excusable, popular excitement.

It is unnecessary to do more than recall to your attention the long and unsatisfactory discussion which followed the presentation of this claim, and especially the fact that, in its progress, the Government of the United States was compelled to express, with emphatic distinctness, the impossibility of accepting the subordination of its Treaty rights to the provisions of local legislation, which was apparently put forward by Her Majesty's Government as a sufficient ground for the rejection of the claim. And it was not until April 1880 (a delay of two years, during which the

importance of an early settlement was urged upon Her Majesty's Government), that, after what this Government understood and accepted, at least as a satisfactory modification of the assumption, we were informed by Lord Salisbury that "Her Majesty's Government are of opinion that, under the circumstances of the case, as at present within their knowledge, the claim advanced by the United States fishermen for compensation on account of the losses stated to have been sustained by them on the occasion in question is one which should not be entertained."

This decision of Her Majesty's Government terminated any further discussion, and the Government of the United States found itself compelled to protect the interests of its citizens by such methods as might commend themselves to its judgment. In addition to the Halifax Award which we had paid for the privileges and rights, the exercise of which is now denied our citizens, we were also continuously paying, in the shape of a remission of duties, some 300,000 dollars per annum for this abortive right. Thus forced into position of antagonism, which it profoundly regretted, the Government of the United States was about to take such action as would at least suspend this annual payment until the two Governments were in accord upon the construction of the Treaty, when Her Majesty's Government, through the United States Minister in London, suggested, June 9, 1880, that the consideration of the subject be resumed between the two Governments, and that, in such consideration, the two questions of the interpretation of the Treaty and the attack upon the American fishermen be separated. To that suggestion I replied, June 12, 1880, communicating my great gratification at the friendly disposition of the British Cabinet, and saying that, "the President would be quite ready to entertain any consideration which may be presented to the Secretary of State to relieve the question of the fisheries from its present difficulties."

On October 27, 1880, Lord Granville addressed you the communication which is the subject of this despatch. I regret to find in this communication a disposition to restrict a liberal compensation for an acknowledged wrong by limitations of the fishing rights accorded by the Treaty to which this Government cannot consent. The use of the strand, not as a basis of independent fishing, but as auxiliary to the use of the seine in these waters, where seine-fishing is the only possible mode of taking herring, has been maintained by this Government in my former despatches, and would seem to be justified by the explicit declaration of Her Majesty's Government in the "case" submitted by them to the Halifax Commission, in which, referring to the use of the shores, it is affirmed, "without such permission the practical use of the inshore fisheries was impossible." But as Lord Granville distinctly refers the propriety and justice of these limitations to further negotiations I will not now discuss them, reserving what I deem it right to say for a future despatch in reference to the second of his Lordship's suggestions.

I have recalled to your attention the history of the Fortune Bay outrage, in order that you may express to Her Britannic Majesty's Government the great disappointment which this long delay in its settlement has occasioned. The circumstances under which it occurred were such as to induce this Government to anticipate prompt satisfaction, and it is impossible not to feel that the course which the British Government has thought fit to pursue has seriously affected public opinion as to the worth of the Treaty, which it was hoped by both countries had promoted an amicable solution of long-standing difficulties.

The United States Government cannot feel that justice has been done its citizens in the protracted discussion which this occurrence has provoked, and while perfectly willing to endeavour, in concert with Her Britannic Majesty's Government, to find some practical and friendly solution of the differences of construction as to the Treaty provisions which their application seems to have developed, this Government cannot consent that, pending such discussion, its citizens shall be exposed to the indignity and loss which have been imposed upon them by these and like occurrences.

You will intimate courteously but firmly to Lord Granville that in accepting what we understand to be the proposition of Her Majesty's Government, it is understood as carrying the idea that the settlement suggested will be put in course of immediate execution, and that the determination of the amount of compensation will not be formally confined by any limitation arising from any construction of the Treaty which may be matter of difference between the two Governments.

So useful to the great interests involved do I regard the prompt settlement of this incident in our fishery relations, that I should be glad to hear by telegraph that Lord Granville concurs in the simple form of award which I have proposed.

In imparting to the British Government these views, you may, in your discretion, read this despatch to Lord Granville, and, if he desires it, leave him a copy.

I am, &c.

(Signed) WM. M. EVARTS.

No. 58.

Earl Granville to Sir E. Thornton.

Sir, *Foreign Office, February* 18, 1881.

THE United States' Minister at this Court called upon me here on the 16th instant.

Mr. Lowell read to me a despatch addressed to him by the United States' Secretary of State, dated the 4th of this month, relative to the occurrences at Fortune Bay; when he had finished reading it, I observed that I could only reply to it officially after having considered the despatch, a copy of which he communicated to me, for a day or two, in consultation with my colleagues, but I added that its tone was one of complaint, and hardly in unison with the conciliatory course which Her Majesty's Government have taken in the matter.

Mr. Lowell, however, assured me that he did not believe that it was intended to convey this impression, but that inasmuch as public opinion in the United States had been somewhat excited upon the subject, his Government had deemed it necessary to place once more their views upon record.

I went on to say that in any case I did not wish to dwell on a matter of form, but that as to the substance of the despatch, there seemed to be propositions in it with which I believed that Her Majesty's Government would be disposed to agree; that there would be no objection to the reservation by each Government of their opinion as to their respective rights, but it might be hoped that such questions would be set at rest both by the agreement which would be come to as to the amount of damages to be paid to the United States' fishermen, as well as by the Regulations which might be established in the future.

I added that the proposal of the United States' Government, that the question of damages should be arranged by negotiation between the Secretary of State and yourself, or by parties delegated by each of you respectively for that purpose, appeared to me to be good.

Mr. Lowell said that whilst unwilling to precipitate the discussion, he was desirous of impressing upon me the great importance of the right to the strand fishery, and of the bait question.

But I suggested that we should not go further into these matters at present.

I am, &c.

(Signed) GRANVILLE.

No. 59.

Sir J. Pauncefote to Mr. Herbert.

Sir, *Foreign Office, February* 18, 1881.

I AM directed by Earl Granville to state to you, for the information of Her Majesty's Secretary of State for the Colonies, that the United States' Minister at this Court called upon his Lordship at the Foreign Office on the 16th instant to read to him a despatch which he had received from his Government, a copy of which is inclosed herewith,* relative to the Fortune Bay case.

This despatch is a reply to the communication addressed by Lord Granville to Mr. Lowell on the 27th October, a copy of which was transmitted to you in my letter of the 28th of that month.

I am further to transmit the accompanying copy of a despatch addressed to Her Majesty's Minister at Washington,† embodying the substance of the conversation which ensued between Lord Granville and Mr. Lowell; and I am to request, that in laying these papers before the Earl of Kimberley, you will move his Lordship to favour Lord Granville with his observations thereon.

I am, &c.

(Signed) JULIAN PAUNCEFOTE.

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* No. 57. † No. 58.

No. 60.

*Earl Granville to Sir E. Thornton.**

Sir, *Foreign Office, February* 21, 1881.

MR. LOWELL informed me to-day that, in addition to the despatch from Mr. Evarts of the 4th instant, he had received another on the subject of the occurrences at Fortune Bay, of which he communicated to me the substance, to the following effect:—

There had been, Mr. Evarts stated, more than one attack upon American fishermen, and the President was of opinion that the long delay which had arisen in coming to a settlement of the Fortune Bay case had encouraged the fishermen there to these acts of violence, which the Government of the United States saw with dissatisfaction.

There could be no question between the two Governments as to the illegality of these further outrages to which he had referred, and he was desired to call the immediate attention of Her Majesty's Government to these complaints.

I said that I would tell him what had occurred to me with regard to the previous despatch from Mr. Evarts. I had not much to add to what I stated to him as my first impression of that despatch. The two propositions contained in it appeared to me to be acceptable, viz., that each Government should reserve their respective Treaty rights, and that, in accordance with the proposal of Mr. Evarts, the amount of damages should be settled by him and by yourself, or by Delegates appointed by either, but I thought that it was desirable, in case there was a difference, which I hoped would not occur, that there should be a previous agreement to refer it to a third person.

It had, however, occurred to me that it would be a still shorter and more satisfactory mode of procedure, that I should at once propose a fair and reasonable sum to settle the matter. If Mr. Lowell would telegraph to ascertain whether this suggestion commended itself to Mr. Evarts, I would in the meanwhile inquire, from the best authority obtainable, what would be an equitable calculation of the amount, in order to make a fair and liberal offer of a round sum. The calculations of the fishermen themselves were obviously such as were likely to be put forward by the parties interested.

I am, &c.
(Signed) GRANVILLE.

No. 61.

Mr. Lowell to Earl Granville.—(Received February 22.)

My Lord, *Legation of the United States, London, February* 22, 1881.

I HAVE the honour to inclose herewith copies of the affidavits of the masters of two United States' fishing-vessels, detailing the acts of violence by which they have been prevented from exercising their rights of fishing in certain Newfoundland waters, and which are mentioned in the instruction from Mr. Evarts which I had the honour of communicating to your Lordship yesterday.

I have, &c.
(Signed) J. R. LOWELL.

Inclosure 1 in No. 61.

Affidavits of Joseph Bowie and Charles G. Ferguson.

I, JOSEPH BOWIE, master of the American schooner "Victor," of Gloucester, Massachusetts, do on oath depose and say that I sailed from Gloucester on or about the 7th June, 1880, for a trip to the Grand Banks for codfish. I went into Musquito, Newfoundland, three times for bait, and bought capelin from the local fishermen, which they had taken in seines of their own. I paid for bait (and ice to preserve it) 66 dollars for the three baitings.

The next time, I went to a place called Devil's Cove on the chart, but it is called

* Substance telegraphed, February 22.

Job's Cove by the people. This was on the 4th August, and the only bait to be obtained was squid. I anchored in the cove about a quarter of a mile from the shore, and commenced to catch squid with the common hooks or jigs used for that purpose. I had no nets or seines on my vessel. I had been fishing about fifteen minutes when some sixty boats that had been fishing inshore from us, manned by at least 150 men, rowed up alongside of us, and forbade our taking any squid. I was not interfering in any way with their fishing, they being a long distance inside of us; in fact, we were outside of the cove, in open water. I had intended to buy my squid, but finding them plenty, I found I could catch them, and save the expense of buying. I was acting in perfect accordance with my Treaty rights, and knew what my rights were. I tried to reason with these people, and told them that I had a right to take bait or other fish without being restricted to any distance from shore, and that I should not interfere with them, and they had no right to molest me. I told them the United States had paid a large sum for this privilege; but they declared they knew nothing about it, and cared nothing about it. They told me I should not catch my bait, but should buy it of them. I kept on fishing, and they then attempted to board my vessel; they threatened to cut my cable, and threatened other violence. Finding myself powerless against so many, I told my crew to haul in their lines and stop fishing, which they did. This pacified the mob, and they then left me.

The next morning I determined to fish, and not submit to this violence.

I manned my lines and commenced to fish. The boats came off in larger numbers, and the men were very violent. They said, "We warned you not to fish yesterday, and we will cut your cable and drive you on shore if you don't stop;" they came alongside, struck at my men with their oars, and some ten men leaped on the vessel and gathered around the windlass.

I went forward and asked them if they were aware what they were doing; they told me they were, and that I should not fish there. At the same time I saw a heavy oar lifted over my head, and jumped one side to avoid the blow, which, if it had struck me, would have struck me down.

In the meanwhile the mob had entirely destroyed our lines and jigs, leaving me no means of fishing.

The boats being around my bow at the cable, and knowing if it was cut my vessel would be likely to go on shore, as the wind blowed directly on, I had to submit again to mob violence, and agreed not to fish any more. They then left my vessel, and went for the American schooner "Moro Castle," which had come in, and was trying to catch bait. The wind blowed so hard that I was obliged to get under weigh, and leave without my bait; as my trip depended on my getting bait speedily, I returned there and bought my bait the next day, paying 120 dollars for squid; I was obliged to do this, as there was no squid at any other place.

It is universal in the baiting-places at Newfoundland to experience the same feeling and action, and it is impossible for American vessels to take their own bait, as the local fishermen will not allow it, but compel us to purchase it of them.

We are thus compelled to pay at least 100,000 dollars yearly, although the Treaty of Washington gives us a perfect right to take these fish, and I am satisfied that the United States receives absolutely nothing for the immense sum paid for the privilege of fishing on the coast of British North America.

(Signed) JOSEPH BOWIE,
Master of Schooner "Victor."

I, Charles G. Ferguson, one of the crew of the schooner "Victor," of Gloucester, Massachusetts, do on oath depose and say that I was on board the schooner, and know that all the facts stated by Captain Bowie are true.

(Signed) CHARLES G. FERGUSON,
One of the Crew.

Massachusetts, Essex, ss.

Personally appeared the above-named Joseph Bowie, master, and Charles G. Ferguson, one of the crew of schooner "Victor," and made oath to the truth of the above affidavit.

Before me,

(Signed) AARON PARSONS, *Notary Public.*

Gloucester, November 18, 1880.

Inclosure 2 in No. 61.

Affidavit of John Dago.

I, JOHN DAGO, master of the American schooner "Concord," of Gloucester, Massachusetts, do on oath depose and say that I left Gloucester on the 1st April, 1880, "for a trip to the Grand Banks." Our first baiting was at Freshwater Bay, Newfoundland, buying capelin and ice to the amount of 25 dollars. On the 9th August, 1880, we went into a cove in Conception Bay, called Northard Bay, for squid. I put out four dories and attempted to catch my bait with the squid jigs, or hooks used for that purpose.

My men went in to the immediate vicinity of where the local shore boats were fishing for squid, but in a short time they returned and reported to me that they were not allowed to fish by the men on board the shore boats, and not wishing any trouble they returned on board. I then manned my lines on the vessel and commenced to catch squid. The men in the shore boats seeing us fishing came off to us to the number of sixteen boats with some thirty men. These men demanded that I should stop fishing or leave, or else buy squid from them. They were very violent in their threats, and, to avoid trouble, I bought my squid, paying them 150 dollars for the squid, which I could easily have taken if I had not been interfered with.

Wherever I have been in Newfoundland I find the same spirit exists, and that it is impossible for any American vessel to avail herself of the privileges conferred by the Treaty of Washington, that the Fishery Articles of that Treaty are entirely useless and valueless, and in no sense does the American fisherman receive any benefit from the Treaty.

(Signed) JOHN DAGO, *Master.*

Massachusetts, Essex, ss.

Personally appeared the above John Dago, and made oath to the truth of the above affidavit.

Before me,

(Signed) AARON PARSONS, *Notary Public.*

Gloucester, November 18, 1880.

No. 62.

Sir E. Thornton to Earl Granville.—(Received February 23)

(Extract.) *Washington, February* 11, 1881.

DURING a visit which I paid to the State Department yesterday, Mr. Evarts read to me two despatches which he had addressed on the 4th instant to Mr. Lowell, the United States' Minister in London.

One of these referred to a claim made by some United States' fishermen on account of having been prevented in November last from catching bait on the coast of Newfoundland.

It stated that Newfoundland fishermen had intimated to the American fishermen that they would not allow them to fish for bait; that this prohibition was the act of the Newfoundland fishermen only without any intervention on the part of the authorities either for or against it; that there was no question as to the legality or otherwise of Americans fishing for bait, or of their mode of fishing, whether as regarded their nets or anything else; but that the Newfoundland fishermen simply forbade the Americans to fish for bait on the ground that it interfered with their rights and profits in selling bait. The despatch was accompanied by affidavits which, however, Mr. Evarts did not show me.

The other despatch related to the Fortune Bay affair, with regard to which it suggested that there should be a summary settlement of the amount of indemnity due to American fishermen on account of the damage done to their nets, &c., on the above occasion, either between him and myself, or by two persons delegated by us for that purpose. I gave to Mr. Evarts my opinion that no two persons, one on each side, could ever come to an agreement upon the subject, and that the assistance of a third and impartial person would always be necessary. But Mr. Evarts replied that it was a small business, that it was not advisable to make a great affair of it, and that he

thought any two reasonable persons could come to an agreement upon it. I, however, maintained my opinion, and the more so because, although Mr. Evarts read the despatch very quickly, it appeared to me that it insisted upon the right of American fishermen, in the enjoyment of the permission granted them by the XVIIIth Article of the Treaty of the 8th May, 1871, "To take fish of every kind, except shell-fish, on the sea-coasts and shores, &c." also to make use of the strand for the purpose of carrying on that mode of fishing.

The despatch complains of the delay which has taken place in the settlement of the Fortune Bay affair, and charges that by this delay the Newfoundland fishermen had been encouraged in their opposition to the American fishermen. I said to Mr. Evarts that the delay could not be attributed entirely to us, although there was much more reason for it on our side on account of the investigations and inquiries which it was necessary to make, and the distance from England of the scene of the occurrences.

Mr. Lowell may, perhaps, have communicated to your Lordship the contents of the two despatches before this can reach the Foreign Office.

No. 63.

Earl Granville to Sir E. Thornton.

Sir, *Foreign Office, February* 23, 1881.

I TRANSMIT to you herewith, for your information, the accompanying copy of a letter from Mr. Lowell, inclosing copies of affidavits respecting the further complaints of American fishermen referred to in his communication to me on the 21st instant, as stated in my despatch to you of that day.*

Mr. Lowell, in giving me these papers, suggested that these new claims to which the affidavits relate should be referred to Mr. Evarts and yourself, together with those arising out of the proceedings at Fortune Bay.

There has already been a correspondence with the Colonial Office respecting one of these cases, that which occurred at Jobs Cove, and I have forwarded the papers to Her Majesty's Secretary of State for the Colonies.

I am, &c.
(Signed) GRANVILLE.

No. 64.

Earl Granville to Sir E. Thornton.†

Sir, *Foreign Office, February* 24, 1881.

THE United States' Minister called upon me this afternoon, and informed me that he had received a telegram from Mr. Evarts, in which the latter expressed satisfaction at the suggestion I had made of the offer of a lump sum in compensation for the losses suffered by the United States' fishermen at Fortune Bay.

Mr. Evarts added that he preferred this mode of settlement, and that he considered the total amount of the claims, with interest, amounted to about 120,000 dollars.

I told Mr. Lowell that I had had an opportunity of consulting my colleagues on the question, that we had agreed that it would be best not to look too narrowly at the intrinsic value of the claims put forward by the American fishermen, but to have regard to the more general considerations involved. I said I was not authorized to enter into any process of bargain as to the exact amount which would actually cover the losses, but to offer, on behalf of Her Majesty's Government, the payment of a lump sum of 15,000*l.*, or, say, 75,000 dollars, in full settlement of the question of damages, including interest, and also the two smaller cases which he had been instructed to bring to my notice a few days ago. With regard to these latter, I observed that the only testimony we had was all on one side, and that, if they had to be separately considered, it would be necessary to call for counter-evidence. They were, however, cases in which, *primâ facie*, the Newfoundland fishermen appeared not to be in the right. At the same time, it was clear that the amount of pecuniary damage must be very small.

* No. 61.

† Substance telegraphed.

I added that, if our offer was not acceptable, we should be quite ready to adopt the proposal made in Mr. Evarts' despatch, that the matter should be referred to you and him, or to Delegates chosen by each of you. Each party, I observed, were agreed to reserve the question of the rights which they respectively claimed under the Treaty, and to treat this matter separately from the discussion of the pecuniary payment.

I mentioned to Mr. Lowell that I had at first been taken by surprise at an idea put forward in the despatch of which he had told me the substance last Monday, namely, the possibility of the President sending a ship to protect the American fishermen on the coast of Newfoundland; but that, on consideration, it appeared to me that such a course might be taken which might be of great advantage, if each Government sent vessels with Commanders who received identic and conciliatory instructions for the purpose of keeping the police among the fishermen of their respective countries.

Such a practice has been in force with good effect for some time on the part of the British and French Governments.

I am, &c.
(Signed) GRANVILLE.

No. 65.

Earl Granville to Mr. Lowell.

Sir, *Foreign Office, February* 25, 1881.

I HAVE the honour to acknowledge the receipt of your communication of the 22nd instant, inclosing copies of the affidavits of the masters of two United States' fishing vessels, detailing the acts of violence by which they have been prevented from exercising their rights of fishing in certain Newfoundland waters, and I have to state to you, in reply, that I have forwarded copies to Her Majesty's Secretary of State for the Colonies.

I have, &c.
(Signed) GRANVILLE.

No. 66.

Mr. Lowell to Earl Granville.—(*Received February* 26.)

My Lord, *Legation of the United States, London, February* 26, 1881.

I HAVE the honour and pleasure to acquaint your Lordship that I received early this morning a cable message from Mr. Evarts, in which he states that although the offer made by Her Majesty's Government for the settlement of the fishery claims is not quite up to his expectations, he nevertheless accepts it, assuming that the amount can presently be at his disposal for immediate distribution.

I have, &c.
(Signed) J. R. LOWELL.

No. 67.

Earl Granville to Mr. Lowell.

Sir, *Foreign Office, February* 26, 1881.

I HAVE the honour to acknowledge the receipt of your letter of this day, informing me that you have received a telegraphic message from Mr. Evarts in which he states that although the offer made by Her Majesty's Government for the settlement of the fishery claims is not quite up to his expectations, he nevertheless accepts it, assuming that the amount can presently be at his disposal for immediate distribution; and I have to state to you, in reply, that Her Majesty's Government are ready to hold the sum of 15,000*l.* at the disposal of the Government of the United States on receiving your assurance that it is accepted in full of all claims arising out of any interruption of American fishermen on the coast of Newfoundland and its dependencies up to the

present time, and without prejudice to any question of the rights of either Government under the Treaty of Washington.

I have, &c.
(Signed) GRANVILLE.

No. 68.

Earl Granville to Sir E. Thornton.

Sir, *Foreign Office, February* 26, 1881.

I TRANSMIT to you herewith, for your information, copies of a correspondence with Mr. Lowell in regard to the Fortune Bay question.*

I am, &c.
(Signed) GRANVILLE.

No. 69.

Earl Granville to the Lords Commissioners of the Treasury.

My Lords, *Foreign Office, February* 26, 1881.

YOUR Lordships are aware that a correspondence has taken place with the Government of the United States with regard to certain claims of American fishermen on account of the interruption of their fishing on the coasts of Newfoundland, amounting to about 120,000 dollars, including interest.

The Government of the United States suggested that these claims should be referred for assessment to the United States' Secretary of State and Her Majesty's Minister at Washington, or to Delegates named by them, but it appeared to Her Majesty's Government that it was, for many reasons, desirable to avoid so dilatory a process of investigation, and I was accordingly authorized by the Cabinet to offer a sum of 15,000*l.*, or 75,000 dollars, in full settlement of the claims.

The United States' Minister has informed me to-day that this offer is accepted, and I have stated to him in reply that Her Majesty's Government are ready to hold this sum of 15,000*l.* at the disposal of the Government of the United States on receiving his assurance that it is accepted in full of all claims arising out of any interruption of American fishermen on the coasts of Newfoundland and its dependencies up to the present time, and without prejudice to any question of the rights of either Government under the Treaty of Washington.

I have now therefore to request that your Lordships will be good enough to give the necessary directions for this amount to be held in readiness.

I have forwarded a copy of this letter to Her Majesty's Secretary of State for the Colonies, with whom it will rest to make application to the Governor of Newfoundland for the ultimate refund of this payment.

I am, &c.
(Signed) GRANVILLE.

No. 70.

Lord Tenterden to Mr. Herbert.

Sir, *Foreign Office, February* 26, 1881.

I AM directed by Earl Granville to transmit to you herewith, to be laid before the Earl of Kimberley, a copy of a letter from Mr. Lowell, stating that the United States' Government accept the offer of 75,000 dollars, or 15,000*l.*, in settlement of the fishery claims, together with a letter which his Lordship has addressed to him in reply,* stating that Her Majesty's Government are ready to hold this sum at the disposal of the Government of the United States on receiving his assurance that it is accepted in full of all claims arising out of any interruption of American fishermen on the coasts of Newfoundland and its dependencies up to the present time, and without prejudice to any question of the rights of either Government under the Treaty of Washington.

* Nos. 66 and 67.

I am also to inclose a copy of a letter to the Lords Commissioners of Her Majesty's Treasury, requesting that this sum may be held in readiness.* Lord Kimberley will observe that I have informed their Lordships that a copy of this letter would be forwarded to him, as it will rest with him to make application to the Government of Newfoundland for the ultimate refund of this payment.

I am, &c.
(Signed) TENTERDEN.

No. 71.

Lord Tenterden to Mr. Herbert.

Sir, *Foreign Office, February* 26, 1881.

I AM directed by Earl Granville to transmit to you, to be laid before the Earl of Kimberley, the accompanying copy of a note from Mr. Lowell relating to the Fortune Bay affair.†

I am, &c.
(Signed) TENTERDEN.

No. 72.

Sir E. Thornton to Earl Granville.—(*Received March* 12.)

(Extract.) *Washington, February* 28, 1881.

ON the morning of the 23rd instant Mr. Evarts wrote to me that he had received a telegram from Mr. Lowell, and begged that I would call upon him at the State Department as soon as I could. On my arriving there he read to me the telegram which related to the Fortune Bay affair. It was much shorter, and contained less detail than your Lordship's telegram of the 22nd instant,‡ which I had had the honour of receiving on the previous evening. It stated that Her Majesty's Government was disposed to accept the proposal that the amount of damages caused to American fishermen should be settled by Mr. Evarts and myself, or by Delegates appointed by us, but thought that there should be a previous agreement to refer the matter to a third person, in case the Delegates should fail to agree. The telegram added that Her Majesty's Government would prefer to make an offer of a fair sum to settle the claims of the American fishermen.

I then communicated the substance of your Lordship's telegram to Mr. Evarts, and observed that I had understood it to signify that the question should be referred to a third person, whether it was he and I or the Delegates named by us who should disagree; but he expressed the opinion that Mr. Lowell had rightly interpreted what your Lordship had said.

He went on to say that the Government of the United States would prefer that Her Majesty's Government should make an offer of a lump sum in satisfaction of the damages caused to American fishermen in the Fortune Bay affair. He hoped, however, that it would be a generous offer; for that an illiberal one would be worse than none. He believed that a liberal view of the matter would create a good feeling and would contribute to the success of, and facilitate, any future negotiation which must come on sooner or later with regard to the fisheries question.

I replied that your Lordship's note of the 27th October last and the offer now made was a sufficient proof that Her Majesty's Government wished to deal with the question in a spirit of liberality.

On the evening of the 25th instant your Lordship's telegram of that day reached me,§ and on the following day I called upon Mr. Evarts, who read me a telegram which he had received from Mr. Lowell on the evening of the 24th instant, informing him that your Lordship had offered the sum of 15,000*l.* in settlement of the claims comprised in Mr. Evarts' two despatches to Mr. Lowell. He also read me his answer, which he had forwarded on the 24th instant, to the effect that the United States' Government accepted the offer, expressing the hope that the amount would be available at once, though it did not make this a condition of its acceptance.

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* No. 69. † No. 66. ‡ See No. 60. § No. 64.

No. 73.

Sir E. Thornton to Earl Granville.

(Substance received by telegraph, February 28, and March 2 and 5.)

My Lord, *Washington, March* 7, 1881.

AFTER I had written my despatch of the 28th ultimo, Mr. Evarts requested me to call at the State Department, when he repeated that he had received another telegram from Mr. Lowell with regard to the Fortune Bay and other claims. This telegram he read to me; it was similar to that which I had had the honour to receive from your Lordship on the 26th ultimo.

Commenting upon it, Mr. Evarts said that it appeared to him impossible to give such an assurance as was desired by your Lordship, to the effect that the sum offered by Her Majesty's Government should be accepted in full of all claims arising out of any interruption of American fishermen on the coast of Newfoundland and its dependencies up to the present time. He had understood that the offer had been made for definite claims, viz., those arising out of the Fortune Bay affair and the further claim mentioned in his despatch No. 109 to Mr. Lowell.

Mr. Evarts argued that if he accepted the lump sum as for all claims up to the present time, he would be under the necessity of advertising, in order to ascertain whether any other claimants existed, and that he would thus encourage the presentation of new claims which might have no foundation whatever, but which would have to be examined. Nor could the sum mentioned be distributed amongst the Fortune Bay claimants until it had been proved that there were no others.

Mr. Evarts stated, however, that he had caused an examination to be made, and had found that the Fortune Bay claims, and those mentioned in his despatch No. 109 to Mr. Lowell, were the only claims which had been presented to the State Department, except one concerning the American fishing-vessel "Mist," with respect to which a communication had been made to your Lordship some time ago. The claimant in this case, he said, had been informed that, as the claim was then presented, it could not be entertained by the United States' Government, and nothing further had been heard from him.

Mr. Evarts added that, at this moment, something might be occurring on the coasts of Newfoundland of which we must necessarily be ignorant. The United States' Government would, however, be willing to give an assurance that the sum offered would be accepted in satisfaction of all claims which had been presented to either Government. Mr. Evarts expressed the strongest conviction that there were none besides those mentioned above.

I am myself of opinion that this conviction is well-founded, for it is almost impossible that such occurrences should not come to our knowledge.

I communicated to Mr. Evarts the contents of your Lordship's telegram of the 1st instant.* He repeated the same arguments which I have reported above, and observed further that although it had been at first proposed that a summary settlement of the matter should be made by him and myself, it was now said that the alternative should be a reference to assessors named by us.

Your Lordship's telegram of the 3rd instant, the contents of which I communicated to Mr. Evarts, satisfied him upon that point.

In more than one of my interviews with him he has assured me that his Government was ready, and thought it would be expedient to proceed as soon as possible with the negotiation of an arrangement concerning the regulations which were to govern the fisheries hereafter.

On the evening of the 5th instant Mr. Evarts called at the Legation and read me a telegram which he was then sending to Mr. Lowell, referring to the two despatches which had been read to your Lordship, and instructing him to inquire whether Her Majesty's Government would offer a separate sum for the claims mentioned in each of those despatches, and repeating his assurance that he knew of no others. He asked me at the same time to telegraph, if I thought proper, to your Lordship, giving the reasons he had put forward for not being able to give so comprehensive an assurance as your Lordship desired to have. To this I assented in the hope that my communication might possibly contribute in some small degree to the settlement of this long vexed question.

I have, &c.

(Signed) EDWD. THORNTON.

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* See No. 74.

No. 74.

*Earl Granville to Sir E. Thornton.**

Sir, *Foreign Office, March* 1, 1881.

WITH reference to your telegram of the 28th February, I have to instruct you to inform Mr. Evarts that, when Her Majesty's Government offered to pay to the Government of the United States a lump sum, they did so in the expectation of securing a final and immediate settlement of all claims up to the present date, as this result alone would justify them in offering such an amount.

Unless this settlement can be secured, they prefer to revert to Mr. Evarts' original proposal, to the effect that the claims should be referred to assessors named by Mr. Evarts and yourself, with the addition that provision should be made for reference to a third person in case of disagreement.

Whichever alternative Mr. Evarts may now adopt, Her Majesty's Government take it for granted that the Government of the United States are willing at once to confer for the purpose of establishing such Regulations for the fisheries as shall in future prevent misunderstanding.

I am, &c.
(Signed) GRANVILLE.

No. 75.

Mr. Lowell to Earl Granville.—(Received March 2.)

My Lord, *Legation of the United States, London, March* 2, 1881.

I HAVE the honour to acquaint your Lordship that, having inquired of Mr. Evarts, by telegraph, of the nature of the assurance that I might give your Lordship upon the receipt of the proposed indemnity in the Newfoundland fishery transactions, I received from him an answer, by cable, late last evening to the following effect:—

The assurance I may give is this: that the sum paid is accepted in full of all claims arising out of any interruption of American fishermen on the coasts of Newfoundland and its dependencies up to this time presented to either Government, and without prejudice to any question of the rights of either Government under the Treaty of Washington.

I am also permitted to say to your Lordship, in giving this assurance, that, as a matter of fact, no other claims than those embraced in the Fortune Bay list and those named in Mr. Evarts' despatch No. 109, which I have shown to your Lordship, are within the knowledge of my Government for presentation or for its own consideration.

I have already communicated to your Lordship orally the substance of this cable message, at the interview which I had the honour of having with you this morning. I understood your Lordship to say, in answer to this communication, that Her Majesty's Government adhered to the terms they had finally offered: that is to say, that the sum of 15,000*l.* should be considered as received in full of all demands arising out of the interruptions of American fishermen on the coasts of Newfoundland up to date; otherwise, that you would prefer to fall back upon the plan of a reference, already suggested.

I sent a telegram to Mr. Evarts this morning informing him of your views.

I have, &c.
(Signed) J. R. LOWELL.

No. 76.

Earl Granville to Sir E. Thornton.

Sir, *Foreign Office, March* 3, 1881.

I HAVE received your telegraphic despatch of the 2nd instant, and I have to state to you, in reply, that Her Majesty's Government did not intend to put forward a fresh alternative, but desired only to allude to the original offer made by the United

* Substance telegraphed.

States' Secretary of State to have the matter referred to you and him, or else to Delegates nominated respectively by each of you, with the addition that provision should be made for reference to a third person in the event of disagreement.

I am, &c.
(Signed) GRANVILLE.

No. 77.

Earl Granville to Sir E. Thornton.

Sir, *Foreign Office, March* 3, 1881.

THE United States Minister called upon me to-day, and communicated to me the substance of a telegraphic despatch from Mr. Evarts, of which a copy is inclosed.* I observed that I shared Mr. Evarts' regret at our being unable so far to arrive at an agreement, as I had looked forward to the great satisfaction of settling the matter with him; but that if it was the fear of new claims which made him hesitate to give the assurance required by Her Majesty's Government, he must remember that they ran a similar risk. I was not, however, aware of any claims, excepting those which he had mentioned, though there had been brought to the notice of Her Majesty's Government two cases, of which I furnished him with the particulars, in which complaints had been made of the interruption of American vessels, the "Moro Castle" and "Minnesota" when engaged in collecting bait. It did not appear that either of these cases was of importance.

I am, &c.
(Signed) GRANVILLE.

No. 78.

Mr. Lowell to Earl Granville.—(Received March 4.)

My Lord, *Legation of the United States, London, March* 3, 1881.

REFERRING to our conversation of this afternoon, I have the honour to inclose herewith a copy of the telegram from Mr. Evarts, the substance of which I had the honour of communicating to your Lordship on that occasion.

You will observe that in one or two places the translation from the cypher is conjectural.

I have, &c.
(Signed) J. R. LOWELL.

Inclosure in No. 78.

Mr. Evarts to Mr. Lowell.

(Telegraphic.) *Washington, March* 3, 1881.

SECRETARY'S offer, as communicated to me by your telegram of the 24th February, was 15,000*l.* for Fortune Bay, and those mentioned in Number hundred nine.

This I accepted by my telegram of the 25th February. This completed the subject, and the amount as definitely ascertained, and showed no indistinctness or discrepancy of views. All the previous communications either way related to Fortune Bay claims. Claims of Number hundred nine were introduced specifically by Secretary as additional to Fortune Bay, and I accepted the sum offered for both. I cannot consent to any modification of the completed settlement of specific claims. I have at no time treated except of definite pecuniary interests of claimants in my charge. The agreed sum measured these claims and goes to these claimants. I have been willing to give every assurance to cover all claims brought to the knowledge of either [? a] Government, and authorized you to inform Secretary that as a matter of fact no others were entertained by this Government. All this was no part of the offer made and accepted, and came in as new matters [? of controversy]. You will explain to

* Inclosure in No. 78.

Secretary the impossibility of my changing [? the subject] of negotiation after an agreed valuation of that subject should the offer be retracted after its acceptance, or new conditions be imposed afterwards which would not have been entertained as an original subject. I must regret that the effort to remove a serious obstacle to friendly disposition of the fishery controversy should have increased difficulties [? are] which embarrass it. If the money is paid under the assurance authorized by my last, telegraph me; if it is not, you may say to the Secretary that this Government will await his early attention to Numbers hundred nine and hundred ten, which must stand unaffected [? by] anything which has passed since.

No. 79.

Mr. Lowell to Earl Granville.—(Received March 8.)

My Lord, *Legation of the United States, London, March 7, 1881.*

REFERRING to our conversation this afternoon in regard to the settlement of claims for damages growing out of the interruption of American fishermen on the coasts of Newfoundland, I have the honour, agreeably to your request, to inclose herewith such portions of a telegram received by me yesterday from Mr. Evarts as he instructs me therein to communicate to your Lordship.

Perhaps it may seem superfluous in me, after our late conversation, to endeavour further to impress upon your Lordship my sense of the very great importance of a speedy settlement of these long-standing claims, but I cannot refrain from adding my conviction, that such a settlement would tend to allay a growing irritation, and would remove an obstacle to that understanding between the two Governments as to their respective rights and duties under the Treaty of Washington, which would greatly lessen, if it did not exhaust, the sources from which similar claims would be likely to arise hereafter.

I have, &c.
(Signed) J. R. LOWELL.

Inclosure in No. 79.

Copy of Portions of a Telegram received by Mr. Lowell from Mr. Evarts, March 6, 1881.

"READ my despatch 110, 4th and 5th paragraphs, relating to arbitration, and ask Secretary whether he was, and is, ready to submit the matter there stated to summary award of Secretary of State and British Minister. If so, say to him that, as he has expressed a preference for a lump sum rather than this summary award, and I agree in this preference, that I will receive a proposition from him of a lump sum for the Fortune Bay claims.

* * * * * *

"I renew the subject in this way as a last effort to remove the obstacle these claims as heretofore treated by British Government interpose to a liberal disposition of the more permanent interests involved, and to supersede, if possible, the record made by the recent communications between the two Governments, that an explicit offer of a lump sum for the Fortune Bay claims and those named in No. 109 was retracted after its explicit acceptance by this Government.

"You may say to the Secretary that I will also receive a proposition of a lump sum for the claim in 109.

* * * * * *

"You will use your own discretion as to the terms in which you will impress upon Secretary my earnest desire to relieve the important discussions on the Fisheries which must soon engage the two Governments from the disturbing influence of the unsatisfied Fortune Bay claims.

* * * * * *

"In reference to last part of your last telegram, I have no difficulty in saying that no other claims are at all likely to arise, but I cannot receive money measured by particular claims under any indefinite obligations to reserve or distribute it otherwise."

No. 80.

*Earl Granville to Sir E. Thornton.**

Sir, *Foreign Office, March* 8, 1881.

I CONVERSED with Mr. Lowell yesterday upon the subject of the fishery claims. I told him that I should have been very much gratified had I been able to have arranged them with Mr. Evarts. The sole reply I could make to his further representations was, that I was prepared to revert to the proposition for a reference of the claims to Mr. Evarts and to yourself, or to Delegates nominated by you, but that the form of assurance required by Her Majesty's Government could not be modified.

I entertain some doubt, which Mr. Lowell was unable to clear up, as to whether the telegraphic despatch of the 5th instant was a repetition only of the former statement of Mr. Evarts, or whether some modification was intended. He considered, however, that no change was indicated.

I observed that Mr. Evarts' argument to you, that if he accepted a lump sum he was bound to advertise, and by so doing would invite claims, to be by no means self-evident.

I added that Her Majesty's Government would not object to the substitution of the words "up to the end of last year" for "up to the present time."

I have communicated the substance of this despatch to you by telegraph.

I am, &c.

(Signed) GRANVILLE.

No. 81.

Earl Granville to Sir E. Thornton.

Sir, *Foreign Office, March* 9, 1881.

THE United States' Minister called upon me this afternoon to resume the discussion of the mode of settling the claims of United States' fishermen for interference with their fishing off the coast of Newfoundland.

I thanked Mr. Lowell for his letter of the 7th instant, and told him that I had had an opportunity of consulting my colleagues, who agreed with me in the desire to arrive at a speedy settlement of this part of the question. It had been with this object that I had offered the payment of a lump sum as an alternative to the plan of reference to yourself and Mr. Evarts, or to Delegates to be named severally by you and him. When we were accused of having shifted our ground, I must observe that the offer was originally made under the impression and with the understanding that it would settle off-hand all claims of this nature up to the present date, as we knew of no others that had been made beyond those brought forward by the United States' Government. But when—although the Government of the United States assured me of their belief that there were no other claims—exception was taken to the wording of our offer, on the ground that it would debar them from advancing possible further claims on account of past occurrences, we felt that the objection made it necessary for us to adhere to the form we had adopted.

We now thought the best plan would be to revert to the proposal of reference of the claims to you and Mr. Evarts or his successor, or to persons to be named by you on either side.

I asked Mr. Lowell to inquire what were the views of his Government as to my suggestion of a combined naval force on the coast to keep the police, with identic instructions to the Commanders.

I am, &c.

(Signed) GRANVILLE.

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* Substance telegraphed.

No. 82.

Sir E. Thornton to Earl Granville.

(Substance received by telegraph, March 12.)

(Extract.) *Washington, March* 14, 1881.

I HAVE the honour to inform your Lordship that, on Mr. Blaine's invitation, I called upon him at the State Department on the 12th instant, for the purpose of conferring with him upon the proposed settlement of the Fortune Bay and other claims of American fishermen.

Mr. Blaine said that, after due reflection, he had come to the conclusion that the discussion of the matter could be carried on more satisfactorily here than in London. He adverted to the position which had been taken by his predecessor, and pointed out that, as Mr. Evarts had declined to give the full assurance required by your Lordship on the receipt of 15,000*l.* from Her Majesty's Government, he did not think it was in his power at once to agree to the same terms without at least making further inquiries as to the existence of other claims. Upon my observing that your Lordship had since then offered to substitute the phrase "up to the end of last year" for "up to the present time," Mr. Blaine said that, though this made a slight alteration in the wording, the substance of the assurance to be given was the same, for that it was hardly to be supposed that any claims could be originated at this season of the year. But he authorized me to inform your Lordship that he hoped that he and I could come to an agreement upon the question at issue without reference to a third person, and that, after further inquiries and when he had satisfied himself as to the probable existence of other claims, and should have complete control of the claimants and of the whole matter, he would even be able to accept your Lordship's offer of 15,000*l.*, coupled with a statement, on its acceptance, in the terms desired by Her Majesty's Government.

Upon my inquiring what steps it was proposed to take with a view to an agreement as to the rules and regulations which are to prevail hereafter respecting the fisheries, Mr. Blaine replied that this question would meet the early consideration of the United States' Government, and that he thought it was very desirable that a decision should be arrived at as soon as possible.

Mr. Blaine was most cordial in his manner, and expressed his earnest hope that there might be no obstacle to friendly relations between the two Governments.

No. 83.

*Earl Granville to Sir E. Thornton.**

Sir, *Foreign Office, March* 14, 1881.

HER Majesty's Government are in some doubt as to the meaning of the expression "required assurance" which appears in your telegraphic despatch of the 12th instant, and I have to request you to inform me whether it means "receipt in full up to the 1st January, 1881."

I am, &c.
(Signed) GRANVILLE.

No. 84.

Sir E. Thornton to Earl Granville.

(Substance received by telegraph, March 19.)

My Lord, *Washington, March* 21, 1881.

WHEN your Lordship's telegram of the 17th instant† reached me Mr. Blaine was unwell and was not able to be at his office. On the 19th, however, he allowed me to pay him a visit at his house, when he repeated to me the substance of the telegram he had sent to Mr. Lowell relating to the Fortune Bay affair, more

* Substance telegraphed.

† See No. 88.

or less in the same words as those contained in your Lordship's telegram above mentioned.

Upon my asking him what he meant to imply by the reference of the Fortune Bay affair to him and myself, whether he intended that we should merely assess the damages for the claims contained in Mr. Evarts' despatches Nos. 109 and 110 to Mr. Lowell,* or whether his object was that we should agree upon a lump sum upon his giving the assurance required by Her Majesty's Government, he replied that he wished that the reference should be as wide as possible, so that we might agree upon a lump sum coupled with an assurance to be given by the United States' Government in the terms required by Her Majesty's Government, or if we could not agree upon this mode of settlement, then we should apply ourselves to an assessment of the damages suffered by the claimants above mentioned.

Mr. Blaine said that he would much prefer the former mode of settlement, and that he was now making searching inquiries with a view to being able to give to Her Majesty's Government such an assurance as would satisfy it. He hinted at a slight increase of the lump sum offered by your Lordship, but said nothing definite. With regard to the form of receipt, he thought he would be able, and it would be expedient, to fix the 4th March as the time up to which all claims of that nature should be considered as cancelled.

Mr. Blaine seemed to dislike negotiation by means of telegraphic communication, and said that a good deal of misapprehension had already arisen from its being employed.

With regard to sending cruizers to the coast of Newfoundland during the fishing season, Mr. Blaine said that he saw no objection to such a step, but thought that, before doing so, it would be desirable to agree upon the Regulations which such cruizers would have to enforce, so that there might be no disputes between the commanders of the respective vessels.

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

No. 85.

Mr. Lowell to Earl Granville.—(*Received March* 15.)

My Lord, *Legation of the United States, London, March* 15, 1881.

I HAVE the honour to inform your Lordship that I received last evening a cable message from Mr. Blaine, in which he instructs me to say that your Lordship's proposition to refer the question of damages to American fishermen to himself and Sir Edward Thornton is accepted, and further suggesting that the subject of joint-cruizers should be postponed or should also be referred to the same gentlemen. I inclose a copy of this telegram.

I have, &c.
(Signed) J. R. LOWELL.

Inclosure in No. 85.

Mr. Blaine to Mr. Lowell.

(Telegraphic.) *Washington, March* 14, 1881.

INFORM Minister for Foreign Affairs (Lord Granville) that his proposition to refer the matter to British Minister (Sir Edward Thornton) and myself is accepted. The subject of joint cruizers may be postponed, or if desired may also be referred to British Minister and myself, to be taken up afterwards with power to agree upon a series of regulations under which Treaty rights may be mutally secured.

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* For substance of these despatches, see Nos. 57, 60, and 61.

No. 86.

Lord Tenterden to Mr. Herbert.

Sir, *Foreign Office, March* 15, 1881.

I AM directed by Earl Granville to transmit to you, to be laid before Her Majesty's Secretary of State for the Colonies, the accompanying copy of a further communication from the United States' Minister at this Court,* inclosing copy of a telegram received by him from the United States' Secretary of State, upon the subject of the compensation claimed by United States' fishermen for damages caused by occurrences on the coasts of Newfoundland; and I am to request that, in laying these papers before Lord Kimberley, you will move his Lordship to cause Lord Granville to be informed what reply should be returned to the latter part of Mr. Blaine's telegram.

I am, &c.
(Signed) TENTERDEN.

No. 87.

Earl Granville to Sir E. Thornton.

Sir, *Foreign Office, March* 17, 1881.

I INCLOSE herewith, for your information, a copy of a letter from Mr. Lowell respecting the Fortune Bay question.*

I am, &c.
(Signed) GRANVILLE.

No. 88.

Earl Granville to Sir E. Thornton.†

Sir, *Foreign Office, March* 17, 1881.

WITH reference to my despatch of this day's date in which I inclosed a copy of a letter from Mr. Lowell forwarding a copy of a telegram from Mr. Blaine stating that the proposition to refer to him and to yourself the Fortune Bay indemnity is accepted, I should wish to know whether Her Majesty's Government are to understand that the claims in question are to be referred for investigation and assessment, or merely in order that Mr. Blaine and yourself may agree upon the acceptance by the United States' Government of a lump sum upon his giving you the assurance which Her Majesty's Government have required.

You will have seen that the telegram from Mr. Blaine does not tally with the statement made to you by him on Saturday last, as reported in your telegram of the 15th instant.‡

I am, &c.
(Signed) GRANVILLE.

No. 89.

Mr. Herbert to Lord Tenterden.—(*Received March* 18.)

Sir, *Downing Street, March* 18, 1881.

I AM directed by the Earl of Kimberley to acknowledge the receipt of your letter of the 15th instant, inclosing a communication from the United States' Minister at this Court, with a telegram received by him from the United States' Secretary of State, upon the subject of the compensation claimed by United States' fishermen for damages caused by the occurrences on the coast of Newfoundland, and requesting Lord Kimberley's opinion as to the reply which should be returned to the latter part of Mr. Blaine's telegram.

Lord Kimberley desires me to state, for the information of Earl Granville, that, in his opinion, no further steps should be taken in regard to the question of the joint

* No. 85. † Substance telegraphed. ‡ See No 84.

American and British cruizers in Newfoundland waters before the Newfoundland Government is consulted on the matter; and that it will be advisable to postpone all other questions until Her Majesty's Government have been able to communicate to the Newfoundland Government the result of the present negotiations respecting the payment of compensation.

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

No. 90.

Mr. Wingfield to Lord Tenterden.—(*Received March* 19.)

My Lord, *Downing Street, March* 19, 1881.

WITH reference to the letter from this Department of the 14th January last respecting the rights of the inhabitants of the United States in connection with the Newfoundland fisheries, I am directed by the Earl of Kimberley to transmit to you, for communication to Earl Granville, a copy of a despatch from the Governor of the Colony, inclosing a copy of a notice which his Government intends to issue for the purpose of notifying to the inhabitants of outlying settlements, frequented by the Americans, the right to which the latter are entitled under the Treaty of Washington.

Lord Kimberley proposes, with Lord Granville's concurrence, to approve the terms of the notice, and to instruct the Governor to cause it to be widely circulated on the coasts of the Colony.

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

Inclosure 1 in No. 90.

Sir J. Glover to the Earl of Kimberley.

My Lord, *Government House, Newfoundland, February* 21, 1881.

I HAVE the honour to acknowledge the receipt of your Lordship's despatch of the 10th January, and in compliance with the request contained therein, I now transmit a copy of a notice which it is the intention of my Government to issue for the purpose of notifying to the inhabitants of outlying settlements, frequented by the Americans, the rights which the latter have under the Treaty of Washington.

Printed copies of this notice will be forwarded to your Lordship by the next mail.

I have, &c.
(Signed) JOHN H. GLOVER.

Inclosure 2 in No. 90.

Notice.

(Signed) JOHN HAWLEY GLOVER. (L.S.)

By his Excellency Sir John Hawley Glover, Knight Grand Cross of the Most Distinguished Order of St. Michael and St. George, Governor and Commander-in-chief in and over the Island of Newfoundland and its Dependencies.

To all to whom these presents shall come, greeting:

WHEREAS by Article XVIII of the Treaty of Washington of the 8th May, 1871, it is agreed by the High Contracting Parties that, in addition to the liberty secured to the United States' fishermen by the Convention between Great Britain and the United States, signed at London on the 20th October, 1818, of taking, curing, and drying fish on certain coasts of the British North-American Colonies, therein defined, the inhabitants of the United States shall have, in common with the subjects of Her Britannic Majesty, the liberty, for the term of years mentioned in Article XXXIII of

this Treaty, to take fish of every kind except shell-fish, on the sea-coasts and shores, and in the bays, harbours, and creeks of the Provinces of Quebec, Nova Scotia, and New Brunswick, and the Colony of Prince Edward's Island, and of the several islands thereunto adjacent, without being restricted to any distance from the shore, with permission to land upon the said coasts and shores and islands, and also upon the Magdalen Islands, for the purpose of drying their nets and curing their fish. Provided that in so doing they do not interfere with the rights of private property or with British fishermen in the peaceable use of any part of the said coasts in their occupancy for the same purpose.

It is understood that the above-mentioned liberty applies solely to the sea fishery, and that salmon and shad fisheries, and all other fisheries in rivers and the mouths of rivers, are hereby reserved exclusively for British fishermen.

And whereas, by Act of the Local Legislature, 37 Vict., cap. ii., and by the Governor's Proclamation thereunder, dated the 30th May, 1874, the above recited section was made applicable to Newfoundland.

I do therefore enjoin all Her Majesty's subjects in this Colony to respect the fishing privileges granted to American citizens by the said Treaty, and not to hinder or molest them in any way whatsoever in the exercise of the same.

Given under my hand and seal, at the Government House in St. John's, this 21st day of February, A.D. 1881.

By his Excellency's command,
(Signed) E. D. SHEA, *Colonial Secretary.*

No. 91.

Mr. Herbert to Lord Tenterden.—(*Received March* 25.)

(Extract.) *Downing Street, March* 25, 1881.

WITH reference to the letter from this Department of the 7th January last,* upon the subject of the proposal that one of Her Majesty's ships on the Newfoundland Station should be detailed to visit especially the coast of Newfoundland between Cape Bonavista and Fortune Bay during the bait season, I am directed by the Earl of Kimberley to transmit to you, to be laid before Earl Granville, a copy of a letter from the Admiralty, inclosing one from the Commander-in-chief on the North American Station, from which it will be seen that Sir Leopold McClintock has arranged that Her Majesty's ship "Druid" shall be on the part of the coast in question by the 25th April, the commencement of the bait season.

Inclosure 1 in No. 91.

The Secretary to the Admiralty to Mr. Herbert.

(Extract.) *Admiralty, February* 14, 1881.

I AM commanded by my Lords Commissioners of the Admiralty to send you herewith, for the consideration of the Earl of Kimberley, copy of a letter from the Commander-in-chief on the North American Station, dated the 25th January, written in reply to Admiralty letter of the 14th December last, the purport of which was communicated to you in my letter of the same date relative to the desirability of one of the ships employed in protecting the Newfoundland fisheries being sent specially to the part of the coast between Fortune Bay and Cape Bonavista.

It will be seen that Sir L. McClintock has arranged that Her Majesty's ship "Druid" shall be on the part of the coast in question by the 25th April, the commencement of the bait season, to prevent breaches of the peace and fishery laws.

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* See *ante*, No. 49.

Inclosure 2 in No. 91.

Vice-Admiral Sir F. McClintock to the Secretary to the Admiralty.

(Extract.) "*Northampton*," *at Dominica, January* 25, 1881.

WITH reference to your letter of the 14th ultimo, I request you will be pleased to inform the Lords Commissioners of the Admiralty that, in compliance with the instructions therein contained, I propose to dispatch the "Druid" from Bermuda to Fortune Bay, Newfoundland, early in April, in order that she may be there at the commencement of the bait season, viz., the 25th April.

No. 92.

*Earl Granville to Sir E. Thornton.**

Sir, *Foreign Office, March* 25, 1881.

WITH reference to my despatch of the 17th instant relative to the claims for compensation advanced by United States' fishermen on account of the occurrences at Fortune Bay and elsewhere on the coast of Newfoundland, I have instructed you by telegraph to take no further steps with regard to the proposed dispatch to that neighbourhood of joint British and American cruizers. I have further to request that you will postpone the consideration of all other questions connected with this discussion until such time as Her Majesty's Government may be in a position to communicate to the Government of Newfoundland the result of the present negotiations for the payment of an indemnity to the American fishermen.

I am, &c.

(Signed) GRANVILLE.

No. 93.

Mr. Bramston to Lord Tenterden.—(*Received March* 29.)

(Extract.) *Downing Street, March* 29, 1881.

WITH reference to the letter from this Department of the 25th instant, respecting the proposal that one of Her Majesty's ships on the Newfoundland Station should be detailed to visit the coast of Newfoundland between Cape Bonavista and Fortune Bay during the bait season, I am directed by the Earl of Kimberley to transmit to you, for the information of Lord Granville, a copy of a further letter from the Lords Commissioners of the Admiralty, stating the names of the officers selected for employment this year on the Newfoundland and Labrador fisheries.

Inclosure in No. 93.

The Secretary to the Admiralty to Mr. Herbert.

(Extract.) *Admiralty, March* 21, 1881.

I AM commanded by my Lords Commissioners of the Admiralty to request that you will state to the Earl of Kimberley that a letter has been received from the Commander-in-chief on the North American and West Indian Station, in which he reports that the officers he has selected for employment on the Newfoundland and Labrador fisheries this year, under the orders of Captain Kennedy, of Her Majesty's ship "Druid," are Commander W. C. Karslake, Her Majesty's ship "Fantôme," and Lieutenant F. A. Moysey, commanding Her Majesty's ship "Contest."

The "Druid" will leave Bermuda early in April to proceed to Fortune Bay, and the "Fantôme" and "Contest" will leave that island about the second week in May to proceed to St. John's.

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* Substance telegraphed.

No. 94.

Sir E. Thornton to Earl Granville.—(*Received March* 31.)

(Telegraphic.) *Washington, March* 31, 1881.

MR. BLAINE anxiously awaits an answer from the United States' Minister in London with respect to his request that Fortune Bay claims should be referred to him and myself.

No. 95.

Lord Tenterden to Mr. Herbert.

Sir, *Foreign Office, April* 1, 1881.

I AM directed by Earl Granville to transmit to you, to be laid before the Secretary of State for the Colonies, a copy of a telegram which has been received from Her Majesty's Minister at Washington.*

Lord Granville now proposes, should Lord Kimberley see no objection, to send to Sir E. Thornton the instruction† of which the draft is inclosed herewith; and I am to request that, in laying the same before his Lordship, you will move him to inform Lord Granville at his earliest convenience whether he concurs in its terms.

I am, &c.

(Signed) TENTERDEN.

No. 96.

Mr. Herbert to Lord Tenterden—(*Received April* 2.)

My Lord, *Downing Street, April* 2, 1881.

I AM directed by the Earl of Kimberley to acknowledge the receipt of your letter of the 1st instant, inclosing a copy of a telegram received from Her Majesty's Minister at Washington respecting the claims of the United States' Government arising out of the occurrences at Fortune Bay and elsewhere on the coast of Newfoundland, together with the draft of a telegram which Earl Granville proposes to address to Sir Edward Thornton in reply.

I am to request that you will inform Lord Granville that Lord Kimberley concurs in the terms of the proposed instruction to Sir Edward Thornton.

I am, &c.

(Signed) ROBERT G. W. HERBERT.

No. 97.

Earl Granville to Sir E. Thornton.‡

Sir, *Foreign Office, April* 2, 1881.

I HAVE received your telegram of the 31st ultimo, in which you inform me that Mr. Blaine is extremely anxious to learn whether Her Majesty's Government are prepared to accede to his request that the claims connected with the Fortune Bay dispute should be settled at Washington between himself and Her Majesty's Minister.

I have to state to you, in reply, that should there be any misunderstanding with regard to Mr. Blaine's meaning in pressing this mode of settlement, it is desirable that it should be made clear. If, however, he is ready to agree that the claims of the American fishermen should be referred to himself and yourself, or to Delegates to be named by both, for assessment, Her Majesty's Government are prepared to accept this arrangement at once.

This mode of proceeding is now preferred by the Colonial authorities in this

* No. 94. † See No. 97. ‡ Substance telegraphed.

country to the payment of a lump sum, in view of the desirability of obtaining the co-operation and concurrence of the Government of Newfoundland.

I should be glad to learn whether anything has passed between Mr. Blaine and yourself with regard to a reference to a third party in case it should be found impossible to come to an agreement between yourselves, or that the same difficulty should occur in the case of the Delegates.

Her Majesty's Government do not wish to raise any difficulties, and they give you full discretion to arrive at the best solution you can make with the Secretary of State, either as regards an assessment of the claims, or the payment by Her Majesty's Government of a lump sum. Under present circumstances they would prefer an arrangement by assessment.

I need not remind you how desirable it is, in view of the approach of the fishing season, that a settlement of these claims should be arrived at as speedily as possible, and also an understanding with regard to the Regulations to be framed for the fisheries, with a view to the prevention of future misunderstandings.

I am, &c.
(Signed) GRANVILLE.

No. 98.

Lord Tenterden to Mr. Herbert.

Sir, *Foreign Office, April* 2, 1881.

WITH reference to my letter of yesterday's date, and to previous correspondence, I am directed by Earl Granville to transmit to you, for the information of the Secretary of State for the Colonies, a copy of a despatch from Sir E. Thornton, reporting the substance of a conversation he had had with Mr. Blaine on the 12th ultimo, relative to the proposed settlement of the Fortune Bay question and other claims of American fishermen.*

I am, &c.
(Signed) TENTERDEN.

No. 99.

Sir E. Thornton to Earl Granville.

(Substance received by telegraph, April 5.)

(Extract.) *Washington, April* 4, 1881.

WITH reference to your Lordship's telegram of the 2nd instant, I have the honour to inform you that I called this morning upon Mr. Blaine at the State Department, and stated that Her Majesty's Government acceded to his request that the fishery claims should be referred for assessment to him and myself, or to Delegates named by us. I presumed that by the fishery claims your Lordship intended to signify the Fortune Bay claims and those described in Mr. Evarts' despatch to Mr. Lowell No. 110,† the contents of which were communicated to you by the latter.

I went on to say that I was afraid that we should not be likely to agree upon the amount of damages to be paid on account of the claims in question, and that it would therefore be very desirable that we should name a third person who should decide in the event of our disagreeing. But Mr. Blaine replied that Mr. Evarts' original proposal, to which he had now reverted, did not include any reference to a third person, and that his Government was not prepared to acquiesce in such a reference, to which he thought the subject of the claims was not adapted.

In answer to my inquiry, Mr. Blaine said that he would rather negotiate the matter with me than leave it to Delegates named by us. He added that he would examine the documents upon the subject as soon as he could, and would then invite me to meet him.

In the course of the conversation Mr. Blaine said that he should have preferred to have negotiated on the basis of a lump sum, and that, having now carefully examined the claims already presented, and considered possibility of any further claims which might be brought forward, he would have been prepared, on behalf of his

* No. 82.

† For substance of this despatch, see Nos. 60 and 61.

Government, to accept the sum of 16,000*l.*, and to give a receipt in full for all claims for interruption of American fishermen on the coasts of Newfoundland or of its dependencies which may have arisen up to the 4th March, 1881.

I replied that Her Majesty's Government now preferred that the claims should be assessed, and was disinclined to negotiate upon the basis of a lump sum.

No. 100.

Sir J. Pauncefote to Mr. Bramston.

(Extract.) *Foreign Office, April* 6, 1881.

I AM directed by Earl Granville to state to you that on the receipt of your letter of the 2nd instant, the instruction respecting the Fortune Bay dispute, of which the text was inclosed with the letter from this Department of the preceding day, was immediately forwarded to Sir E. Thornton, who has now returned the reply of which a copy is inclosed herewith.*

You will observe that Mr. Blaine is prepared to agree that the amount of compensation to be given for the Fortune Bay claims should be settled between himself and Her Majesty's Minister at Washington, in conjunction with those referred to in the communication made by Mr. Lowell to Lord Granville on the 21st February last. In making that communication, no copy of Mr. Evarts' despatch on the subject appears to have been left by Mr. Lowell with Lord Granville, but on the 22nd February he forwarded to the Foreign Office the affidavits of the masters of two American fishing-vessels which had formed the subject of his conversation with Lord Granville on the 21st February. Copies of the correspondence on this particular point were forwarded to the Colonial Office on the 23rd of that month.

Mr. Blaine now absolutely declines to acquiesce in the proposal that in case of disagreement reference should be made to a third person, and has intimated that he would prefer the assignment of a lump sum as a settlement of all claims in full up to the 4th March last, which sum he seems disposed to fix at 16,000*l.*

I am to request that you will lay the accompanying papers before the Earl of Kimberley, and move him to favour Lord Granville, at his earliest convenience, with any observations he may wish to make upon Sir E. Thornton's telegram of the 4th instant.

No. 101.

Sir J. Pauncefote to Mr. Herbert.

(Extract.) *Foreign Office, April* 8, 1881.

I AM directed by Earl Granville to acknowledge the receipt of your letter of the 19th ultimo, inclosing a copy of a notice which the Government of Newfoundland intends to issue for the purpose of notifying to the inhabitants of outlying settlements in the Colony frequented by citizens of the United States the rights to which the latter are entitled under the Treaty of Washington.

In reply, I am to request that you will have the goodness to inform the Secretary of State for the Colonies that Lord Granville concurs in the terms of the proposed notice, and that he agrees with Lord Kimberley that it will be desirable that Sir J. Glover should be instructed to cause it to be widely circulated on the coasts of Newfoundland.

No. 102.

Mr. Bramston to Lord Tenterden.—(Received April 12.)

Sir, *Downing Street, April* 11, 1881.

I HAVE laid before the Earl of Kimberley your letter of the 6th instant, inclosing a copy of a telegram from Sir E. Thornton respecting the Fortune Bay dispute, and requesting to be furnished with any observations his Lordship may desire to make thereupon.

* No. 99.

Lord Kimberley would suggest, for Lord Granville's consideration, whether the best course would not be to let the matter be referred to Sir E. Thornton and Mr. Blaine, without insisting on the nomination of a third person to decide in case they are unable to agree.

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

No. 103.

Earl Granville to Sir E. Thornton.

Sir, *Foreign Office, April* 19, 1881.

I INCLOSE, for your information, copies of despatches, as marked in the margin,* on the subject of notices to be issued by the Government of Newfoundland to outlying settlements under its jurisdiction in view of the Fortune Bay and other fisheries disputes.

I am, &c.
(Signed) GRANVILLE.

No. 104.

Sir E. Thornton to Earl Granville.
(Substance received by telegraph, April 22.)

(Extract.) *Washington, April* 25, 1881.

ON the 21st instant I had an interview with Mr. Blaine at the State Department with regard to the Fortune Bay claims and those arising from United States' fishermen having been prevented from fishing for bait.

Mr. Blaine considers that the offer which he had made to accept 16,000*l.* in full of all claims of the class above mentioned up to the 4th March last was really better for Her Majesty's Government than that made by your Lordship of 15,000*l.* up to the end of last year. With a view, however, to a prompt settlement of the question, and to entering upon a negotiation as to the regulations respecting the fisheries which were to prevail hereafter, he was ready to accept the sum of 15,500*l.* for the Fortune Bay claims and those of American fishermen who had been prevented from fishing for bait, as well as for all claims arising out of any interruption of American fishermen on the coasts of Newfoundland and its dependencies up to the 4th March last.

No. 105.

Sir J. Pauncefote to Mr. Bramston.

Sir, *Foreign Office, April* 22, 1881.

WITH reference to your letter of the 11th instant, I am directed by Earl Granville to transmit to you, for the consideration of the Secretary of State for the Colonies, a copy of a telegram which has been received this morning from Her Majesty's Minister at Washington.†

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

No. 106.

Mr. Bramston to Sir J. Pauncefote.—(Received April 25.)

Sir, *Colonial Office, April* 25, 1881.

I AM directed by the Earl of Kimberley to acknowledge the receipt of your letter of the 22nd instant, inclosing a telegram from Sir E. Thornton respecting the

* Nos. 90 and 101.

† See No. 104.

claims of the United States' Government arising out of the occurrences at Fortune Bay and elsewhere on the coast of Newfoundland.

Lord Kimberley is disposed to think that the sum of 15,000*l.* offered to the United States' Government in satisfaction of the claims in question should not be exceeded.

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

No. 107.

Sir J. Pauncefote to Mr. Bramston.

Sir, *Foreign Office, April* 27, 1881.

WITH reference to your letter of the 25th instant, I am directed by Earl Granville to transmit to you the draft of an instruction which his Lordship proposes, with Lord Kimberley's concurrence, to transmit to Her Majesty's Minister at Washington,* informing him that Her Majesty's Government cannot consent, without previous inquiry, to increase their offer of a lump sum of 15,000*l.* as compensation to the American fishermen on account of the occurrences at Fortune Bay; but that they are prepared to abide by the proposal which has been accepted by Mr. Blaine, that the amount should be referred for inquiry and adjustment to himself and to Sir E. Thornton.

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

No. 108.

Mr. Herbert to Sir J. Pauncefote.—(*Received April* 28.)

Sir, *Downing Street, April* 27, 1881.

IN reply to your letter of this day's date, I am directed by the Earl of Kimberley to convey to you his Lordship's concurrence in the terms of the telegram which Earl Granville proposes to address to Sir E. Thornton respecting the claims of the United States' Government in connection with occurrences at Fortune Bay.

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

No. 109.

Earl Granville to Sir E. Thornton.†

Sir, *Foreign Office, April* 28, 1881.

I HAVE had under my consideration your despatch of the 4th instant, reporting the substance of a conversation you had had that morning with Mr. Blaine as to the means proposed for arriving at a settlement of the claims of the American fishermen concerned in the dispute which had arisen with the Newfoundlanders at Fortune Bay in the month of January 1878.

I have informed you by telegraph this day, in reply, that Her Majesty's Government are not prepared, without a previous examination of the individual claims, to make any further advance upon the gross sum of 15,000*l.* which you have been authorized to offer to the Government of the United States as compensation for the losses sustained by the American fishermen in consequence of these transactions. They are, however, willing to abide by the proposal which has been made to Mr. Blaine, and accepted by him, that the amount of the claims should be referred to Washington for inquiry and adjustment between himself and you.

I request that you will convey to Mr. Blaine the views of Her Majesty's Government in the sense of this despatch.

I am, &c.
(Signed) GRANVILLE.

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* See No. 109.

† Substance telegraphed.

No. 110.

Lord Tenterden to Mr. Bramston.

Sir, *Foreign Office, May* 3, 1881.

WITH reference to your letter of the 27th ultimo, I am directed by Lord Granville to transmit to you the draft of an instruction which Lord Granville proposes, with Lord Kimberley's concurrence, to address to Sir E. Thornton,* informing him that it is intended to suggest to the Newfoundland Government to send some person to assist him, on the part of that Government, in the assessment of the claims of the American fishermen.

I am to request that you will move Lord Kimberley to inform Lord Granville at his earliest convenience whether he sees any objection to the terms of this telegram.

I am, &c.

(Signed) TENTERDEN.

No. 111.

Mr. Herbert to Lord Tenterden.—(*Received May* 3.)

Sir, *Downing Street, May* 3, 1881.

I AM directed by the Earl of Kimberley to acquaint you, for the information of Earl Granville, that his Lordship concurs in the terms of the draft instruction to Sir E. Thornton, inclosed in your letter of this day, and that a telegram will be sent to Sir J. Glover, suggesting that the Newfoundland Government should send some competent person to confer with and assist Sir E. Thornton.

I am to inclose the draft of the telegram which Lord Kimberley proposes, with the concurrence of Lord Granville, to address to Sir J. Glover on the subject.

I am, &c.

(Signed) ROBERT G. W. HERBERT.

No. 112.

Earl Granville to Sir E. Thornton.†

Sir, *Foreign Office, May* 3, 1881.

WITH reference to my despatch of the 28th ultimo, I have to state to you that it will probably be desirable to send some person from Newfoundland to assist you personally and confidentially in the assessment of the claims connected with the Newfoundland fisheries.

I should be glad, therefore, to receive notification of the day, whenever it is fixed, for discussing with Mr. Blaine the amount of the indemnity to be awarded for their losses to the American fishermen.

In the meanwhile, I have to authorize you to proceed at once with the negotiation, without waiting for the further instructions promised in my despatch of the 28th April, should Mr. Blaine express a wish to expedite the settlement of the question; but you should so arrange that time may be given to enable Her Majesty's Government to communicate with the authorities of Newfoundland.

I am, &c.

(Signed) GRANVILLE.

No. 113.

Sir E. Thornton to Earl Granville.

(Substance received by telegraph, May 5 and 7.)

My Lord, *Washington, May* 9, 1881.

WITH reference to your Lordship's telegrams of the 28th ultimo and of the 3rd instant, I have the honour to inform your Lordship that I had an interview with Mr. Blaine at the State Department on the 5th instant upon the subject of the

* See No. 112.

† Substance telegraphed.

Fortune Bay claims. I informed him that I was instructed by your Lordship to state that Her Majesty's Government could not consent to increase its offer of a lump sum of 15,000*l.*, which it considered to be a large concession, without a previous inquiry, but that it was prepared to abide by the proposal accepted by him, that the amount should be referred to him and myself for inquiry and adjustment.

Mr. Blaine said that he was perfectly willing and ready to enter upon a detailed examination of the claims in question; but it was evident that, unless we rested upon the affidavits which had been already presented on the American and British sides of the question, it would be necessary to summon witnesses and call for documentary evidence, which would be a very tedious operation, and would probably cause the inquiry to extend over a great length of time.

If we were to rely solely upon the affidavits sworn to upon each side, it is pretty clear that the assessment would be much above the 15,000*l.* which have already been offered by Her Majesty's Government. I am also convinced that the summoning of witnesses and the calling for further documentary evidence would have a similar result.

Mr. Blaine stated, however, that since he had entered upon his office he had caused searching inquiries to be made as to whether there existed any other claims besides those which had been already brought before the two Governments, and that he had satisfied himself that there were none. As his Government, therefore, did not wish to place any obstacles in the way of the settlement of the claims in question, it would be prepared to accept the sum of 15,000*l.* originally offered by Her Majesty's Government in full of the Fortune Bay claims and of all claims arising out of wrongs done to United States' fishermen on the coasts of Newfoundland and of its dependencies up to the 4th March last.

I then pointed out to Mr. Blaine that, in examining the affidavits and accounts which had been submitted to Her Majesty's Government by the instructions of Mr. Evarts, and from which the latter had stated, in his despatch to Mr. Welsh of the 1st August, 1879,* that the claims amounted to 105,305 dol. 2 c., I had not been able to understand how this amount had been reached, unless claims of American fishermen for being deterred from fishing for bait in Aspee Bay, Cape Breton, were included among the Fortune Bay claims. I had, therefore, concluded that, although Aspee Bay was not on the coast of Newfoundland, these claims were among those for which a demand had been made by Mr. Evarts of the sum of 105,305 dol. 2 c.

Mr. Blaine acquiesced in my view of this matter, and said that they would be included among those for which he now stated that the Government of the United States would accept the sum of 15,000*l.*

Affidavits with regard to the Aspee Bay claims are to be found at pp. 138 to 141 inclusive of Inclosure No. 1 in my despatch of the 7th June last.†

Mr. Blaine then said that he would address me a note to the above effect, and that he would be glad to receive an answer at once from me that Her Majesty's Government acquiesced in this settlement of the claims in question; but I replied that I did not consider myself authorized to give such an answer without asking for instructions from your Lordship, which I would do at once by telegraph.

I have now the honour to inclose copy of the note which Mr. Blaine has addressed to me in consequence of the above-mentioned interview, and I venture to hope that Her Majesty's Government will be able to agree to the settlement indicated therein, which I believe to be the most favourable which can be now obtained.

Your Lordship will perceive that Mr. Blaine states in his note that at my convenience he will discuss the subject of joint cruizers on the fishing-grounds and the code of instructions under which they should sail, which subject he understands to have been also referred by your Lordship. As this, however, is a matter of considerable importance and delicacy, it would certainly be desirable that I should be aided by the advice of some person from Newfoundland who is well acquainted with the subject.

I have, &c.

(Signed) EDWD. THORNTON.

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* See "United States No. 1 (1880)," Inclosure 1 in No. 1, p. 8. † See Inclosure in No. 28.

Inclosure in No. 113.

Mr. Blaine to Sir E. Thornton.

Sir, *Department of State, Washington, May* 6, 1881.

I WAS advised by Mr. Lowell by his despatch of the 9th March last that Lord Granville would either pay 15,000*l.* in the Fortune Bay matter for a receipt in full against all claims up to and including the close of the past year, or he would refer the matter to yourself and me for adjustment.

I chose the latter because I had at that time no means of knowing with definiteness whether there might not be claimants whom I could not properly bar by a receipt given without an opportunity of a hearing assured to them.

As I told you in our first consultation, I did not seek the reference with any desire to urge you to a larger sum than was offered by Lord Granville unless new facts could be found which would warrant the demand.

Both of us have discovered and think that we have no practical means of assessing the damages except by taking the facts as stated in the American Case, unless, indeed, we should resort, at great expense and with endless trouble, to a new, independent, and exhaustive investigation by original testimony in each and every claim.

Under these circumstances, it is proper that I should frankly state to you that I find no other claims than those already presented for wrongs inflicted in the waters of Newfoundland and its dependencies; and, as I originally advised you, I have no desire to urge you to increase the sum offered by Lord Granville on the old claims.

My investigations have included the period up to the 4th March, 1881; and in giving the receipt I would, if desired, be willing to cover that period. I make this offer in the hope that you will recognize in it a disposition on the part of the United States to be, not merely just, but liberal in dealing with Her Majesty's Government on this complicated and somewhat delicate question.

Your understanding, communicated verbally, that the injury at Aspee Bay was to be included, is correct; and the receipt which I shall give will cover that case.

In accepting Lord Granville's offer in this matter, I desire to state that at your convenience I will discuss the subject of joint cruizers on the fishing-grounds, and the code of instructions under which they should sail. I understand this subject to have been also referred by Lord Granville.

I have, &c.

(Signed) JAMES G. BLAINE.

No. 114.

Sir J. Pauncefote to Mr. Herbert.

Sir, *Foreign Office, May* 6, 1881.

WITH reference to your letters of the 27th ultimo and 3rd instant, I am directed by Her Majesty's Principal Secretary of State for Foreign Affairs to transmit to you a copy of a telegram,* dated the 5th May, which has been received from Her Majesty's Minister at Washington, announcing that Mr. Blaine has signified his readiness to accept the sum of 15,000*l.* which has been offered by Her Majesty's Government in satisfaction of the claims of the American fishermen on account of the interruption caused to their fishing operations by the proceedings of the Newfoundlanders.

Mr. Blaine has intimated that he is prepared to comprise in this arrangement the claims arising out of the occurrences at Fortune Bay, and also all claims on account of any interruption of American fishing on the coasts of Newfoundland and its dependencies up to the 4th March last, and at Aspee Bay, Cape Breton, in the month of June 1879.

The particulars of the last-named claims are given with the documents annexed to the President's message of the House of Representatives of the 17th May, 1880, of which a copy is forwarded herewith for convenience of reference (see pp. 138–141).

I am to request that you will submit this letter, with its inclosure, to the Earl of Kimberley, and that you will move him to inform Lord Granville at his earliest

* See No. 113.

convenience whether he concurs with Lord Granville in thinking that, as Mr. Blaine is now prepared to give the full assurance required by Her Majesty's Government when they made the offer of 15,000*l.*, Sir E. Thornton should be authorized to agree to this settlement ?

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

No. 115.

Mr. Herbert to Lord Tenterden.—(Received May 7.)

My Lord, *Downing Street, May 7, 1881.*

I AM directed by the Earl of Kimberley to acknowledge the receipt of your letter of yesterday, transmitting a copy of a telegram dated the 5th instant from Sir E. Thornton, announcing that Mr. Blaine has signified his readiness to accept the sum of 15,000*l.* in satisfaction of the claims of the American fishermen on account of the interruptions to their fishing operations by the Newfoundland fishermen.

As Earl Granville is aware, a telegram was sent to Sir J. Glover on the 3rd instant, informing him that Sir E. Thornton and Mr. Blaine would probably soon commence an informal inquiry into the matter of the United States' claims, and desiring to be informed whether the Newfoundland Government could send a competent person to assist and confer with Sir E. Thornton, in order that he might know the views and calculations of the Newfoundland Government; and Sir J. Glover has replied that he thinks the Premier, Sir William Whiteway, is disposed to visit New York for this purpose.

As the Newfoundland Government has thus been officially informed that at the inquiry which was about to take place an opportunity would be given them to state their views as to the amount payable as compensation to the United States' fishermen, it appears to Lord Kimberley that it is necessary, before any further action is taken, to acquaint the Newfoundland Government that Sir E. Thornton and Mr. Blaine, after a preliminary consideration of the question, have concurred in thinking that there is no prospect of their agreeing to an assessment; that in these circumstances the United States' Government has preferred to revert to an arrangement which was under consideration while Mr. Evarts was in office for the settlement of the claims, namely, the immediate payment of a lump sum of 15,000*l.*, which will be in satisfaction of Fortune Bay claims, and all other claims arising out of any interruptions of American fishermen on the coast of Newfoundland and its dependencies up to the 4th March last, including the Aspee Bay claims, and that Her Majesty's Government are of opinion that this offer should be agreed to.

If Lord Granville concurs, Lord Kimberley will address a telegram to this effect to the Governor of Newfoundland.

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

No. 116.

Sir J. Pauncefote to Mr. Herbert.

Sir, *Foreign Office, May 8, 1881.*

I AM directed by Earl Granville to acknowledge the receipt of your letter of the 7th instant, and am to request that you will inform Lord Kimberley, in reply, that his Lordship concurs in the telegram which it is proposed to send to the Governor of Newfoundland on the Fortune Bay question.

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

No. 117.

Lord Tenterden to Mr. Herbert.

Sir, *Foreign Office, May* 9, 1881.

I AM directed by Lord Granville to transmit to you, to be laid before the Earl of Kimberley, the decypher of a further telegram which has been received from Her Majesty's Minister at Washington,* stating that he had received from Mr. Blaine the note referred to in his telegram of the 5th May, a copy of which was forwarded to you with my letter of the following day.

Sir E. Thornton adds that Mr. Blaine states in that note that he is now prepared to enter upon the question of the dispatch to the Newfoundland fisheries of joint cruizers on the part of the American and British Governments, and of the instructions under which these Commanders should act.

I am, &c.
(Signed) TENTERDEN.

No. 118.

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

My Lord, *Downing Street, May* 11, 1881.

WITH reference to the letter from this Department of the 7th instant respecting the proposed settlement of the claims of American fishermen arising out of occurrences at Fortune Bay and elsewhere on the coast of Newfoundland, I am directed by the Earl of Kimberley to transmit to you, for the information of Earl Granville, copies of a telegram which was sent to the Governor of Newfoundland upon the subject on the 9th instant.

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

Inclosure in No. 118.

The Earl of Kimberley to Governor Sir J. Glover.

(Telegraphic.) *Downing Street, May* 9, 1881, 10·5 P.M.

WITH reference to my telegram of the 3rd instant, I have to inform you that Sir E. Thornton and Mr. Blaine are of opinion, after preliminary consideration, that they see no prospect of their coming to an agreement as to assessment; and the United States' Government have therefore decided that the preferable course will be to revert to an arrangement for the settlement of American claims by the payment of a lump sum. This course was considered at the time that Mr. Evarts was in office. The United States' Government are willing to accept 15,000*l.*, to be paid at once, in full satisfaction of the claims known as the Fortune Bay and Aspee Bay claims, and all other claims up to the 4th of March last, arising out of the interruptions from which American fishermen on the coasts of Newfoundland and of its dependencies have suffered.

This arrangement appears to Her Majesty's Government to be satisfactory; and it is hoped that, as this solution of the question renders Sir William Whiteway's proposed visit to Washington unnecessary, he may be enabled to carry out his original plan of leaving for England by the steamer of the 11th instant.

No. 119.

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

My Lord, *Downing Street, May* 11, 1881.

WITH reference to the letter from this Department of the 19th March, and to your reply of the 8th ultimo, respecting the issue of a notice by the Government of

* No. 113.

Newfoundland for the purpose of notifying to the inhabitants of the Colony the rights of fishery which the Americans enjoy under the Treaty of Washington, I am directed by the Earl of Kimberley to transmit to you, for the information of Earl Granville, a copy of a further despatch which has been received from the Governor of Newfoundland on the subject.

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

Inclosure in No. 119.

Governor Sir J. Glover to the Earl of Kimberley.

(Extract.) *Government House, Newfoundland, April* 22, 1881.

I HAVE the honour to acknowledge the receipt of your Lordship's despatch of the 12th instant, transmitting a copy of a letter from the Foreign Office expressing the concurrence of Lord Granville in the terms of the notice issued by my Government, for the purpose of notifying to the inhabitants of outlying Settlements frequented by the Americans the rights which the latter have under the Treaty of Washington.

2. I duly communicated your Lordship's despatch, with its inclosure, to my Government, who will use every exertion to cause the notice to be as widely circulated as possible on the coasts of this Colony.

No. 120.

*Earl Granville to Sir E. Thornton.**

Sir, *Foreign Office, May* 13, 1881.

I HAVE received your telegrams of the 5th and 7th instant† relative to the note addressed to you by Mr. Blaine, in which you state he signifies his acceptance of the offer made to him of a lump sum of 15,000*l.* in satisfaction of the Fortune Bay claims and all claims arising out of any interruption to the operations of American fishermen on the coast of Newfoundland and its dependencies up to the 4th March last, including the Aspee Bay claims, mentioned in Inclosure 1 of your despatch of the 7th June last.

I have informed you by telegraph to-day, in reply, that in order to avoid any possibility of misapprehension hereafter as to the full meaning of expressions used in telegrams, Her Majesty's Government prefer to await the arrival of your despatch inclosing Mr. Blaine's note.

I am, &c.
(Signed) GRANVILLE.

No. 121.

Earl Granville to Sir E. Thornton.

Sir, *Foreign Office, May* 13, 1881.

WITH reference to my previous despatch of this day's date, I have to state to you that Sir J. Glover and Sir W. Whiteway are expected in England from Newfoundland towards the end of next week; and with a view to the ultimate payment of the compensation by Newfoundland, Lord Kimberley would be glad that the settlement of the American fishery claims should be deferred until after their arrival.

I am, &c.
(Signed) GRANVILLE.

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* Substance telegraphed.

† See No. 113.

No. 122.

Earl Granville to Sir E. Thornton.

Sir, *Foreign Office, May* 19, 1881.

I GATHER from your telegram of the 7th instant that Mr. Blaine is ready to discuss with you the question of sending to the Newfoundland fisheries joint American and British cruizers, and the instructions under which their Commanders should act.

In reply, I have to refer you to the instructions contained in my despatch of the 25th March last, and to add that Her Majesty's Government still think that it would not be desirable to take any steps relative to this point before they have had an opportunity of consulting with the Governor of Newfoundland and Sir William Whiteway, who are expected to arrive in England towards the end of this week.

I am, &c.

(Signed) GRANVILLE.

No. 123.

Lord Tenterden to Mr. Herbert.

Sir, *Foreign Office, May* 23, 1881.

I AM directed by Earl Granville to state to you, for the information of Her Majesty's Secretary of State for the Colonies, that a despatch has been received this morning from Sir E. Thornton, of which a copy is forwarded herewith,* in which he communicates the substance of what passed at his interview with Mr. Blaine on the 5th instant relative to the proposed settlement of the Fortune Bay claims by the payment to the United States' Government of a lump sum of 15,000*l.*

Sir E. Thornton also transmits with the same despatch a copy of the note addressed to him by Mr. Blaine on the following day, in which he expresses his readiness to accept the sum of 15,000*l.* in satisfaction of the American claims for the occurrences complained of in the waters of Newfoundland and its dependencies up to the 4th March, 1881.

In laying these papers before the Earl of Kimberley, I am to request that you will call his attention to the intimation conveyed in Mr. Blaine's letter that he is prepared to enter upon the discussion of the question of the joint American and British cruizers in Newfoundland, and the Code of Instructions under which they should sail, and that Sir E. Thornton considers it expedient that some person from Newfoundland who is versed in the subject should aid him with his advice in this negotiation.

I am, &c.

(Signed) TENTERDEN.

No. 124.

Sir J. Pauncefote to Mr. Herbert.

Sir, *Foreign Office, May* 25, 1881.

I AM directed by Earl Granville to request that you will inform the Earl of Kimberley that Lord Granville is strongly of opinion that arrangements should be made for the settlement of the American claims on account of disturbance of their fishery operations by the immediate payment to the United States' Government of a lump sum of 15,000*l.*, which Mr. Blaine has expressed his willingness to accept, in satisfaction of all claims.

Instructions will at once be drawn up, which will be submitted for Lord Kimberley's concurrence, directing him to close with the settlement of all the claims for the sum of 15,000*l.*, on account of disturbances caused to the operations of the American fishermen on the coasts of Newfoundland and its dependencies up to the 4th March last, including the occurrences at Aspee Bay.

I am to add that Lord Granville presumes that, as Sir W. Whiteway and the Governor of Newfoundland are now in England, Lord Kimberley will soon be in a

* No. 113.

position to give his opinion as to the instructions to be given to Sir E. Thornton with regard to the future regulation of the fisheries.

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

No. 125.

Sir J. Pauncefote to Mr. Herbert.

Sir, *Foreign Office, May* 25, 1881.

WITH reference to my previous letter of this day, I am directed by Earl Granville to transmit to you the draft of an instruction which his Lordship proposes, with Lord Kimberley's concurrence, to forward to Sir E. Thornton, directing him to close with the settlement of all the claims, as already proposed, in connection with the occurrences at Fortune Bay and elsewhere, for the sum of 15,000*l.*, and without prejudice to any question of the rights of either Government under the Treaty of Washington.*

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

No. 126.

Mr. Herbert to Sir J. Pauncefote.—(*Received May* 27.)

Sir, *Downing Street, May* 26, 1881.

I AM directed by the Earl of Kimberley to acknowledge the receipt of your letter of the 25th instant, and to state that his Lordship concurs in the terms of the instruction which Earl Granville proposes to address to Sir E. Thornton, directing him to conclude the settlement of the claims in connection with the occurrences at Fortune Bay and elsewhere for the sum of 15,000*l.*, without prejudice to any question of the rights of either Government under the Treaty of Washington.

I am to inclose, for Lord Granville's information, a copy of a letter which has been this day addressed to Sir William Whiteway in reference to this matter.

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

Inclosure in No. 126.

Mr. Herbert to Sir W. Whiteway.

(Extract.) *Downing Street, May* 26, 1881.

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

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

The amount will be advanced by the Imperial Treasury, and a communication will in due course be made to the Government of Newfoundland with regard to its repayment by the Colony.

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* See No. 127.

No. 127.

*Earl Granville to Sir E. Thornton.**

Sir, *Foreign Office, May* 27, 1881.

I HAVE received your despatch of the 9th instant, inclosing a copy of the letter addressed to you by Mr. Blaine on the 6th May, in which he accepts the offer made by Her Majesty's Government of the payment of the sum of 15,000*l.* in satisfaction in full of the claims of the American fishermen visiting the waters of Newfoundland and its dependencies, as well as those on account of the occurrences in Aspee Bay, up to the 4th March last.

I accordingly addressed to you a telegram this afternoon, authorizing you to inform Mr. Blaine that Her Majesty's Government are prepared to settle this question by the payment to the Government of the United States of the above-named sum, on receiving the assurance that it is accepted in full satisfaction of all claims, up to the date agreed upon, arising out of any interruption of American fishermen in their fishing operations in the localities which have been the subject of discussion between the two Cabinets, and without prejudice to any question of the rights of either Government under the Treaty of Washington.

I am, &c.
(Signed) GRANVILLE.

No. 128.

Sir E. Thornton to Earl Granville.—(*Received June* 13.)

My Lord, *Washington, May* 30, 1881.

I HAVE the honour to inform your Lordship that on the receipt of your telegram of the 27th instant relating to the Fortune Bay affair, I wrote the note, of which a copy is inclosed, and the terms of which will, I hope, be found by your Lordship to be in entire conformity with the instructions contained in that telegram.

I took this note to Mr. Blaine on the 28th instant, and asked him whether he had any remarks to make upon it before I signed it. He replied at once that it was in accordance with the conditions which had been already agreed upon. I therefore signed it in his presence, and gave it to him. He promised to send me an answer, conveying the acquiescence of the Government of the United States in the terms of the agreement, and the conditions on which the payment was to be made.

Early the same afternoon I received the note, of which I inclose a copy, and to the contents of which there seems to me to be no objection.

With regard to the payment of the amount agreed upon, Mr. Blaine said that whatever was most convenient to Her Majesty's Government would be agreeable to that of the United States. He added that, if it were thought convenient, he would be ready to receive a bill of exchange drawn upon Her Majesty's Government, and signed by myself. Upon this point I shall have the honour of awaiting your Lordship's instructions.

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

Inclosure 1 in No. 128.

Sir E. Thornton to Mr. Blaine.

Sir, *Washington, May* 28, 1881.

WITH reference to your note of the 6th instant relating to the discussions which have recently taken place between Her Majesty's Government and that of the United States with regard to the losses alleged to have been suffered by United States' fishermen in Fortune Bay, Newfoundland, on the 6th January, 1878, in consequence of certain acts committed by natives of that Colony, I have the honour to inform you that Her Majesty's Government is prepared to meet the views of the Government of the United States upon this matter by the payment of the sum of 15,000*l.* sterling in full satisfaction of all claims for disturbance of American fishermen in their fishing

* Substance telegraphed.

operations on the coasts of Newfoundland and its dependencies up to the 4th March last, including the occurrences at Aspee Bay, Cape Breton, Nova Scotia, in the Dominion of Canada, a statement of which is made at pp. 138 to 141, inclusive of executive document No. 84 of the Second Session of the House of Representatives of the 46th Congress.

It will, however, be clearly understood that the above-mentioned payment will be made without prejudice to any question of the rights of either of the two Governments under Articles XVIII to XXV, both inclusive, and Article XXXII of the Treaty of the 8th May, 1871, between the United States and Great Britain.

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

Inclosure 2 in No. 128.

Mr. Blaine to Sir E. Thornton.

Sir, *Department of State, Washington, May* 28, 1881.

I HAVE the honour to acknowledge the receipt of your note of the 28th May, 1881, in which, referring to mine of the 6th, you convey the gratifying intelligence that Her Majesty's Government has accepted the terms of settlement agreed upon by us of the difficulties of Fortune Bay occurring on the 6th January, 1878.

The understanding of this Government is, as you state, that the payment of 15,000*l.* sterling is in full satisfaction of all claims for disturbances of American fishermen in their fishing operations on the coasts of Newfoundland and its dependencies up to the 4th March last, including the occurrences at Aspee Bay, Cape Breton, Nova Scotia, in the dominion of Canada, a statement of which is made at pp. 138 to 141, inclusive of executive document No. 84 of the House of Representatives of the 46th Congress.

This Government also clearly understands that the above-mentioned payment will be made without prejudice to any question of the rights of either of the two Governments under Articles XVIII to XXV, both inclusive, and Article XXXII of the Treaty of the 8th May, 1871, between the United States and Great Britain.

You can advise me of the time and method of payment, which I leave to be settled by your own convenience.

I have, &c.
(Signed) JAMES G. BLAINE.

No. 129.

Sir E. Thornton to Earl Granville.—(Received May 30.)

My Lord, *Washington, May* 16, 1881.

I HAD the honour to receive your Lordship's telegrams of the 13th instant, and almost at the same moment I received from Mr. Blaine the note of which a copy is inclosed, and in which he expresses the desire that the Fortune Bay affair should be promptly and definitely settled. He assumes that no further reference is now necessary, and invites me to join him, at my earliest convenience, in closing the transaction.

I called upon Mr. Blaine on the following day at the State Department, and explained to him that I had not considered myself authorized to come to a definite conclusion of the Fortune Bay affair until I should receive further instructions; that I had telegraphed to your Lordship upon the subject, and had received on the 13th instant a telegram from you to the effect that, owing to the misapprehension which so frequently arises from trusting entirely to telegrams, Her Majesty's Government preferred awaiting the arrival of his note of the 6th instant, which I had not been able to forward till last Tuesday, the 10th instant, so that it would not reach your Lordship till quite the end of this week.

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

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Inclosure in No. 129.

Mr. Blaine to Sir E. Thornton.

Sir, *Washington, May* 13, 1881.

IT is quite desirable, for some reasons not necessary to explain, that this Department bring to a prompt and definite settlement the Fortune Bay affair.

I consider that in our last conversation we had, under authority of the reference made to us by both Governments, reached a conclusion satisfactory to both parties, and my note of the 6th instant was the record on the part of the United States' Government of its acceptance of that conclusion.

As the subject was committed to our decision, no further reference can now be necessary, and it would be agreeable to me if you would join me, at your earliest convenience, in closing the transaction.

It is a source of great satisfaction to me that the discussion has been conducted in so amicable a spirit, and reached so satisfactory a result.

I have, &c.

(Signed) JAMES G. BLAINE.

No. 130.

Lord Tenterden to Mr. Herbert.

Sir, *Foreign Office, May* 30, 1881.

I AM directed by Earl Granville to transmit to you, to be laid before Her Majesty's Secretary of State for the Colonies, a copy of a despatch which has been received this morning from Sir E. Thornton,* forwarding a communication from Mr. Blaine, dated the 13th May, in which he expresses the hope for a speedy settlement of the Fortune Bay question.

I am, &c.

(Signed) TENTERDEN.

No. 131.

Lord Tenterden to the Lords Commissioners of the Treasury.

My Lords, *Foreign Office, May* 30, 1881.

IN a letter dated the 26th February last I requested that your Lordships would be good enough to give the necessary directions that the sum of 15,000*l.* should be held in readiness, in order that it might be placed at the disposal of the Government of the United States, as had been sanctioned by the Cabinet, on the terms indicated in that letter, on account of certain hindrances caused to American fishermen in their fishing operations in the waters of Newfoundland and its dependencies.

Since that date an active correspondence has been carried on between London and Washington, in order to arrive at a clear understanding that this sum would be accepted by the Government of the United States as a complete settlement of all the claims on the part of the American fishermen, which should include not only claims on account of occurrences in the Newfoundland waters, but also those at a place called Aspee Bay, in Cape Breton Island, up to a given date, which has been fixed as the 4th March last.

In consequence of the satisfactory assurances on this point which have been received by Her Majesty's Minister at Washington from Mr. Blaine, the United States' Secretary of State for Foreign Affairs, instructions were sent to Sir E. Thornton on Friday last, desiring him to inform Mr. Blaine that Her Majesty's Government were now prepared to close this question by the payment to the United States of the sum of 15,000*l.*, in full satisfaction of all claims for disturbance caused to American fishermen on the coast of Newfoundland and its dependencies up to the 4th March last, including those at Aspee Bay, on the understanding that this payment is made without prejudice to any question of the rights of either Government under the Treaty of Washington.

* No. 129.

Mr. Blaine having now informed Sir E. Thornton that he acknowledges the correctness of the conditions under which it had been agreed between the two Governments that this payment would be made, Sir E. Thornton has applied by telegraph for authority to draw for 15,000*l.* on Her Majesty's Paymaster-General, and he inquires at the same time at how many days' sight this should be done, if sanction is given to his drawing such a bill.

I have to request, therefore, that your Lordships will enable me to answer Sir E. Thornton's inquiry at your earliest convenience.

Her Majesty's Secretary of State for the Colonies has caused Sir William Whiteway, the Premier of Newfoundland, who is now in this country, to be informed that a communication will, in due course, be made to the Government of Newfoundland with regard to the repayment of this sum by the Colony.

I am, &c.
(Signed) TENTERDEN.

No. 132.

Mr. Cole to Lord Tenterden.—(*Received June* 1.)

My Lord, *Treasury Chambers, June* 1, 1881.

THE Lords Commissioners of Her Majesty's Treasury have had before them your letter of the 30th May stating that the sum of 15,000*l.* has been accepted by the Government of the United States as a complete settlement of all the claims of the American fishermen in respect of hindrances in their fishing operations in the waters of Newfoundland and its dependencies.

Their Lordships have directed me to state, in reply to the request contained in your Lordship's letter, that Her Majesty's Minister should be instructed to draw a bill for this sum on Her Majesty's Paymaster-General at ten or thirty days' sight, as may appear to him most desirable.

I have, &c.
(Signed) J. H. COLE.

No. 133.

Sir E. Thornton to Earl Granville.
(Substance received by telegraph, June 2.)

My Lord, *Washington, June* 2, 1881.

I HAVE the honour to inform your Lordship that I have this day drawn upon Her Majesty's Paymaster-General for the sum of 15,000*l.* to Mr. Blaine's order at thirty days after sight.

I have transmitted the bill to Mr. Blaine in the note of which a copy is inclosed.

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

Inclosure in No. 133.

Sir E. Thornton to Mr. Blaine.

Sir, *Washington, June* 2, 1881.

WITH reference to your note of the 28th ultimo, I have the honour to transmit herewith a bill of exchange in triplicate drawn by me on Her Majesty's Paymaster-General at thirty days after sight for the sum of 15,000*l.*, in full payment of the claims mentioned in the note above referred to and on the conditions therein expressed.

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

No. 134.

*Lord Tenterden to Sir R. Lingen.**

Sir, *Foreign Office, June* 2, 1881.

WITH reference to your letter of yesterday's date, I am directed by Earl Granville to state to you, for the information of the Lords Commissioners of Her Majesty's Treasury, that a telegram has been this day received from Her Majesty's Minister at Washington, reporting that he has drawn a bill at thirty days after sight on Her Majesty's Paymaster-General, in settlement of the American fishery claims arising out of the occurrences at Fortune Bay and elsewhere.

I am, &c.
(Signed) TENTERDEN.

No. 135.

Earl Granville to Sir E. Thornton.

Sir, *Foreign Office, June* 3, 1881.

WITH reference to my despatch of the 2nd instant, I transmit herewith, for your information, copies of the correspondence marked in the margin,† relative to the settlement of the American fishery claims arising out of the occurrences at Fortune Bay and elsewhere.

I am, &c.
(Signed) GRANVILLE.

No. 136.

Lord Tenterden to Mr. Herbert.

Sir, *Foreign Office, June* 3, 1881.

WITH reference to my letter of yesterday's date, I am directed by Earl Granville to transmit herewith, to be laid before Lord Kimberley, a copy of a letter which was addressed on the 30th ultimo to the Lords of the Treasury relative to the settlement with the Government of the United States of the fishery claims arising out of the occurrences at Fortune Bay and elsewhere.‡

I am, &c.
(Signed) TENTERDEN.

No. 137.

Mr. Bramston to Sir J. Pauncefote.—(Received June 14.)

Sir, *Downing Street, June* 13, 1881.

WITH reference to the recent correspondence respecting the claim of the United States' fishermen in connection with the Newfoundland fisheries, I am directed by the Earl of Kimberley to transmit to you, for the information of Earl Granville, a copy of a despatch which his Lordship has addressed to the Governor of Newfoundland relative to the settlement of the question by the payment of 15,000*l.* to the United States' Government.

A copy of the letter to Sir W. Whiteway, inclosed in that despatch, accompanied the letter from this Department of the 26th ultimo.

I am also to inclose a copy of a despatch in which Lord Kimberley has acquainted the Governor-General of Canada with the inclusion of the Aspee Bay claims in the settlement referred to.

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

P.S.—A copy of Sir W. Whiteway's reply to the letter from this Department is also inclosed.

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* Also to Colonial Office. † Nos. 131 and 132. ‡ No. 131.

Inclosure 1 in No. 137.

The Earl of Kimberley to the Officer Administering the Government of Newfoundland.

Sir, *Downing Street, June* 7, 1881.

I HAD the honour to inform you, in my telegram of the 31st ultimo, of the settlement of the Fortune Bay question by the payment of 15,000*l.* to the United States' Government.

The inclosed copy of a letter which I caused to be addressed to Sir William Whiteway will place you in possession of the reasons which, in the opinion of Her Majesty's Government, rendered it advisable to agree that 15,000*l.* should be paid to the United States' Government in satisfaction of all claims up to the 4th of March last, rather than to enter upon an inquiry with a view to determine the amount of the compensation due to the American fishermen.

In this amount has been included the settlement of the claims of United States' fishermen, known as the Aspee Bay claims, and I have addressed a despatch to the Governor-General of Canada, informing him of the agreement which has been arrived at.

The papers relating to the subject will shortly be laid before Parliament, and will be communicated to you in due course.

I have, &c.
(Signed) KIMBERLEY.

Inclosure 2 in No. 137.

The Earl of Kimberley to the Marquis of Lorne.

My Lord, *Downing Street, June* 2, 1881.

I HAD the honour to inform you in my telegram of the 31st ultimo, that the Aspee Bay question has been settled in conjunction with the Fortune Bay claims.

The depositions of the American fishermen with regard to the occurrences at Aspee Bay are contained on pp. 138-141 of the message from the President of the United States (46th Congress, 2nd Session, Ex. Doc. No. 84), a copy of which is no doubt in the possession of your Lordship's Government.

Her Majesty's Government had been for some time in communication with the United States' Government on the subject of the Fortune Bay claims, and in order to avoid an expensive inquiry with a view to the assessment of compensation to the American fishermen, and the consequent protraction of an irritating controversy, it was at length agreed that the question should be settled at once by the payment of a sum of 15,000*l.*

In this amount has been further included the settlement of the Aspee Bay claims and all other claims up to the 4th March last, it being understood that this payment is made without prejudice to any question of the rights of either Government under the Treaty of Washington.

I have, &c.
(Signed) KIMBERLEY.

Inclosure 3 in No. 137.

Sir W. Whiteway to Mr. Herbert.

Sir, *British Hotel, June* 2, 1881.

I HAVE the honour to acknowledge the receipt of your letter of the 26th ultimo relating to the occurrences in Fortune Bay in 1878. I will take the earliest opportunity of communicating the purport of the same to my colleagues.

I have, &c.
(Signed) W. V. WHITEWAY.

No. 138.

*Lord Tenterden to Sir R. Lingen.**

Sir, *Foreign Office, June* 14, 1881.

WITH reference to my letter of the 2nd instant, I am directed by Earl Granville to transmit to you, to be laid before the Earl of Kimberley, the accompanying copy of a despatch, with its inclosure,† from Her Majesty's Minister at Washington in regard to the payment made to the United States' Government in satisfaction of the claims of American fishermen on account of occurrences at Fortune Bay and elsewhere.

I am, &c.

(Signed) TENTERDEN.

No. 139.

Sir J. Pauncefote to Mr. Herbert.

Sir, *Foreign Office, June* 16, 1881.

I AM directed by Earl Granville to transmit to you a copy of a despatch from Her Majesty's Minister at Washington, inclosing a copy of his letter to Mr. Blaine of the 28th May, and of Mr. Blaine's reply of the same day,‡ in which he notifies the acceptance by the United States' Government of the sum of 15,000*l.* in full satisfaction of the American claims arising out of the occurrences at Fortune Bay and elsewhere on the coasts of Newfoundland and its dependencies up to the 4th March last, including those at Aspee Bay.

In laying these documents before the Earl of Kimberley, I am to request that you will state that Lord Granville proposes, with his Lordship's concurrence, to approve the terms of Sir E. Thornton's communication to Mr. Blaine of the 28th May, and to inform him that the reply returned by Mr. Blaine is entirely satisfactory to Her Majesty's Government.

I am, &c.

(Signed) JULIAN PAUNCEFOTE.

No. 140.

Sir E. Thornton to Earl Granville.—(*Received June* 18.)

(Extract.) *Washington, June* 6, 1881.

WITH reference to my despatch of the 2nd instant, I have the honour to inclose copy of a note which I have received from Mr. Blaine, acknowledging the receipt of mine of the 2nd instant, in which I transmitted to him a bill of exchange for 15,000*l.*, in full payment of the Fortune Bay and other claims, as specified in my note of the 28th ultimo.

Inclosure in No. 140.

Mr. Blaine to Sir E. Thornton.

Sir, *Department of State, Washington, June* 4, 1881.

I HAVE the honour to acknowledge the receipt of your note of the 2nd instant, transmitting a bill of exchange in triplicate drawn by you on Her Majesty's Paymaster-General at thirty days after sight for the sum of 15,000*l.*, in full payment of the claims mentioned in my note of the 28th ultimo, and to inform you that the same is accepted by this Government on the conditions hereto agreed upon between us.

I have, &c.

(Signed) JAMES G. BLAINE.

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* Also to Colonial Office. † No. 133. ‡ No. 128.

No. 141.

Earl Granville to Sir E. Thornton.

Sir, *Foreign Office, June* 18, 1881.

I INCLOSE, for your information, copies of a letter, and of its inclosures, as marked in the margin, on the subject of the Fortune Bay Fisheries question.*

I am, &c.

(Signed) GRANVILLE.

No. 142.

Earl Granville to Sir E. Thornton.

Sir, *Foreign Office, June* 20, 1881.

WITH reference to recent correspondence respecting the compensation claimed by the United States' fishermen on account of the occurrences at Fortune Bay and elsewhere, I have to request you to inform me what proportion of the sum of 15,000*l.* paid by Her Majesty's Government in satisfaction of these claims may be taken to represent the amount payable on account of the Aspee Bay claim.

I am, &c.

(Signed) GRANVILLE.

No. 143.

Sir E. Thornton to Earl Granville.

(Substance received by telegraph, June 22.)

My Lord, *Washington, June* 22, 1881.

WITH reference to your Lordship's telegram of the 20th instant, I have the honour to state that the claim made by certain United States' fishermen for having been prevented from fishing for bait in Aspee Bay has always appeared to me a very small affair, and has, I know, been so considered by both Mr. Evarts and Mr. Blaine. But such little claims, if neglected, are apt to be magnified in course of time, and as it could not be considered as one having arisen in a dependency of Newfoundland, I thought it would be desirable to mention it separately.

I am, however, of opinion that 150*l.* would fully satisfy the Aspee Bay claims mentioned above, and I am convinced that the United States' Government will not assign more than that sum to their satisfaction.

I have, &c.

(Signed) EDWD. THORNTON.

No. 144.

Sir J. Pauncefote to Sir R. Lingen.†

Sir, *Foreign Office, June* 23, 1881.

WITH reference to my letter of the 14th instant, I am directed by Earl Granville to transmit to you, to be laid before the Lords Commissioners of the Treasury, the accompanying copy of a further despatch, as marked in the margin,‡ from Her Majesty's Minister at Washington, transmitting a copy of Mr. Blaine's receipt for 15,000*l.* on account of the Fortune Bay Claims settlement.

I am, &c.

(Signed) JULIAN PAUNCEFOTE.

No. 145.

Mr. Bramston to Lord Tenterden.—(*Received June* 24.)

My Lord, *Downing Street, June* 23, 1881.

I AM directed by the Earl of Kimberley to acknowledge the receipt of your letter of the 16th instant, forwarding a copy of a despatch from Sir E. Thornton,

* No. 137. † Also to Colonial Office. ‡ No. 140.

with its inclosures, respecting the settlement of the American claims arising out of the occurrences at Fortune Bay and elsewhere.

Lord Kimberley concurs in the terms of the reply which Earl Granville proposes to return to Sir E. Thornton.

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

No. 146.

Mr. Cole to Earl Granville.—(*Received July* 1.)

My Lord, *Treasury Chambers, June* 30, 1881.

I AM directed by the Lords Commissioners of Her Majesty's Treasury to acknowledge the receipt of your letter of the 23rd instant, inclosing a copy of a further despatch from Her Majesty's Minister at Washington, transmitting a copy of Mr. Blaine's letter of receipt for 15,000*l.* on account of the Fortune Bay, &c., fishery claims; and I am to request that you will move Earl Granville to cause the original letter of receipt to be transmitted to this Board in order that it may be produced to the Comptroller- and Auditor-General.

I have, &c.
(Signed) J. H. COLE.

No. 147.

Earl Granville to Sir E. Thornton.

Sir, *Foreign Office, July* 2, 1881.

I TRANSMITTED to the Lords Commissioners of Her Majesty's Treasury a copy of your despatch of the 6th ultimo, inclosing copy of a note which you had received from Mr. Blaine, acknowledging the receipt of your communication of the 2nd ultimo, in which you forwarded to him a bill of exchange for 15,000*l.* in full payment of the Fortune Bay and other claims; and I now transmit to you the accompanying copy of a letter which has been received from the Treasury in reply,* desiring to be furnished with the original letter of receipt for production to the Comptroller-and Auditor-General; and I have to request you to forward this document accordingly for the purpose indicated.

I am, &c.
(Signed) GRANVILLE.

No. 148.

Mr. Bramston to Sir J. Pauncefote.—(*Received July* 6.)

Sir, *Downing Street, July* 5, 1881.

WITH reference to the letter from this Department of the 18th ultimo, and to your reply of the 24th respecting the amount paid to the United States' Government on account of the Aspee Bay affair, I am directed by the Earl of Kimberley to transmit to you, for the information of Earl Granville, a copy of a despatch which his Lordship had addressed to the Governor-General of Canada on the subject.

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

Inclosure in No. 148.

The Earl of Kimberley to the Marquis of Lorne.

My Lord, *Downing Street, June* 30, 1881.

IN my despatch of the 2nd instant I explained to you that the agreement with the United States' Government under which the Fortune Bay claims and all other claims preferred up to the 4th March last have been settled by the payment of a sum of 15,000*l.* included the settlement of the Aspee Bay claims.

* No. 146.

2. The occurrence at Aspec Bay, Cape Breton, in June 1879, where James Anderson, of the schooner "Cadet," of Gloucester, Massachusetts, alleged that he was prevented by the inhabitants from taking squid with his seine, and thereby suffered loss, and certain other masters of American schooners alleged that in consequence of the prohibition they suffered similar loss, was of a comparatively unimportant character, and did not in fact present itself for consideration until a late stage of the negotiations, when, in coming to an agreement that the fixed sum to be paid should cover all outstanding claims, it was observed that there was this claim against the Dominion Government, in addition to the claims against the Government of Newfoundland.

3. Her Majesty's Government felt it their duty, having an opportunity of settling this matter, of which advantage could not have been taken if the decision had been delayed in order to give time for consultation with the Dominion Government, to act at once in the interest of your Government in the manner which they could not doubt that your Ministers would approve; more especially as it was clear that this course would commit Canada to the payment of a very inconsiderable sum, far less than the cost of an inquiry would have been if the affair had not been summarily disposed of.

4. I have requested the Secretary of State for Foreign Affairs to ascertain from Sir E. Thornton what proportion of the sum of 15,000*l.* represents the amount of the claims in respect of the Aspec Bay transaction, and Sir E. Thornton has replied that 150*l.* should be amply sufficient to cover it.

5. I trust that your advisers will be of opinion that in this matter Her Majesty's Government have acted for the best in the interests of the Dominion, and I shall be obliged by your requesting them to make the necessary provision for the repayment to Her Majesty's Exchequer of the amount thus paid on account of Canada.

I have, &c.
(Signed) KIMBERLEY.

No. 149.

Earl Granville to Sir E. Thornton.

Sir, *Foreign Office, July* 7, 1881.

I HAVE to acknowledge the receipt of your despatch of the 30th May last, with its inclosures, relative to the settlement of the American claims arising out of the occurrences at Fortune Bay and elsewhere on the coast of Newfoundland and its dependencies up to the 4th March last, including those at Aspec Bay.

In reply, I have to convey to you my approval of the terms of the communication addressed by you to Mr. Blaine on the 28th May, and to inform you that the reply returned by Mr. Blaine on the same day is considered as entirely satisfactory by Her Majesty's Government.

I am, &c.
(Signed) GRANVILLE.

No. 150.

Lord Tenterden to Mr. Herbert.

Sir, *Foreign Office, July* 11, 1881.

WITH reference to my letter of the 24th ultimo, I am directed by Earl Granville to transmit to you, to be laid before Her Majesty's Secretary of State for the Colonies, for his Lordship's information, the accompanying copy of a despatch which has been received from Her Majesty's Minister at Washington, relative to the compensation which will probably be awarded on account of the Aspee Bay claim out of the sum paid to the United States' Government in consideration of the occurrences at Fortune Bay and elsewhere.*

I am, &c.
(Signed) TENTERDEN.

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* No. 143.

UNITED STATES. No. 2 (1881).

FURTHER CORRESPONDENCE respecting the Occurrences at Fortune Bay, Newfoundland, and other places.

[In continuation of "United States No. 1 (1881)."]

Presented to both Houses of Parliament by Command of Her Majesty. 1881.

LONDON:
PRINTED BY HARRISON AND SONS.

970

CANADA.

ADDRESS TO HER MAJESTY

FROM THE

SENATE AND HOUSE OF COMMONS OF CANADA

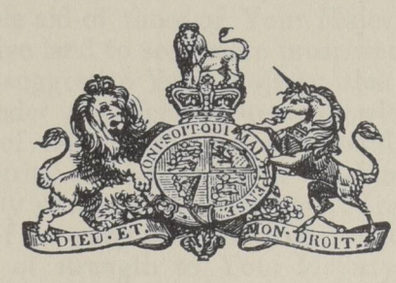
IN RELATION TO

AFFAIRS IN IRELAND

AND THE

REPLY THERETO.

Presented to both Houses of Parliament by Command of Her Majesty.
July 1882.



LONDON:
PRINTED BY GEORGE E. B. EYRE AND WILLIAM SPOTTISWOODE,
PRINTERS TO THE QUEEN'S MOST EXCELLENT MAJESTY.
FOR HER MAJESTY'S STATIONERY OFFICE.

1882.

[C.—3294.] *Price* ½*d.*

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No. 1.

GOVERNOR-GENERAL THE MARQUIS OF LORNE, K.T., G.C.M.G., to the RIGHT HON. THE EARL OF KIMBERLEY. (Received June 3, 1882.)

Government House, Ottawa,
May 16, 1882.

MY LORD,

I HAVE the honour to forward herewith, in order that it may be laid at the foot of the Throne, an Address to Her most Gracious Majesty the Queen, agreed to by the Senate and House of Commons of Canada in Parliament assembled in relation to affairs in Ireland.

I have, &c.
(Signed) LORNE.

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

Enclosure in No. 1.

MOST GRACIOUS SOVEREIGN,

WE, Your Majesty's most dutiful and loyal subjects, the Senate and Commons of Canada, in Parliament assembled, desire most earnestly, in our own name, and on behalf of the people whom we represent, to renew the expression of our unswerving loyalty and devotion to Your Majesty's person and Government.

1. We have observed, may it please Your Majesty, with feelings of profound regret and concern, the distress and discontent which have prevailed for some time among Your Majesty's subjects in Ireland.

2. We would respectfully represent to Your Majesty that Your Irish subjects in the Dominion of Canada are among the most loyal, most prosperous, and most contented of Your Majesty's subjects.

3. We would further respectfully represent to Your Majesty that the Dominion of Canada, while offering the greatest advantages and attractions for those of our fellow-subjects who may desire to make their homes amongst us, does not receive that proportion of emigrants from Ireland which might reasonably be expected, and that this is due, in a great measure, in the case of many of our Irish fellow-subjects who have sought foreign homes, to their feelings of estrangement towards the Imperial Government.

4. We would further most respectfully represent to Your Majesty, that in the interests of this, Your loyal Dominion and of the entire Empire, it is extremely to be desired that Your Majesty may not be deprived in the development of Your Majesty's possessions on this continent of the valuable aid of those of Your Majesty's Irish subjects who may feel disposed to leave their native land to seek more prosperous homes.

5. We desire respectfully to suggest to Your Majesty, that Canada and its inhabitants have prospered exceedingly under a Federal system, allowing to each Province of the Dominion considerable powers of self-government, and would venture to express a hope that if consistent with the integrity and well-being of the Empire, and if the rights and status of the minority are fully protected and secured, sure means may be found of meeting the expressed desire of so many of Your Irish subjects in that regard, so that Ireland may become a source of strength to Your Majesty's Empire, and that Your Majesty's Irish subjects at home and abroad may feel the same pride in the greatness of Your Majesty's Empire, the same veneration for the justice of Your Majesty's rule, and the same devotion to, and affection for, our common flag, as are now felt by all classes of Your Majesty's loyal subjects in this Dominion.

6. We would further express a hope that the time has come when Your Majesty's clemency may without injury to the interests of the United Kingdom be extended to those persons who are now imprisoned in Ireland charged with political offences only, and the inestimable blessing of personal liberty restored to them.

R 2903. Wt. 2903.

We pray that the blessings of Your Majesty's Reign may, for Your people's sake, be long continued.

(Signed) D. L. MACPHERSON,
Speaker.

The Senate,
Wednesday, 3rd May 1882.

House of Commons,
Thursday, 20th April 1882.

(Signed) J. G. BLANCHET,
Speaker.

No. 2.

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

MY LORD, Downing Street, June 12, 1882.

I HAVE received and laid before the Queen the Address to Her Majesty from the Senate and House of Commons of Canada in Parliament assembled, which was transmitted in your Lordship's despatch of the 16th of May.*

I am commanded by Her Majesty to request that you will convey to the Senate and House of Commons her appreciation of the renewed expression of their unswerving loyalty and devotion to Her Majesty's person and Government.

Her Majesty will always gladly receive the advice of the Parliament of Canada on all matters relating to the Dominion, and the administration of its affairs; but, with respect to the questions referred to in the Address, Her Majesty will, in accordance with the Constitution of this country, have regard to the advice of the Imperial Parliament and Ministers, to whom all matters relating to the affairs of the United Kingdom exclusively appertain.

I have, &c.
(Signed) KIMBERLEY.

The Marquis of Lorne.

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* No. 1.

CANADA
(EMIGRATION TO THE UNITED STATES).

RETURN to an Address of the Honourable The House of Commons, dated 15 August 1882;—*for*,

"COPY of the REPORT (dated the 29th day of December 1881) by the SECRETARY of the DEPARTMENT of AGRICULTURE to the MINISTER of AGRICULTURE in *Canada*, with reference to the alleged EMIGRATION from *Canada* to the *United States*."

Colonial Office, August 1882. } EVELYN ASHLEY.

(*Mr. Torrens.*)

Ordered, by The House of Commons, *to be Printed*, 24 *October* 1882.

383.

COPY of the REPORT (dated the 29th day of December 1881) by the SECRETARY of the DEPARTMENT of AGRICULTURE to the MINISTER of AGRICULTURE in *Canada*, with reference to the alleged EMIGRATION from *Canada* to the *United States*.

REPORT on alleged Exodus from *Canada* to the *United States*.

Sir, Ottawa, 29 December 1881.

I HAVE the honour to report to you the following results of a further examination, undertaken at your request, into the alleged extent of the emigration of Canadians to the United States, and particularly on our western frontier, at Port Huron.

I obtained a copy of a printed statement, issued by the United States Collector of Customs, at Port Huron, for the year ending 30th June 1881, in which the number of immigrants said to have entered the United States from Canada at that point during the fiscal year, was 111,170.

This statement of numbers I subsequently found was not alone issued by the Collector of Customs, at Port Huron, but published officially by the Bureau of Statistics of the Treasury Department, at Washington, over the signature of Mr. Joseph Nimmo, junr., Chief of the Bureau.

Before entering upon a particular examination of the figures of the Port Huron Collector, it is better to give a statement of the alleged total emigration from Canada into the United States, as published in the Report of the Chief of the Bureau of Statistics of the United States, for the four quarters of the fiscal year ending 30th June 1881. It is as follows:—

STATEMENT showing the Number of IMMIGRANTS, by Nationality, arrived in the *United States*, during the Year ending 30th June 1881.

	Males.	Females.	Total.
Quebec and Ontario - - - -	62,033	40,889	102,922
Manitoba - - - - - -	674	405	1,079
Nova Scotia - - - - -	7,977	6,460	14,437
New Brunswick - - - -	2,837	1,497	4,334
Prince Edward Island - - -	617	916	1,533
British Columbia - - - -	640	138	778
Newfoundland - - - - -	124	184	308
TOTALS - - -	74,902	50,489	125,391

It

It thus appears that the figures furnished by the Port Huron Customs Collector form the great bulk of the alleged emigration from Canada, for if we subtract 111,170 from the above total, we have only a remainder of 14,221 for all the other ports along the whole of the United States frontier, from the Atlantic to the Pacific.

I find it important for the purpose of this inquiry further to take from the quarterly Reports of the Chief of the United States Bureau of Statistics, some of the details with which this alleged immigration from Canada into the United States at Port Huron, is stated. These purport to give, in addition to the gross numbers, the age and sex of the immigrants, and, further, the numbers of both males and females, within three periods of life:—

NUMBER, AGE and SEX of IMMIGRANTS arrived in the *United States* at *Huron, Michigan*, during the Three Months ended 30th September 1880:

Total Males	27,204
Total Females	16,775
TOTAL Immigrants of both Sexes	43,979

These are again sub-divided:—

Under 15 years—	
Males	4,274
Females	4,183
Total	8,457
15 years and under 40—	
Males	21,661
Females	11,798
Total	33,459
40 years and upwards—	
Males	1,269
Females	794
Total	2,063
TOTAL for Quarter	43,979

For the three months ended 31st December 1880, the following figures are given:—

Total Males	18,341
Total Females	10,760
Total	29,101
Under 15 years of age—	
Males	2,377
Females	2,256
Total	4,633
15 years and under 40—	
Males	14,954
Females	7,830
Total	22,784
40 years and upwards—	
Males	1,010
Females	674
Total	1,684
TOTAL for Quarter	29,101

During

During the three months ended 31st March 1881—

Total Males	5,310
Total Females	3,641
Total	8,951
Under 15 years—	
Males	867
Females	847
Total	1,714
15 and under 40 —	
Males	4,108
Females	2,568
Total	6,676
40 years and upwards—	
Males	335
Females	226
Total	561
TOTAL for Quarter	8,951

During the three months ended 30th June 1881—

Total Males	16,265
Total Females	12,874
Total	29,139
Under 15 years—	
Males	3,045
Females	2,998
Total	6,043
15 years and under 40—	
Males	12,387
Females	9,350
Total	21,737
40 years and upwards—	
Males	833
Females	526
Total	1,359
TOTAL for Quarter	29,139

Recapitulating for the four quarters we have:—

September quarter	43,979
December „	29,101
March „	8,951
June „	29,139
TOTAL for Fiscal Year at Port Huron	111,170

This total of immigration, as taken from the four quarters of the fiscal year in the Report of the Chief of the Bureau, exactly coincides with the figures for the year furnished by the Port Huron Customs Collector.

It is further indicated in Mr. Nimmo's reports that all the immigrants were aliens, not one of them coming under the head of Returned Citizens of the United States.

In Mr. Nimmo's Bulletin of "Immigration during the Month of June 1881, "and during the Year ended 30th June 1881," I find the following item in small type:—"*Note.*—A part of the immigration into the United States from "the

" the Dominion of Canada consisted of immigrants from Europe who came by " steamer to Montreal and thence reached the Lake ports of the United States " by railroad." But Mr. Nimmo does not say what " part," nor does he give any figures. And it is to be observed there is no reference whatever to anything of this kind in the published volumes of his final reports. In the text of this Bulletin, too, he gives the total immigration from the Dominion of Canada for the 12 months ended 30th June 1881, as 118,664. But in his published final reports he gives this, as I have above stated, at 125,391, for the same 12 months; and both are precise figures, it will be noticed, down to units. Without, however, at all dwelling on this little eccentricity, I will say I have thought it proper to assume that the final reports contain the figures Mr. Nimmo desires to give to the world.

The first remark to be made with respect to these detailed statements of statistics is, that it is indubitable they could not be obtained with accuracy, nor at all obtained in the absence of some regular registration and forms of questions asked. And with respect to these points I have to state that I visited Port Huron twice, once in August last, and once in November last, in pursuance of this inquiry. I crossed the river as an ordinary passenger with the usual Grand Trunk express trains, on which there were migrants from Canada to Manitoba; and I watched with carefulness the proceedings. No questions of any kind were asked of me, either with respect to my age, or my intention to enter the United States as an emigrant or a traveller simply; and none were asked of any of the migrants to Manitoba or any other persons on these trains. In fact, neither I nor any of the passengers that my careful watching enabled me to discover, were subjected to any of the proceedings necessary to obtain the information published by Mr. Nimmo, and both the trains were ordinarily well filled with passengers. There might have been emigrants from Canada for the United States on the cars, but I could not ascertain the fact except by questioning the passengers, which I did not consider expedient, nor did I feel, being simply a passenger, I was authorised to do. Our luggage was simply opened and examined, under a shed on the United States side of the river, in the same way as is common at other custom houses, and nothing further was done. I took pains to inquire of the railway officials if the proceedings I witnessed were usual, and I was informed that nothing more was ever done.

For further and more detailed reports of the proceedings at this point between the months of January and April 1881, I refer you to those of Mr. G. R. Kingsmill (*see* Appendix, No. 39),* an officer who was placed at that point by you for the express purpose of watching and reporting such proceedings. His evidence is quite positive, and to the effect that during the four months he was on the spot there was not even a pretence made of any asking of questions, nor any counting or taking down of figures visible to him.

I did not think it advisable to ask any questions of the United States officials in the face of the kind of feeling that prevails after the exposure of last year, for the reason that I had no authority to do so. It is known there was an investigation ordered by an officer from Washington, and that it took place; but his report has not been published.

There remains the unquestioned fact published in my report of last year, as respects the proceedings on the trains, of the statement made to me at an interview by the United States Customs officer, who had the duty confided to him of making up these so-called statistics, that " questions were not asked, because it " would be an impossibility to ask them and record the answers within the time " afforded; that 20 men could not do this on some days." " That when he looked " in the door of a car he saw at a glance what it contained and the numbers it " contained, and that he could tell whether the passengers were immigrants or " not; that he made up the figures after he had done examining the train. " That he could not ask the questions required by the Government, but had to " arrive at the information as best he could." I notice that the details of the " occupations " of the immigrants are not this year given by the Chief of the Bureau.

* Not printed.

Bureau. But why strain a point of this kind? When all those details of age and sex are given, when it is determined that all the immigrants are aliens, that none of them are United States citizens returning from abroad, and when all the provinces from which it is alleged they came are stated; and all this without a single question being asked. It is even doubtful if every car door is opened by the officer who makes up the figures, or, in his own words "arrives at "the information" in the best way he can.

There is, however, an easy and positive means of applying a test of criticism to the figures to which the Chief of the Bureau of Statistics has lent his official sanction. The great bulk of all the travel both east and west at the point of Port Huron is by the Grand Trunk Railway. There is a branch of the Great Western Railway at Sarnia, but this is not much used for the conveyance of through passengers, as these, for the most part, take the main line: and there is a ferry between the points of Sarnia and Port Huron, by which, as stated in my report last year, a few immigrants may pass with teams; but the only considerable movement possible is by the railways. And, fortunately for the purposes of this inquiry, the total numbers of passengers going east and west at this point are facts of exact official record.

The total number of passengers, that is of individuals, the half tickets being counted of all kinds, crossing at this point from east to west, by the Grand Trunk Railway, for the 12 months ended 30th June, were as follow:—

Passengers having purchased tickets in Canada to points in Canada, *viâ* United States.	5,658
Passengers from Canada to United States - - -	53,641
Ditto - - United States to Canada, N.W. - -	173
Ditto - - United States to United States - -	25,046
TOTAL going West - - -	84,518

This total includes all travellers for business and for pleasure, immigrants from Europe using Canadian steamships and railways to go to the Western States, migrants from the older Provinces of Canada to the Canadian North-West, and all passengers and migrants between the Eastern United States and the Western.

The corresponding figures for the same period by the Sarnia Branch of the Great Western Railway were as follow:—

From Canada to Western points in the United States -	1,345
From Eastern United States points to Western United States.	57
TOTAL - - -	1,402
Making a GRAND TOTAL of all Passengers going West by all Railways at this Point -	85,920

This claim of immigration, at Port Huron, as stated by the United States Customs' Collector, and officially published to the world on the authority of the Treasury Department at Washington, by the Chief of the United States Bureau of Statistics, is therefore 29·38 per cent. more than the total travel at that point. It is equivalent to the feat of exaggerating, by nearly 30 per cent., all the passengers who enter France at the ports of Calais and Boulogne, and then claiming the result as immigration into that country from England.

It is thus established that such a claim is both impossible and absurd. But this view will become more striking when we more closely examine the figures.

The item of 53,641 of passengers who obtained tickets in Canada for points in the Western United States, includes 14,624 immigrants from Europe who obtained tickets at Quebec, and 491 immigrants from Europe who obtained tickets at Halifax for points west of Port Huron, in the Western United States, and were therefore simply passengers from Europe (largely from Scandinavia) using Canadian routes. These must be deducted.

The

The deductions therefore are:

Passengers from Europe *viâ* Quebec - - - - -	14,624
Immigrants at Halifax obtaining tickets for points West of Port Huron.	491
Passengers and migrants from Eastern Canada to North-West Canada.	5,658
From Eastern United States to North-West Canada -	173
From Eastern United States to Western United States -	25,046
TOTAL - - -	45,992

Taking these deductions from the Grand Total of all passengers going West, *viâ* Port Huron, namely, 85,920, we have a total of all passengers, of all sorts, from points in Canada to points in the Western United States, of 39,928, or in other words a little more than one-third of the number of the immigrants claimed to have entered the United States at Port Huron.

These facts relate simply to the West-bound passengers. But the grotesqueness of the pretension will become still more apparent when the East-bound are taken into consideration.

Taking first the Grand Trunk Railway, there passed:—	
From North-West Canada to Eastern Canada *viâ* United States.	947
From North-West Canada to United States - - -	258
From Western United States to Canada - - -	34,267
From Western United States to Eastern United States -	20,835
TOTAL, Grand Trunk Passengers going East - -	56,307
By the Sarnia Branch, Great Western Railway:—	
From Western United States to Canada - - -	681
From Western United States to Eastern United States -	18
TOTAL by both Railways going East - - -	57,006

The true emigration is, of course, the difference between the East-bound and West-bound passengers. It therefore follows from the preceding figures that the Western United States made a gain by the Grand Trunk Railway of 4,211 from the Eastern United States, the West-bound passengers having been 25,046, while the East-bound were 20,835; and the Western United States a gain of 39 by the Sarnia Branch of the Great Western Railway, the West-bound passengers having been 57 and the East-bound 18.

The difference of numbers between passengers going from Canada to the Western United States and those coming from the Western States to Canada is 19,374, the total West-bound passengers of this class being 53,641, and the East-bound 34,267. But from this difference there must be taken the 14,624 European immigrants who obtained tickets at Quebec after landing from the steamships; and the immigrants at Halifax who obtained tickets to points west of Port Huron, 491; making a net total difference of 4,259, against the Port Huron claim of 111,170.

And even this difference of 4,259, must be held to include all those immigrants who are alleged to have taken advantage of the special assisted rates of passage between the United Kingdom and Canada, and after remaining for a while went on to the Western States. Also all those immigrants from beyond the sea who have landed at Portland and Boston and entered Canada *viâ* Montreal and Ogdensburg, proceeding afterwards to the Western States; the numbers of which, I believe, are considerable. There is not, in fact, any evidence of any Canadian emigration of any significance at the point of Port Huron to the United States.

It is noticeable that the claim of 111,170 immigrants at the point of Port Huron is largely in excess of that of the previous year, viz., 94,375, notwithstanding the fact that the self-evident impossibility of those large figures had

been clearly proved, and the proofs furnished to Mr. Nimmo, the Chief of the Bureau of Statistics.

If the statistics published on the authority of Mr. Nimmo could be supposed to be well founded, an exodus from Canada of 125,391 in one year, would imply in a decenniad, on a moderate estimate of natural increase, at the ages given by Mr. Nimmo, a loss of population of about a million and-a-half. This would very nearly wipe out all the population in the great Province of Ontario, and more than wipe out the whole of that of the Province of Quebec, supposing, for the sake of measuring the alleged exodus with the known numbers of people living in these provinces, such comparison is made. It is known to everybody that no depopulation in Canada is taking place; but, on the contrary, the figures of the census prove that the increase within the last decenniad has been 18 per cent.; and this considerable increase is over and above all the emigration that has taken place from the Dominion within the period. We have thus, by another test, based upon well-established facts, a further proof of the grossly absurd exaggeration of the so-called statistics, published by the Chief of the Washington Bureau.

The United States Census Returns for 1880, of place of birth, have not yet been published in an available form; but by the United States Census, for the decenniad ended in 1870, the proportion of persons of Canadian birth were 12 per 1,000 of the population; while, on the other hand, the persons of United States birth in Canada by the census of 1871 were a fraction over 18 per 1,000 of the population. The following is a comparison of the differences in the years named in Canada, the figures being the numbers of persons of United States birth per 1,000 in the population of the Provinces named:—

	1871.	1881.
Ontario - - - - - - - -	26·7	23·6
Quebec - - - - - - - -	12·3	14·3
New Brunswick - - - - - -	14·3	15·9
Nova Scotia - - - - - -	5·8	6·6

After the preceding analysis of 111,170, of Mr. Nimmo's figures, out of the alleged emigration from Canada of 125,391, any further examination of the little remainder of 14,221 for all the other ports on the long Canadian frontier has certainly diminished interest. The clear statement, however, in Mr. George Johnson's Report (*see* Appendix, No. 40) * of an investigation made at your request, shows that the alleged exodus from Nova Scotia has been very weak, although Mr. Nimmo makes a claim of 14,437. It is beyond question that no satisfactory proof can be adduced in support of these comparatively large figures; and it is impossible to read Mr. Johnson's Report without feeling that they are are of the same unsupported texture as the large Port Huron figures.

As respects the Province of New Brunswick, some figures given by Mr. S. Gardner, the Immigration Agent at St. John (*see* Appendix, No. 44) * show the nature of the movement between the Eastern States and that port. They do not exhibit any sign of exodus, nor even considerable emigration.

It is, however, to be remarked, as respects the Provinces of Nova Scotia and New Brunswick, that a considerable portion of the alleged emigration from those Provinces, as claimed by Mr. Nimmo, is at the point of Port Huron, and that has been proved to be utterly fallacious.

I have not the figures of emigration and immigration between the Province of Quebec and the New England States, but these are, I believe, considerable both ways; and also that there is a movement of the nature of that described by

* Not printed.

by Mr. Kingsmill in his report between the lumber woods of Michigan and other points in the west and the Provinces of Quebec and Ontario.

It is a fact of precise and ascertained record in connection with entries of immigrants' effects at the custom houses along the frontier, during the year 1881, that 15,404 persons immigrated to Canada from the United States. Of these, 9,821 were returned Canadians and 1,963 United States citizens. Undoubtedly, there were very large numbers of others, of mechanics and working men, who passed no free entries with their "settlers' effects," and, therefore, there is no record of them. As between two parts of a continent in the position of Canada and the United States, with a very long frontier, there must always be a considerable flux and reflux of population, in accordance with the relative activity of trade or industries in one or other country, or the attractions of newly-opened lands; but this is a movement altogether different in its nature from that of a depopulating exodus of the kind stated in the grossly erroneous figures of the return of Mr. Nimmo.

There is a particular and very great injustice done to what may be called the immigration interests of Canada by the constant publication and re-publication of these figures in the United Kingdom and the continent of Europe. Mr. Nimmo publishes monthly bulletins which are widely communicated to the press, and these give, month by month, the cumulative numbers. They are constantly telegraphed to and published in the London "Times;" and, in fact, all over America and Europe, under the authority of the Treasury Department of the United States, from figures furnished to editors and newspaper correspondents by the Washington Bureau of Statistics. The argument which is drawn from them and presented to the emigrating classes is, that if Canada is a place from which people flee in a depopulating exodus, it cannot be a good place for emigrants from the Old World to go to. The unfairness and injustice of these proceedings lie in the fact that these published statements fall to pieces under any test that may be applied to them, and yet they are persistently reiterated.

I have, &c.
(signed) *John Lowe*,
Secretary of the Department of Agriculture.

To the Honourable J. H. Pope,
Minister of Agriculture.

CANADA
(EMIGRATION TO THE UNITED STATES).

COPY of the REPORT (dated 29 December 1881) by the SECRETARY of the DEPARTMENT of AGRICUTURE to the MINISTER of AGRICULTURE in *Canada*, with reference to the alleged EMIGRATION from *Canada* to the *United States*.

(*Mr. Torrens.*)

Ordered, by The House of Commons, *to be Printed*,
24 *October* 1882.

383.

H.—25. 10. 82. *Under* 1 *oz.*

984

CANADA.—NEWFOUNDLAND.

CORRESPONDENCE

RELATING TO THE

SETTLEMENT OF CLAIMS

ARISING OUT OF TRANSACTIONS

AT

FORTUNE BAY AND ELSEWHERE.

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

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



LONDON:
PRINTED BY EYRE AND SPOTTISWOODE.

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1883.

[C.—3762.] *Price* 4½*d.*

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3	To Administrator Sir F. B. T. Carter (Newfoundland).	October 11, 1881	Informing him that the United States Government have accepted the sum of 15,000*l.* in full satisfaction of their claims, and conveying the views of Her Majesty's Government generally on the subject, with directions to submit to the Colonial Legislature a vote for the repayment of the sum in question to the Imperial Exchequer.	10
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R 8461. Wt. 8480.

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Serial No.	From or to whom.	Date.	Subject.	Page.
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CORRESPONDENCE

RELATING TO THE

FORTUNE BAY FISHERY CLAIMS.

No. 1.

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

MY LORD, May 20, 1881.

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

I have, &c.

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

Enclosures in No. 1.

MEMORANDUM.

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

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

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

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

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

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

REPORT.

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

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

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

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

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

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

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

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

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

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

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

---

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

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

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

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

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

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

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

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

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

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

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

"Lizzie and Namari," Dagle, Master.

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

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

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

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

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

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

"F. A. Smith," Jas. McDonald, Master.

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

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

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

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

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

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

"William E. McDonald," McDonald, Master.

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

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

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

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

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

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

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

"Hereward," E. Stapleton, Master.

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

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

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

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

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

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

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

This vessel has clearly no claim.

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

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

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

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

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

He charges—

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

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

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

Say from above—

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

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

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

	Dollars.
400 barrels herrings purchased - - - - -	560
500 barrels herrings short at 3 dollars - - - - -	1,500
	2,160

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

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

"Moses Adams," Job Jacobs, Master.

He does not make any deposition.

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

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

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

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

Recapitulation.

(Based on Lord Granville's Despatch.)

"Ontario" and "New England" owned by Pew and Sons.

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

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

Recapitulation.

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

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

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

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

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

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

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

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

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

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

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

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

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

"Bunker Hill" (p. 51).

	Dol.	c.
Account stated—		
Expenses, cargo for trade, &c. - - - - -	3,179	80
Sale of 911 barrels herrings, at 2 dollars - - - -	1,962	00
	1,217	80
The cargo of this vessel had been sold for 3 dollars per barrel, but on account of delay brought 2 dollars per barrel, leaving a loss of -	981	00
Full cargo would have been 1,300 barrels, but, on account of disturbance, did not obtain but 981 barrels, leaving a deficiency of 319 barrels, which would have cost 478 dol. 50 c., were sold for 957 dollars, leaving a loss of - - - - - -	478	50
Total - - - - - -	2,677	30

(Signed) Walen and Allan.

The account of loss correctly stated should be—

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

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

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

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

"Izaac Rich," McDonald, Master.

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

	Dol.	c.
Charges for cargo supplies - - - - - -	1,030	25
Enters at Customs on oath at - - - - - -	250	00

His account stated is—

	Dol.	c.
Debit charges - - - - - - - -	2,986	09
Credits—		
Sale of 918 barrels herrings, at 2 dollars - - - -	1,836	00
	1,150	09
The cargo of this vessel had been contracted for at 3 dollars per barrel, but, on account of the delay they only brought 2 dollars per barrel, leaving a loss of - - - - - - -	918	00
Full cargo would have been 1,200 barrels, but on account of the disturbance did not obtain but 918 barrels, leaving a deficiency of 282 barrels, which would have cost 423 dollars, were sold for 846 dollars, leaving a loss of - - - - - -	428	00
Total claim - - - - -	2,496	09

(Signed) M. Walen.

The real loss for short cargo and price was :—

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

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

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

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

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

"Bonanza." Owner, Jas. Proctor.

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

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

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

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

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

"John W. Bray."

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

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

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

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

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

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

Further comment is unnecessary.

"HERBERT M. ROGERS."

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

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

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

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

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

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

"MAUD AND EFFIE."

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

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

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

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

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

"WILDFIRE."

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

Her owner swears she was driven away from Newfoundland.

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

"MOSES KNOWLTON."

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

Claims 5,356 dol. 60 c.

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

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

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

All which is respectfully submitted.

(Signed) T. R. BENNETT.

Harbour Grace, Newfoundland, May 4, 1881.

No. 2.

COLONIAL OFFICE to FOREIGN OFFICE.

(Extract.) Downing Street, May 21, 1881.

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

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

No. 3.

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

SIR, Downing Street, October 11, 1881.

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

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

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

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

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

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

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

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

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

I have, &c.

The Officer Administering the Government. (Signed) KIMBERLEY.

No. 4.

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

MY LORD, Government House, November 26, 1881.

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

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

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

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* No. 3.

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

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

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

I have, &c.
(Signed) H. FITZ. B. MAXSE.

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

Enclosure in No. 4.

Extract from Minutes of Council of 22nd November 1881.

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

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

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

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

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

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

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

No. 5.

COLONIAL OFFICE to FOREIGN OFFICE.

(Extract..) Downing Street, January 3, 1882.

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

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

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

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

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

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

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

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* Not printed. † No. 3. ‡ No. 4. § No. 2.
‖ *See* Enclosure in No. 129 of [C.-3059], 1881.

No. 6.

FOREIGN OFFICE to COLONIAL OFFICE.

SIR, Foreign Office, March 3, 1882.

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

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

I am, &c.

The Under Secretary of State, (Signed) TENTERDEN.
Colonial Office.

No. 7.

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

(Extract.) Downing Street, March 15, 1882.

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

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

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

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

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

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

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

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* No. 5. † No. 4. ‡ No. 4. § No. 3.
|| *See* enclosure in No. 129 of [C.-3059] 1881.

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

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

No. 8.

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

MY LORD, Government House, Ottawa, March 11, 1882.

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

I have, &c.
(Signed) LORNE.

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

Enclosure 1 in No. 8.

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

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

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

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

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

Enclosure 2 in No. 8.

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

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

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

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

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

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

These complaints are of two classes:—

(*a.*) Where it is alleged in the complaint that violence was used, and the nets and seines of American fishermen were destroyed, and they themselves driven from the fishing-ground, viz., at Fortune Bay and Job's Cove, in Newfoundland, and damages were alleged to the amount of $105,000.

(*b.*) Where the complaint did not charge violence, but simply that resident fishermen (having no legal or judicial authority) forbid them to fish in certain localities and by certain means, as in the case of the schooner "Mist," Captain Cozzens, master, who complains of threats at Broad Cove, Newfoundland, and claims $800 damages; also of the schooner "Cadet," James L. Anderson, master, who makes a similar complaint against certain fishermen at Aspee Bay, in Cape Breton, within the Dominion of Canada.

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

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

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

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

The original claims for the Fortune Bay affair (class *a.*), in 1878, amounted to $103,162$\frac{73}{100}$. There were 22 specific claims, ranging from $2,496$\frac{09}{100}$ to $8,506$\frac{05}{100}$ each, the total of which amounted to that sum of $103,162$\frac{73}{100}$. Other two claims for cases at Job's Cove, in 1879, were afterwards admitted without specifying their amount, but the ultimate demand on the British Government was for $120,000, being the original demand with interest, and these two special claims added. The telegram of Mr. Evarts to Mr. Lowell, dated 3rd March 1881, makes this conclusive as follows:—"* * * All "the previous communications either way related to Fortune Bay claims. Claims of "number hundred nine (Job's Cove claims) were introduced specifically by Secretary as

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The whole respectfully submitted.

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

No. 9.

The Right Hon. the EARL OF KIMBERLEY to Governor-General the MARQUIS OF LORNE, K.T., G.C.M.G. (Canada).

My Lord, Downing Street, April 11, 1882.

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

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

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

I have, &c.

The Marquis of Lorne. (Signed) KIMBERLEY.

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* No. 8. † See Enclosure in No. 148 in [C.—3059] of 1881.

No. 10.

COLONIAL OFFICE to FOREIGN OFFICE.

SIR, Downing Street, April 14, 1882.

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

I am, &c.

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

No. 11.

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

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

MY LORD, April 15, 1882.

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

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

I have, &c.

(Signed) A. T. GALT,
High Commissioner.

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

No. 12.

COLONIAL OFFICE to TREASURY.

SIR, Downing Street, April 19, 1882.

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

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

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

I am, &c.

The Secretary to the Treasury. (Signed) ROBERT G. W. HERBERT.

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* No. 148 of Foreign Office Paper [C.–3059] of 1881. † No. 8. ‡ No. 9.
§ No. 11. ‖ No. 8. ¶ No. 9.

No. 13.

COLONIAL OFFICE to FOREIGN OFFICE.

SIR, Downing Street, April 19, 1882.

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

I am, &c.

The Under Secretary of State, Foreign Office. (Signed) ROBERT G. W. HERBERT.

No. 14.

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

Government House, Newfoundland,

MY LORD, June 2, 1882.

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

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

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

I have, &c.

The Right Hon. the Earl of Kimberley, &c. &c. &c. (Signed) F. B. T. CARTER, Administrator.

Enclosure in No. 14.

April 18, 1882.

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

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* No. 10. † No. 11. ‡ Not printed.

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

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

No. 15.

COLONIAL OFFICE to FOREIGN OFFICE and TREASURY.

Sir, Downing Street, June 23, 1882.

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

I am, &c.

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

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* No. 14.

No. 16.

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

MY LORD, Citadel, Quebec, July 29, 1882.

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

I have, &c.

The Right Hon. the Secretary of State for the Colonies. (Signed) LORNE.

Enclosure in No. 16.

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

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

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

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

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

No. 17.

COLONIAL OFFICE to FOREIGN OFFICE and TREASURY.

SIR, Downing Street, August 23, 1882.

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

I am, &c.

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

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* Enclosure in No. 148 of Foreign Office Paper [C.-3059] 1881. † No. 8. ‡ No. 16.

No. 18.

The Right Hon. the EARL OF DERBY to Sir F. B. T. CARTER, K.C.M.G. Administering the Government of Newfoundland.

Sir, Downing Street, March 13, 1883.

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

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

I need hardly again remind you that Her Majesty's Government rely upon your urging your Government to lose to time in directing the serious attention of the Legislature to this matter in order that a speedy settlement may be arrived at.

I have, &c.

The Officer Administering the Government. (Signed) DERBY.

No. 19.

COLONIAL OFFICE to TREASURY.

Sir, Downing Street, March 16, 1883.

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

I am, &c.

The Secretary to the Treasury. (Signed) JOHN BRAMSTON.

No. 20.

Sir F. B. T. CARTER, K.C.M.G., Administering the Government of Newfoundland, to the Right Hon. the EARL OF KIMBERLEY. (Received April 16, 1883.)

Government House, Newfoundland,

My Lord, April 2, 1883.

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

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

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* Not printed. † Not printed. ‡ No. 18. § No. 18.

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

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

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

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

I have, &c.

(Signed) F. B. T. CARTER,

Administrator.

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

Enclosure in No. 20.

Extract from Minutes of Council, 2nd April 1883.

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

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

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

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

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* No. 14.

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

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

No. 21.

COLONIAL OFFICE to TREASURY and FOREIGN OFFICE.

SIR, Downing Street, April 30, 1883.

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

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

I am to add that a letter in this sense has been transmitted to the Foreign Office / Treasury.

I am, &c.

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

No. 22.

TREASURY to COLONIAL OFFICE.

SIR, Treasury Chambers, May 31, 1883.

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

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

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

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* No. 19. † No. 20. ‡ No. 1. § * No. 21.

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

I have, &c.

The Under Secretary of State, Colonial Office. (Signed) LEONARD COURTNEY.

No. 23.

The Right Hon. the EARL OF DERBY to Governor Sir H. F. B. MAXSE, K.C.M.G., (Newfoundland).

Sir, Downing Street, June 16, 1883.

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

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

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

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

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

I have, &c.

(Signed) DERBY.

Sir H. F. B. Maxse.

No. 24.

COLONIAL OFFICE to TREASURY.

Sir, Downing Street, June 25, 1883.

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

I am, &c.

The Secretary to the Treasury. (Signed) EDWARD WINGFIELD.

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* No. 20. † Enclosure in No. 1. ‡ No. 22. § No. 23.

No. 25.

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

Government House, Newfoundland,
July 3, 1883.

MY LORD,

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

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

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

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

I have, &c.
(Signed) H. FITZ. B. MAXSE.

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

Enclosure in No. 25.

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

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

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

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

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

No. 26.

COLONIAL OFFICE to TREASURY.

Downing Street, July 17, 1883.

SIR,

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

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* No. 23. † No. 24. ‡ No. 25.

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

I have, &c.

The Secretary to the Treasury. (Signed) EDWARD WINGFIELD.

No. 27.

TREASURY to COLONIAL OFFICE.

Sir, Treasury Chambers, July 23, 1883.

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

I have, &c.

The Under Secretary of State, Colonial Office. (Signed) LEONARD COURTNEY.

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

L. C.

No. 28.

The Right Hon. the EARL OF DERBY to Governor Sir H. F. B. MAXSE, K.C.M.G. (Newfoundland).

Sir, Downing Street, August 4, 1883.

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

I have, &c.

Sir H. F. B. Maxse. (Signed) DERBY.

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* No. 26. † No. 25.

LONDON: Printed by EYRE and SPOTTISWOODE,
Printers to the Queen's most Excellent Majesty.
For Her Majesty's Stationery Office.

CANADA.

ACT OF THE CANADIAN PARLIAMENT,

CHAPTER XXX., 1883,

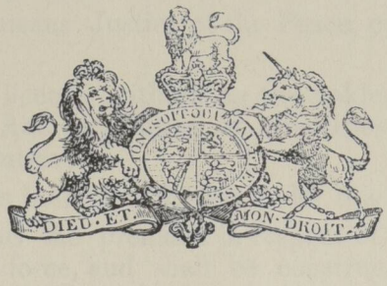
INTITULED

"AN ACT RESPECTING THE SALE OF INTOXICATING LIQUORS

AND THE

ISSUE OF LICENSES THEREFOR."

Presented to both Houses of Parliament by Command of Her Majesty,
February 1884.



LONDON:
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1884.

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46 VICTORIA.

CHAPTER xxx.

An Act respecting the sale of Intoxicating Liquors, and the issue of licenses therefor.

[*Assented to* 25*th May* 1883.]

Preamble.

WHEREAS it is desirable to regulate the traffic in the sale of intoxicating liquors and it is expedient that the law respecting the same should be uniform throughout the Dominion, and that provision should be made in regard thereto for the better preservation of peace and order: Therefore Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:—

Short title.

1. This Act may be cited as "*The Liquor License Act*, 1883."

Definition of terms used.

2. In this Act the words and expressions following shall, unless such interpretation be repugnant to the subject or inconsistent with the context, be construed as follows:—

Board.

1. "Board" means the Board of License Commissioners;

District.

2. "District" means a License District;

Electors.

3. "Electors" means those who are entitled to vote at an election for a member of the House of Commons;

Inspector.

4. "Inspector" means an Inspector of licensed premises, and includes every person having the authority of such Inspector;

Justice.

5. "Justice" or "Justices" means Justice of the Peace, or Justices of the Peace, as the case may be;

Hotel license.

6. "Hotel License" means a license authorising the holder thereof to sell and dispose of, under the provisions of this Act, any liquor in quantities not exceeding one quart, which may be drunk on the premises;

Licensee.

7. "Licensee" means a person holding a license under this Act;

Licensed premises.

8. "Licensed premises" means the premises in respect of which a license under this Act has been granted and is in force, and shall be construed to mean and extend to every room, closet, cellar, yard, stable, outhouse, shed, or any other place whatsoever of, belonging, or in any manner appertaining to, such house or place;

Liquor.

9. "Liquors" or "Liquor" shall be construed to mean and comprehend all spirituous and malt liquors, and all combinations of liquors and drinks and drinkable liquids, which are intoxicating;

Magistrate.

10. "Magistrate" means the Judge of the Sessions of the Peace, Police, Stipendiary or Sitting Magistrate, Recorder, Justice or Justices of the Peace, or Commissioner of a Parish Court who may have jurisdiction to entertain a complaint in respect of a contravention of the provisions of this Act;

Bar.

11. "Public Bar" or "Bar" means and includes any room passage, or lobby in any licensed premises open immediately to any street, highway, public place or public thoroughfare, and into which the public may enter and purchase liquors;

u 10897. Wt. 21595.

Saloon license.

12. "Saloon License" means a license authorising the holder thereof to sell and dispose of any liquors, not exceeding one quart, on the premises therein specified, and which may be drunk on the premises.

3. Nothing in this Act shall apply—

Exception as to makers of native wines.

1. To manufacturers of native wines from grapes grown and produced in Canada, and who sell such wines in quantities of not less than one gallon, or two bottles of not less than three half-pints each, at one time, at the place of manufacture;

Auctioneers.

2. To any person who holds a license as auctioneer, selling liquor at public auction in quantities of not less than two gallons at any one time;

Refreshment rooms in Legislative buildings.

3. To any person selling liquor in any refreshment room at the Senate or House of Commons, or the Legislative Council or House of Assembly of any of the Provinces, by the permission and under the control of the Senate, House of Commons, Legislative Council or House of Assembly respectively.

License Districts.

Establishment of license districts by O. C.

4. The Governor in Council shall, as soon as conveniently may be after the commencement of this Act, establish districts for the purposes of this Act to be called "License Districts," and may, from time to time, alter and re-define the same; and the "License Districts," when so established and when altered, shall be announced by proclamation in the *Canada Gazette;*

Boundaries thereof.

Such districts shall, as far as possible and convenient, be identical and co-terminous with existing and future—

(1.) Counties,
(2.) or Electoral Districts,
(3.) or Cities.

License Commissioners.

Board of Commissioners; of whom composed.

5. There shall be a Board of License Commissioners, to be called "The Board," composed of three persons for each License District;

First Commissioner in the several Provinces.

(*a.*) The first Commissioner shall be, in the Provinces of Ontario, Nova Scotia, New Brunswick, Manitoba and Prince Edward Island, a County Court Judge, or a Junior Judge of a County, as may be selected by the Governor in Council; in the Province of Quebec, the Judge of a Judicial District, a Judge of Sessions of the Peace, the Prothonotary or a Registrar of the County or registration division, as the Governor in Council may appoint; in the Province of British Columbia, such one of the Judges as the Governor in Council may appoint;

Second Commissioner.

(*b.*) The second Commissioner shall be the Warden of the county or Mayor of the city. When there is both a Warden and a Mayor, having jurisdiction within the License District, the former shall be second Commissioner. In the cities of Montreal and Quebec, in the Province of Quebec, the Recorder, and in the Counties of the Province of Prince Edward Island, the Sheriff of the County shall be the second Commissioner; but in the Province of Nova Scotia where the license district embraces two or more municipalities, then the Warden of such of the said municipalities as the Governor in Council may appoint shall be the second Commissioner;

Proviso as to Nova Scotia.

Third Commissioner.

(*c.*) The third Commissioner shall be a person appointed by the Governor in Council, who shall hold office for one year, or for the portion of the year yet unexpired in which he is appointed, but he shall continue to hold office until his successor is appointed;

Commissioners in certain counties in Quebec.

2. In the Counties of Chicoutimi and Saguenay, Gaspé and Bonaventure, in the Province of Quebec, the Governor in Council may appoint two Commissioners, who, with the Warden, shall form the Board; and in any unorganised district, the Governor in Council may appoint three Commissioners;

Chairman and quorum.

3. The Judge shall be chairman of the Board, and two of the said Commissioners shall form a quorum. In the absence of the Judge, the Warden or Mayor, as the case may be, in the cities of Montreal and Quebec the Recorder, in the Province of Prince Edward Island the Sheriff, and in any unorganised district such one of the Commissioners as the Governor in Council shall designate, shall be the Chairman.

LICENSE INSPECTORS.

6. A Chief Inspector of Licenses, and one or more Inspectors, shall be appointed by the Board of License Commissioners from time to time for each district, as the Board may see fit, and each License Inspector shall, before entering upon his duties, give such security as the Board may require for the due performance of his duties, and for the payment over of all sums of money received by him under the provisions of this Act; and the salary of the Inspectors shall be fixed by the Board, subject to the approval of the Governor in Council; — Chief Inspector and inspectors for each district. Security and salaries.

2. The security required by this section shall be by bond to Her Majesty; — Bond.

3. The Chief License Inspector shall be the Secretary-Treasurer of the Board, and all moneys payable to the Board shall be paid to him. — Secretary-Treasurer.

LICENSES.

7. The Governor in Council may direct the issue of licenses on stamped paper, written or printed, or partly written and partly printed, of the several kinds or descriptions following, that is to say— — Descriptions and forms of license.

(1.) Hotel licenses;
(2.) Saloon licenses;
(3.) Shop licenses;
(4.) Vessel licenses;
(5.) Wholesale licenses;

The said licenses shall be signed by the Minister of Inland Revenue, or by some officer appointed by him to sign such licenses, and shall be on such one of the forms in the first schedule of this Act, as shall be applicable, and, except when otherwise provided, shall be in force to the thirtieth day of April inclusive following the date thereof; — How signed, and form and duration of.

(*a.*) An "Hotel License" or "Saloon License" shall authorise the licensee to sell and dispose of any liquors in quantities not exceeding one quart, which may be drunk in the hotel or saloon in which the same is sold; — Hotel or saloon license.

(*b.*) A "Shop License" shall authorise the licensee to sell and dispose of any liquors not to be drunk in or upon the premises for which the license is granted, provided that not less in quantity than one pint shall be sold or disposed of at any one time to any one person; — Shop license.

(*c.*) A "Vessel License" shall authorise the master of the vessel, being a vessel by which passengers are conveyed from one place to another within or beyond the Dominion, to sell or dispose of liquor during the passage of the vessel between such places, to any passenger on board such vessel: Provided always, that it shall not permit the selling, or disposing of any liquor, except at the regular meals served on board such vessel, and then only to actual passengers: and provided further, that it shall not authorise the opening or keeping of a bar or place on board such vessel, where liquors are sold or drunk; — Vessel license. Proviso. Proviso.

(*d.*) A "Wholesale License" shall authorise the licensee to sell and dispose of liquors in his warehouse, store, shop, or place defined in the license, in quantities of not less than two gallons in each cask, or vessel; and in any case when such selling by wholesale is in respect of bottled ale, porter, beer, wine, or other fermented or spirituous liquor, each such sale shall be in quantities not less than one dozen reputed quart bottles. Liquors sold under a wholesale license are not to be consumed in, or upon, the house or premises in respect of which the license is granted; — Wholesale license. As to sale in bottles. Not to be consumed on the premises.

2. But hotel, saloon and shop licenses and such other of the licenses by this Act authorised to be issued, as to which a Provincial Legislature may impose a tax in order to the raising of a revenue, shall be subject to the payment of such duty as the Legislature of the Province, under the power conferred on it by the ninth enumerated class of subjects in section ninety-two of "*The British North America Act*, 1867," may impose for the purpose of raising or in order to raise a revenue for provincial, local, or municipal purposes. — Duty imposed by Provincial Legislatures, under B.N.A. Act, s. 92, to be paid.

8. Every license shall be issued by the authority and under the direction of the Board of License Commissioners for the district in which the premises to which the license is to apply are situate, except in the case of licenses for vessels, which may be issued under — Under authority of what Board license shall issue.

the authority of the Board for any district to or from any port in which the vessel sails, or at any port in which she calls.

Regulations at meeting of Board in February, 1884, for certain purposes.

9. The Board shall hold a meeting during the month of February, 1884, and may thereat pass a resolution or resolutions for regulating the matters following :—

Qualifications and conditions for licenses.

a. For defining the conditions and qualifications requisite to obtain hotel or saloon licenses for the retailing, within the district or any part thereof, of liquors, and also shop licenses for the sale, by retail, within the district or any part thereof, of liquors in shops or places other than hotels, taverns, inns, ale-houses, beer-houses, or places of public entertainment, not contrary to, or inconsistent with the provisions of this Act ;

Number of licenses and times and localities for issuing.

b. For limiting the number of hotel, saloon and shop licenses respectively within the maximum prescribed by this Act, and for defining the respective times and localities within which and the persons to whom such limited number may be issued within the year, from the first day of May of one year till the thirtieth day of April inclusive of the next year ;

c. For declaring the number of saloon licenses that may be issued in any year ;

d. For regulating the hotels, saloons and shops to be licensed ;

e. For fixing and defining the duties, powers and privileges of the Inspectors of Licenses of their district.

Resolutions in subsequent years.

2. In subsequent years the Board may pass the resolution or resolutions herein-before prescribed at their meeting herein-after provided for, but the resolution or resolutions so adopted shall have effect only as respects the licenses of the succeeding year ;

How promulgated.

3. Any resolution or resolutions adopted by the Board shall be promulgated within ten days thereafter, in such manner as they may determine.

Yearly meetings of Board Notice.

10. The Board shall meet on some day in the month of March, of which notice shall be given as herein-after mentioned, for the purpose of taking into consideration all applications for certificates for such licenses as by this Act are authorised to be granted :

Adjournment for want of a quorum.

2. If any cause shall prevent a quorum of the Board being present on the day fixed for the meeting, or at any adjournment of a meeting on the appointed day, the said meeting or adjourned meeting shall stand adjourned from day to day until a quorum shall be present to hold such meeting ;

Notice of meeting by Chief Inspector.

3. The Chief Inspector of any district in which an annual meeting is to be held shall, one calendar month at least before the holding of such meeting, cause a notice thereof to be fixed to the outer door of the Court House or other building where the meeting of the Board is to be held, and shall also cause an advertisement of the time and place of holding such meeting to be inserted at least thrice, in at least one newspaper published in the district, or if no newspaper be published therein, then in a newspaper published nearest to the said district.

Applications for Licenses.

How to be made.

11. Every application for a license to sell liquors, by wholesale or retail, shall be by petition of the applicant to the Board of the district in which the license is to have effect, praying for the same.

And when.

12. Every petition for an hotel, saloon, or shop license, shall be filed with the Chief Inspector for the district wherein the license is to have effect, on or before the first day of March next preceding the day when it is to come into force ;

And filed with Chief Inspector.

2. Every petition for any other license authorised to be granted by this Act shall be filed with the Chief Inspector five days, at least, before the day upon which the meeting of the Board is to be held.

Certificate required with application in case applicant is not a licensee.

13. In the case of an application for an hotel, saloon or shop license by a person who is not, at the time of the making of such application, a licensee under this Act or under any Act of the Provincial Legislature, or as to premises which are not then licensed, the petition must be accompanied by a certificate signed by one-third of the electors entitled to vote in the polling sub-division in which the premises sought to be licensed are situated. Such polling sub-division shall be that established by law for the purposes of an election for the House of Commons, or if none such be established, then, the polling sub-division

used for the last election for the House of Commons. In unorganised districts the said certificate shall be signed by at least ten out of the twenty householders residing nearest to the premises in which the applicant proposes to carry on the business for which the license is required. As to unorganised districts.

14. Such certificates shall be in the form in the second Schedule hereto, or to the like effect, in respect of the fitness of the applicant to have such license, and the premises in which it is proposed to carry on the business, and the desirability, on the ground of public convenience, of having a license granted therefor. Form and requisites of certificate.

15. The Chief Inspector shall cause to be published in some newspaper published in the district, or if no newspaper be there published, then in a newspaper published near thereto, the name of each applicant for a license, the description of license applied for, and the place (described with sufficient certainty) where such applicant proposes to sell, at least fourteen days before the meeting of the Board. He shall also cause a notice containing similar information to be fixed to the outer door of the Court House or other building where the meeting of the Board is to be held. Notice by Chief Inspector as to applications for licenses. Posting up notice.

16. The applicant shall, with his application, deposit a fee of ten dollars to cover expenses of inspection and advertising. Deposit by applicant.

17. It shall be the right and privilege of any ten or more electors of the said polling sub-division and in unorganised districts of any five or more out of the twenty householders residing nearest to the premises for which a license is required, to object by petition, or in any similar manner, to the granting of any license. The objections which may be taken to the granting of a license may be one or more of the following :— Objections to applications for license.

1. That the applicant is of bad fame and character, or of drunken habits, or has previously forfeited a license, or that the applicant has been convicted of selling liquor without a license within a period of three years ; or— As to character of applicant.

2. That the premises in question are out of repair, or have not the accommodation hereby required, or reasonable accommodation if the premises be not subject to the said requirements ; or— As to his premises.

3. That the licensing thereof is not required in the neighbourhood, or that the premises are in the immediate vicinity of a place of public worship, hospital or school, or that the quiet of the place in which such premises are situate will be disturbed if a license is granted. As to the neighbourhood.

18. Every petition having reference to the granting of a license shall have, in addition to each signature thereon, a statement of the approximate distance from the premises to which such petition refers, of the residence or property of each person signing the same. Particulars as to persons signing objections.

19. Any petition against the granting of a license shall be lodged with the Chief Inspector, not less than four clear days before the day appointed for the meeting of the Board. Time for filing.

20. The Chief Inspector shall keep a list posted in his office for three days previous to the meeting of the Board, of all certificates and petitions lodged with him as aforesaid, and every such petition or memorial shall be open for public inspection without fee. Posting list of petitions, &c.

21. The Board shall, on receiving any petition as aforesaid, erase therefrom all names in respect of which the particulars hereby required to be set forth are not appended. Examination of signatures.

22. Every application for a license, and all objections to every such application, shall be heard and determined at a meeting of the Board for the district wherein the premises in respect of which the license is sought, or to which it relates, are situate : Hearing and determining objections.

2. Every such hearing shall be open to the public, and every applicant for a license shall attend personally at such hearing, unless hindered by sickness or infirmity ; and the Board may summon and examine on oath such witnesses as they may think necessary, Proceedings at hearings.

and as nearly as may be in the manner directed by any Act now or hereafter to be in force relating to the duties of Justices in relation to summary convictions and orders :

Adjourning meetings.

3. Any license meeting may, at the discretion of the Board, be adjourned from time to time to the same or any other Court House or building within the district.

Report of Inspector on applications.

23. On every application for a license the Inspector shall report in writing to the Board, and such report shall contain,—

As to premises.

1. A description of the house, premises and furniture ;

Conduct of applicant if previously licensed.

2. And if the application be by a person who held a license for the same premises during the preceding year, a statement as to the manner in which the house has been conducted during the existence of the previous license, and the character of persons frequenting the house ;

As to licensed houses in the neighbourhood.

3. A statement of the number, position, and distance from the house in respect of which a license is applied for of other licensed houses in the neighbourhood ;

Fitness of applicant.

4. A statement whether the applicant is a fit and proper person to have a license, and is known to be of good character and repute ;

Necessity of licensed house.

5. A statement whether the house or premises sought to be licensed is or is not, in his opinion, required for public convenience ;

Whether applicant owns the business.

6. A statement whether the applicant is or is not the true owner of the business of the hotel, saloon, or shop proposed to be licensed.

Report of Inspector to be for information of Board.

24. The report of the Inspector shall be for the information of the Board, who shall, nevertheless, exercise their own discretion on each application.

Accommodation.

Accommodation required in and at an hotel.

25. Every hotel authorised to be licensed under the provisions of this Act shall contain, and during the continuance of the license shall continue to contain, in addition to what may be needed for the use of the family of the hotel-keeper, in cities and towns not less than six bed-rooms, and in other places not less than three bed-rooms, together with, in every case, a suitable complement of bedding and furniture ; and (except in cities and incorporated towns) there shall also be attached to the said hotel proper stabling for at least six horses besides his own :

Not to communicate with a shop.

2. No hotel or saloon shall form a part of, or communicate by any entrance with, any shop or store wherein any goods or merchandise are kept for sale :

Hotel or saloon must have sufficient eating accommodation, and for serving meals.

26. In addition to the accommodation required by the last preceding section, each hotel or saloon shall be shown, to the satisfaction of the Board, to be a well-appointed and sufficient eating-house, with the appliances requisite for daily serving meals to travellers ; and the requirements of this section shall apply to all hotels or saloons, save as herein-after excepted, and continuously for the whole period of the license :

Board may dispense with such accommodation in certain cases.

2. The Board may, by resolution to be passed before the first day of May in any year, dispense, as to a certain number of saloons in any city or town, with the necessity of their having the accommodation in the last preceding section mentioned.

City or municipal council may require additional accommodation.

27. The Council of any city, incorporated village, town, township or parish, may, by byelaw to be passed before the first day of March in any year, prescribe for the then ensuing license year beginning on the first day of May, any requirements in addition to those in the last two preceding sections mentioned, as to accommodation to be possessed by hotels and saloons, which the Council may see fit ; and the Board, upon receiving a copy of such byelaw, shall be bound to observe the provisions thereof ; and such byelaw shall continue in full force for such year and any future year until repealed.

Stabling to be provided with hay, etc.

28. Every hotel-keeper whose license is granted in respect of premises to be provided with stabling, shall, at all times, keep upon his licensed premises a sufficient supply of hay, corn, or other provender, for the accommodation of travellers.

DUTIES OF THE BOARD.

29. The Board shall ascertain that the requirements of this Act as to the petition of the applicant, the certificate of the electors when necessary, and the report of the Inspector, have been complied with : — To see that requirements are complied with.

2. If the said pre-requisites have been complied with (but not otherwise), the Board shall entertain the application : — Entertaining application or not.

3. Where the applicant for an hotel or shop license resides in a remote part of the district, or where for any other reason the Board see fit, they may dispense with the report of the Inspector, and act upon such information as may satisfy them in the premises. — Applicants in remote parts.

4. The Board shall hear and determine all applications, and also all objections which may be made to such applications on such evidence as shall seem to them sufficient, whether the same be strictly legal evidence or not. — Hearing and determining applications.

5. Any person who has signed a memorial against the granting of a license may be heard in opposition thereto. — Hearing objectors.

6. The Council of any city, town, or incorporated village, or of any municipality or parish, may authorise any person to appear in a similar manner on behalf of the ratepayers of such city, town, incorporated village, municipality or parish, as to the granting of a license, and such person so authorised shall have a right to be heard before the Board against the granting of such license. — And those authorised by municipalities.

7. No objection in respect of the character of any applicant shall be entertained, unless three days' notice has been given to the applicant. — As to objections to character.

8. No objection from an Inspector shall be entertained, unless the nature of the objection shall have been stated in the report furnished to the Board. — Objections by Inspectors.

9. Notwithstanding anything in this Act contained, the Board may, of their own motion, take notice of any matter or thing which, in their opinion, would be an objection to the granting of a license, although no notice or objection has been given or made as by this Act provided : in any such case the Board shall notify the applicant, and shall adjourn their hearing of the application, if requested by him, for any period not exceeding fourteen days and not less than seven days, in order that any person affected by the objection may have an opportunity of answering the same : — Board may notice matters not mentioned by objectors. Notice to applicant in such case.

10. The decision of the Board, when once announced by the chairman, shall not be questioned or reconsidered : — Decision of Board final.

11. If any applicant for a license has, at any time or in any place, been refused on the ground that he is not a fit person to hold a license, no application by such applicant shall be entertained by any Board within a period of two years of the last of such refusals. — Applicants refused as unfit disqualified for 2 years.

30. If it appears that the applicant is the true owner of the business of such hotel, saloon, or shop, and has complied with the requirements of the law and with the regulations and requirements of the Board, the Board may grant such applicant a certificate under the hands of any two members of the Board, stating that he is entitled to a license for a certain time, and for a certain hotel, saloon, or shop within the district. — Certificates to applicants found entitled to license.

31. No hotel license shall be granted in respect of any house in any city, town, or incorporated village, unless such house has a separate front entrance, in addition to the entrance to the bar or place where liquors are sold. — Entrance to hotel separate from bar.

32. No license shall be granted if two-thirds of the electors in the sub-division petition against it, on the grounds herein-before set forth, or any of such grounds. — Two-thirds majority of electors may prevent license.

33. No license shall be granted to any person declared, in pursuance of this Act, to be a disqualified person, during the continuance of such disqualification : any liceens issued to a person so disqualified shall be void. — No license to person disqualified.

34. No license shall be granted under the provisions of this Act to or for the benefit of any person who is a License Commissioner or License Inspector, and any license so issued shall be void. — Nor to a Commissioner or Inspector.

Nor if Commissioner or Inspector owns the premises.

35. An hotel, saloon, or shop license shall not be issued under the provisions of this Act for premises within any district of which any of the License Commissioners or of the Inspectors for such district is the owner; and every License Commissioner who knowingly issues, and every License Inspector who knowingly recommends the issue of a license for any such premises, contrary to the provisions of this section, shall be guilty of a misdemeanor:

Proviso: as to joint stock companies.

2. The provisions of this section shall not extend or apply to premises owned or occupied by a joint-stock company in which a License Commissioner is a shareholder, but in every such case such License Commissioner shall not vote upon any question affecting the granting of a license to such company, or for premises owned or occupied by it.

Licenses for vessels or for wholesale.

36. The Board may also direct to be issued licenses for vessels, or wholesale licenses which have been applied for within the time herein-before prescribed.

Condition of wholesale license.

37. No wholesale license shall be granted to any person who does not carry on the business of selling by wholesale or in unbroken packages.

As to partnership.

38. Wholesale licenses may be issued in the name of a co-partnership, when two or more persons are carrying on business as one, but a separate license shall be required in every district wherein the firm carries on its business.

Extension of licenses in certain cases.

39. In any case where the Board of any district do not think fit, or are unable to grant a new license to any applicant who has been licensed during the preceding twelve months, or any part thereof, they may, nevertheless, by resolution, provide for extending the duration of the existing license for any specified period of the year, not exceeding three months, at their discretion; and such license, when a certificate of the extension aforesaid has been endorsed thereon, under the hand of the Chief Inspector for the district, shall remain valid for the period specified in the resolution of the Board, and no longer; but this provision shall not be construed to confer on the Board any authority to exceed the limit prescribed by this Act as to the number of licenses to be granted in any year.

Proviso.

Issue of license and fee.

40. Upon the obtaining by the applicant of the certificate authorising the issuing of a license, the Chief Inspector shall, on the demand of the applicant so authorised, and upon the payment of a fee of five dollars, and upon his giving security by bond as hereinafter mentioned, when it is an hotel, saloon, or shop license that has been directed to issue, issue to him the license to which he is entitled:

Proviso: Applicant must have paid or tendered any lawful Provincial duty.

2. Provided always, that in any Province in which, in order to the raising of a revenue for Provincial, local or municipal purposes, a duty has been imposed under the authority of "*The British North America Act*, 1867," on any license, before the license issues, the person entitled thereto shall establish, to the satisfaction of the Chief Inspector, that he has paid or tendered such duty.

Security to be given.

Form, amount, and conditions of bond.

41. Before any hotel, saloon, or shop license is granted, the person applying for the same shall enter into a bond to Her Majesty in the sum of five hundred dollars, with two good and sufficient sureties (to be approved of by the Chief Inspector), in the sum of one hundred and fifty dollars each, conditioned for the payment of all fines and penalties which such person may be condemned to pay in respect of any offence against any Act, byelaw or provision in the nature of law, relative to hotels, taverns, inns, or houses of public entertainment then and thereafter to be in force, and to do, perform, and observe all the requirements thereof, and to conform to all byelaws and regulations that may be established by competent authority in such behalf; and such bond shall be in the words or to the effect of the Third Schedule to this Act, and when executed shall be filed in the office of the Chief Inspector, to be by him transmitted to the Secretary of State.

Number of Licenses.

Number limited

42. The aggregate number of hotel and saloon licenses to be granted, except as herein-after provided, in the respective municipalities or parishes, shall not, in each year, be in excess of the following limitations:—

1. In cities, towns, and incorporated villages respectively, according to the following scale, that is to say, one for each full two hundred and fifty of the first one thousand of the population, and one for each full five hundred over one thousand of the population; Provided, that two hotel licenses may be granted in any town or incorporated village wherein the population is less than five hundred; In municipalities generally. Proviso.

2. In incorporated villages, being county towns, five licenses may be granted, notwithstanding that according to the population that number could not be issued: In villages being county towns, and—

3. In the town of Niagara Falls, in the province of Ontario, three hotels near the Falls of Niagara, which may be licensed, may be added to the number which would otherwise be the maximum limit under this Act. Niagara Falls

4. In townships or parishes and in places where there is no municipal organisation, the Board of the district shall, by resolution to be passed at their first meeting in each year, limit the number of licenses to be issued in each year: Where there is no municipal organisation.

5. The Board may authorise the granting of two additional hotel licenses beyond the number limited by this Act in a locality largely resorted to in summer by visitors, but such licenses shall only be for a period of six months, commencing on the first day of May in each year; but this provision is not to apply to the town of Niagara Falls: Places of summer resort. Proviso.

6. In incorporated villages, townships, or parishes, no saloon licenses shall be granted. No saloon licenses in certain places.

43. The number of shop licenses to be granted in the respective municipalities shall not in each year be in excess of the following scale:— Number of shop licenses.

One for each full four hundred up to twelve hundred of the population, and

One for each full one thousand beyond twelve hundred of the population.

44. The council of any city, town, or village may, by byelaw to be passed before the first day of March in any year, reduce, within any limit by this Act provided, the number of hotel, saloon, and shop licenses to be issued therein for the then ensuing year, or for any future license year until such byelaw is altered or repealed: Municipal council may further limit the number of licenses.

2. The council shall cause a certified copy of such byelaw to be sent immediately after the passing thereof to the Chief Inspector of the district in which the municipality is situate. Notice to Chief Inspector.

45. No provision in this Act contained shall affect the powers conferred on the Municipal Councils in the Province of Quebec of each county, city, town, village, parish, and township by the laws in force in the said Province, on the first day of July 1867, to restrict or prohibit the sale of intoxicating liquors in the limits of their respective territorial jurisdiction, and the said powers, and the byelaws now in force passed under the authority of the said laws are hereby preserved and confirmed. Certain powers of Municipal Councils in Quebec, at time of confederation, saved.

46. The number of the population which is to determine the number of licenses at any time under this Act shall be according to the then last preceding census, except where the Board are at any time of opinion that, owing to a large increase of population since such census, an increased number of licensed hotels is needed for the convenience and accommodation of travellers; and in that case, if the Board so certify, and the council of the municipality memorialise the Governor for an increase of the number of hotels, the Governor in Council may authorise a new census to be taken at the expense of the municipality, and the limit for the number of licenses shall thereafter, upon each such new census, be one for each full two hundred and fifty of the population under one thousand, and one for each five hundred over one thousand of the population: How population shall be computed for purposes of this Act. New census in certain cases under O. C.

2. In case of the alteration or formation of any municipality subsequent to the taking of any census, the population of such municipality, for the purposes of this Act, may be ascertained by the said Board by reference to the enumeration on which such census took place, or by a new census taken under the provisions of this section: Municipalities altered since census.

3. Where, since the general census, a census has been taken in any municipality under the authority of the Council having jurisdiction, the limit may be the same as in the case of a census taken under this section for the purposes of this Act. The same.

47. No license shall be granted by the Board for the sale of liquors within the limits of a town, incorporated village, parish, township, or other municipality (save and except counties and cities) when it shall have been made to appear to the Board in manner No license in municipalities where three-

fifths of the electors have so voted.

herein-after provided, that a majority of three-fifths of the duly qualified electors therein, who have voted at a poll taken as herein-after specified, have declared themselves to be in favour of a prohibition of the sale of intoxicating liquors in their locality, and against the issue of licenses therefor.

Requisition by one-fifth of electors to Commissioner that poll may be taken.

2. When a requisition is presented to any Commissioner from one-fifth of the electors of any town, incorporated village, township, parish, or other municipality (save and except counties and cities), requiring a vote to be taken as to whether or not such license shall issue or be granted therein, it shall be the duty of such Commissioner, upon the receipt of such requisition, to scrutinise the names of the electors attached to such requisition, and being satisfied that the said electors whose names are attached to the said requisition are duly qualified, and after the person or persons, who have witnessed the signatures to the said requisition, shall have sworn before a Justice of the Peace or a Notary Public, that he the said witness or they the said witnesses, were present and saw the said electors sign the said requisition, and that the signers constitute one-fifth of the electors of such town, incorporated village, parish, township, or other municipality, to command the holding of a public meeting of the said electors, to ascertain whether or not such licenses shall be granted, and the taking of a poll to that effect,—the Commissioner to whom the requisition has been presented shall, by an order inserted in the Register: Firstly, appoint the Chief Inspector or other person to preside at such meeting and act as returning officer, and: Secondly, fix the place and day at and in which the poll shall be taken. The returning officer, in accordance with the order, shall give public notice of such meeting in some newspaper within the Municipality or District, or if there be no newspaper within the Municipality or District, then in some newspaper as near thereto as may be, the publication to be continued in at least one number of such paper each week for three successive weeks, and also by posting up such notices, or copies of the same, at the polling places within such Municipality or District, fixed in the order, and also at two or more of the most public places in the Municipality or District. Such meeting shall be held in the month of January or February next ensuing, on such day as shall be most convenient, and not less than four weeks, and not more than seven weeks from the date of the first publication of such notice,—the said poll to be taken between the hours of nine a.m. and five p.m. of the day so appointed. Should any riot or disturbance take place so as to disturb the polling, such poll shall be continued on the next succeeding lawful day.

How to be attested and proved.

Duty of Commissioner as to the taking of such poll;

And of returning officer.

Notices to be given.

Day and hours for holding the poll.

Provision in case of disturbance.

Duties and powers of returning officer.

Constables.

3. On the day appointed for taking the poll the Chief Inspector, or person appointed as returning officer, shall preside over the meeting; and such officer shall have all the powers for the preservation of the peace which are by law vested in a returning officer at any election of a Member of the House of Commons of Canada, and shall have the powers of appointing and swearing constables.

Oath of office of returning officer and clerks.

Penalties for neglect of duty.

4. The returning officer and the clerks whom he shall employ, shall subscribe and take the oath for the due and proper performance of the duties of their respective offices according to the forms (*mutatis mutandis*) prescribed in the Schedule to "*The Dominion Elections Act*, 1874," before the nearest resident Justice of the Peace or a Commissioner for taking affidavits, and shall be subject to the same penalties for the neglect or improper discharge of their respective duties as are imposed on similar officers in case of an election of a Member of the House of Commons.

List of electors to be furnished.

Oath of elector if required.

5. The Clerk of the Municipality shall furnish the returning officer with a correct list of the electors within the municipality for which the poll is to be taken; and such returning officer shall, in case of doubt, have power to administer to the voters the oath as to qualification required in the case of the election of a Member of the House of Commons.

Provisions of 41 V., c. 16, to apply.

6. The vote of the electors shall be taken by ballot in the manner provided by "*The Canada Temperance Act*, 1878," and the several clauses thereof under the headings "The Poll," "Scrutiny," "Penalties," "Preservation of the Peace," "General Provisions," "Prevention of Corrupt Practices," and "Penalties and Punishments Generally," shall be read and construed as part of this Act, except where the same may be inconsistent with any of the provisions herein contained.

Adjournment on first day if all votes not polled.

7. If, at five o'clock in the afternoon of the first day of the poll, the votes of all the electors present have not been polled, the meeting shall be adjourned to the hour of nine in the forenoon of the following day, for the purpose of proceeding with the polling of such votes;

Closing on second day.

The poll shall be closed at five o'clock in the afternoon of the second day:

If at any time after the votes have commenced to be polled, either on the first or on the second day of the said election, one hour elapses without any votes having been polled, the presiding officer shall close the election : Or on either day in default of voters.

8. At the close of the poll the returning officer shall count the "ayes" and "noes," and ascertain and certify on the face of the poll-book the number of votes given for or against the granting of licenses, respectively ; the certificate shall also be signed by the poll clerk ; the certificate, with the poll-book, shall be deposited in the office of the Board within two days after the close of the poll. Certificate of result by returning officer to Board.

9. Objections to any act or proceeding under this section must be made in writing and filed in the office of the Board of License Commissioners, within eight days after the certificate is deposited in the said office : such objections shall be considered and adjudicated upon by the Board at their next regular meeting : the decision of the Board shall be final ; and in the event of the objections being maintained, they shall have the power to cause another poll to be taken on the question whether or not licenses shall be granted. Objections to be heard and determined. Decision of Board to be final.

10. Nothing in this section shall be construed as permitting any of the proceedings had, or paper writings filed, or notices required therein, to be vitiated or set aside by reason of any mere want or defect of form, or any irregularity in the drawing up or execution of the same. Want of form not to invalidate proceeding.

11. The decision of the three-fifths of the electors against the granting of licenses as declared at the poll, shall come into force in the then ensuing license year, beginning on the first day of May, and such prohibition shall continue in full force for such year and any future year until repealed ; and each and all of the provisions of this section shall apply to the proceedings to be taken in reference to such repeal. When the decision shall take effect, and for how long.

48. Subject to the provisions of this Act as to removals and the transfer of licenses, every license for the sale of liquor shall be held to be a license only to the person therein named and for the premises therein described, and shall remain valid only so long as such person continues to be the occupant of the said premises, and the true owner of the business there carried on. License to apply to person and premises.

Transfer of Licenses.

49. In case any person having lawfully obtained a license under this Act dies before the expiration of his license, or sells, or by operation of law or otherwise assigns his business, or removes from the house or place in respect of which the said license applies, his said license shall, *ipso facto*, become forfeited and be absolutely null and void to all intents and purposes whatsoever,—unless such person, his assigns or legal representatives, within one month after the death, assignment, or removal of, or sale by the original holder of such license, or some other period in the discretion of the Board of the district in which the said license has effect, obtain its written consent or the consent of the Chairman, countersigned by the Inspector, either for the continuance of the said business or the transfer of such license to some other person, and thereupon forthwith transfer the same to such other person, who, under such transfer, may exercise the rights granted by such license, subject to all the duties and obligations of the original holder thereof, until the expiration thereof, in the house or place for which such license was issued and to which it applies, but in no other house or place. Conditions on which transfer shall be allowed and its effect.

2. In every such case of transfer of an hotel license, the person in whose favour any such transfer is to be made shall first produce to the Board, or to the chairman thereof, a report of the Inspector similar in effect to that mentioned in section twenty-three of this Act. Report of Inspector required.

3. Except in case of the death of the licensee no transfer of any license shall be made, nor shall any application for leave to transfer be entertained until the expiration of three months from the time of the granting of such license. When to be applied for.

50. Where a licensee has been legally ejected from any licensed premises, the Board or the Chairman may, notwithstanding the non-production of the license, on the application in writing of the owner of the premises and the proposed new tenant, grant a special certificate of transfer of such license to such new tenant, in such form as he or they shall think applicable, such certificate to be countersigned by the Chief Inspector. Case of licensee ejected.

Authority to continue business for remainder of term in certain cases.

51. Any two members of the Board may, by order, authorise any person they may think entitled to the benefit of any license to carry on the business in the licensed premises for the remainder of the term for which the license was granted, in the same manner as if such license had been formally transferred to such person, in any of the following cases, that is to say :—

Desertion of premises.

1. Whenever any person to whom a license has been granted deserts the licensed premises, or refuses or neglects to transfer the license when justly required so to do; or—

Ceasing occupation.

2. If, during the currency of any such license, the holder thereof ceases to occupy the premises in respect whereof the license is held, or his tenancy of such premises is determined by effluxion of time, or by notice to quit, or by any other means whatsoever.

Case of licensee convicted of an offence disqualifying him or entailing forfeiture of license.

52. Where any licensed person is convicted of any offence, and in consequence either becomes personally disqualified or has his license forfeited, any two members of the Board, upon the application by, or on behalf of, the owner of the premises in respect of which the license was granted (where the owner is not the occupier), and upon being satisfied that such owner was not privy, nor a consenting party to the act of his tenant, and that he has legal power to eject the tenant of such premises, may by order authorise an agent to carry on the business specified in the license relating to such premises until the end of the period for which such license was granted, in the same manner as if such license had been formally transferred to such agent.

Case of marriage of female licensee.

Proviso.

53. In case of the marriage of any female being a licensee the license held by her shall confer on her husband the same privileges, and shall impose on him the same duties, obligations, and liabilities, as if such license had been granted to him originally: Provided that the Chairman of the Board, on the application of the husband of the licensed woman, has confirmed to him his wife's license for the remainder of the term of the duration thereof, and granted him a certificate to that effect, which must be countersigned by the Chief Inspector. Such confirmation shall be granted if the Chairman is satisfied that no objection can be made to the character of the husband, and that he has not forfeited a license within the next preceding three years.

Removal of Licensee.

Grant of leave to remove.

54. Any Chief Inspector may, after resolution allowing the same by the Board, or permission in writing granted by the chairman thereof, endorse on any hotel, saloon, or shop license, permission to the holder thereof to remove from the house to which his said license applies, to another house to be described in the endorsement to be made by the said Inspector on the said license: Provided always, that the house to which the licensee proposes to remove has all the accommodation required by law.

Proviso.

Effect of leave to remove.

2. Such permission, when the approval of the said Inspector is endorsed on the said license, shall authorise the holder of the said license to sell the like liquors in the house mentioned in the endorsement, during the unexpired portion of the term for which the said license was granted, in the same manner, and upon the same terms and conditions as he might do in the premises to which the license originally applied; but no such permission shall be granted unless and until the person applying therefor has filed in the office of the Chief Inspector, a report of the Inspector containing the information required by law in case of application for a license; and any bond or security which such holder of a license may have given for any purpose in relation to such license shall apply to the house or place to which such removal is authorised; but such permission shall not entitle him to sell at any other than such one place.

Proviso: Report of inspector required.

Bonds to apply.

Certificate of electors required.

3. An application for the removal of any hotel, saloon, or shop license from the house to which it applies must be accompanied by a certificate, signed by one-third of the electors of the polling sub-division in the same manner as is required by section thirteen of this Act as to applications for a license.

Fees in cases of removal, &c.

55. For each transfer of a license, for each certificate permitting the continuance of the business, for each certificate of confirmation of a license to the husband of a licensed woman, and for each endorsement of permission to remove to other premises there shall be paid a fee of ten dollars.

License Fund.

56. All sums received on applications for and on the issue of licenses, or received by the Inspector for fines and penalties, shall form the License Fund of the district. How formed.

3. The License Fund shall be applied, under regulations of the Governor in Council, for the payment of the salary and expenses of the Commissioners and Inspectors, and for the expenses of the office of the Board, or otherwise incurred in carrying the provisions of the law into effect; and the residue, on the thirtieth day of June in each year, and at such other times as may be prescribed by the regulations of the Governor in Council, shall be paid over to the Treasurer of the city, town, village, parish or township, municipality in which the licensed premises are respectively situate, for the public uses of the municipality; and in the province of Prince Edward Island, except in the cities and towns thereof, to the Treasurer of that Province; and in unorganised districts the residue shall be paid to the Receiver General. How to be applied. And in P. E. Island and unorganised districts.

3. Cheques upon the license fund account shall be drawn by the Chief Inspector, and countersigned by the Chairman, or any two of the License Commissioners, subject to the regulations made by the Governor in Council. Cheques upon the fund.

57. Two-thirds of any penalty in money recovered under this Act, in cases in which an Inspector is the prosecutor or complainant, shall be paid by the convicting magistrate to the Inspector, and paid in by him to the credit of the "License Fund Account." Application of pecuniary penalties.

2. In case the whole amount of the penalty and costs is not recovered, the amount recovered shall be applied, first, to the payment of the costs, and the balance shall be appropriated as herein provided. If not all recovered.

3. In any case where the Inspector has prosecuted and obtained a conviction, and has been unable to recover the amount of costs, the same shall be made good out of the License Fund. Conviction but no recovery of costs.

4. In any case where the Inspector has prosecuted and failed to obtain a conviction, he shall be indemnified against all costs out of the License Fund, if the magistrate before whom the complaint is made certifies that such officer had reasonable and probable cause for instituting such prosecution or preferring such complaint. Indemnity of Inspector in cases of no conviction.

Revocation of Licenses improperly obtained.

58. The Judge of the County Court of the county or the Judge of the Superior Court having jurisdiction in the county in which a municipality is situate, in any part of which a license granted is intended to take effect, upon the complaint of any person that such license has been issued contrary to any of the provisions of this Act, or of any byelaw in force in the said municipality, or that such license has been obtained by any fraud, shall summon the person to whom such license has been issued, to appear before him, and shall proceed to hear and determine the matter of the said complaint in a summary manner; and may, upon such hearing, or in default of appearance of the person summoned, determine and adjudge that such license, for any of the causes aforesaid, ought to be revoked, and thereupon shall order and adjudge that such license is and stands revoked and cancelled accordingly, and such license shall then be and become inoperative and of none effect, and the person to whom such license issued shall thereafter, during the full period of three years, be disqualified from obtaining any further or other license under this Act. Proceedings for such revocation and powers; Judge. Hearing and judgment, and its effect.

Permits to sell in Municipalities where no License is granted.

59. In municipalities, parishes, or townships, in which "*The Canada Temperance Act*, 1878," is not in force, and where there is no person licensed under an hotel, saloon, or shop license to retail liquors, the sale of such liquors is permitted, as herein-after provided, for medicinal purposes only, or for use in divine worship, on the certificate of a physician or of a clergyman, residing in the municipality or parish, and not otherwise; or for *bonâ fide* use in some art, trade, or manufacture, on the certificate of two justices: Permits to sell for certain purposes only.

2. Such certificate may be given by a resident physician, but only to a patient under his immediate care, or by a clergyman, but only to a person whose spiritual adviser he *bonâ fide* is, under a penalty of thirty dollars for each contravention of this provision: Certificate by and to whom to be given.

Conditions of issue of certificate.

3. Before the two justices shall grant a certificate to a person authorising the sale to him of liquor for use in any art, trade, or manufacture, they shall cause a declaration to be made before them by the applicant to the effect that the liquor is to be used only for the purpose set forth in the declaration, and they shall attach the said declaration to their certificate:

Limit of quantity to be sold.

4. In any case, not more than one pint shall, at any one time, be sold in virtue of such certificate, and no liquor so sold shall be allowed to be drunk on the premises, under a penalty of forty dollars for each contravention of this provision:

By whom to be sold.

5. The sale of liquor permitted by this section shall be made by such person only as may be appointed for that purpose by a resolution of the Board, and the Board may grant to such person a "permit to sell for medicinal purposes, or for use in divine "worship only, or for use in any art, trade, or manufacture:"

Report by person so selling.

Penalty for default.

6. The person so permitted to sell shall make a report, sworn to before a Justice of the Peace, on the first day of each month, to the Chief Inspector, showing the names of the persons to whom he has sold liquor during the previous month, the quantity sold in each case, and upon whose certificate the sale was made, and such certificates shall accompany the report: any violation of, or failure to comply with any of the provisions of this section, shall subject the offender to a penalty of twenty dollars, for each contravention.

Register of Licenses.

Who shall keep.

60. The Chief Inspector of each district shall keep, in such form as may be prescribed by the Board,—

Particulars required.

Licenses.

Forfeitures, &c.

a. A register, to be called "The Register of Licenses," containing the particulars of all licenses granted in the district, the premises in respect of which they are granted, the names of the licensees, and the names of the sureties to any bond given by such licensee in pursuance of the provisions of this Act; there shall also be entered on the register all forfeitures of licenses, disqualifications of licensees, records of convictions, and other matters relating to the licenses then on the register;

Applications to Board.

b. A record of all applications made to the Board, showing the names of the applicants, the nature of the applications, the premises in respect of which the applications are made, the date on which the applications were heard, and the manner in which the same were disposed of, including, in cases of refusal, the cause thereof;

Furnishing extracts.

2. Every Chief Inspector shall, on request, forthwith transmit extracts from any such register of licenses or record of applications, to any other Inspector or to the clerk of any court.

Annual reports of Boards to Minister of Inland Revenue; and what they must show.

61. The Board shall report annually to the Minister of Inland Revenue, and their report shall contain,—

a. A statement of the number and description of licenses and of the names of applicants to whom licenses were granted during the year;

b. The names of those to whom licenses were not granted;

c. Any other statement required to be entered in the Register of Licenses;

d. The prosecutions for infractions of this Act, and the result of the same;

e. General remarks as to the working of the law within the district;

f. And also any other matters asked for by the Minister of Inland Revenue:

Moneys received and expended.

2. They shall also report as to and account for the moneys received and expended during the year.

Regulations and Prohibitions.

Licenses to be kept exposed.

Penalty for default.

62. All licenses shall be constantly and conspicuously exposed in the warehouses and shops, in the bar-rooms of hotels, saloons, or other places of public entertainment, and in the saloon or cabin of vessels, to which the licenses respectively relate, under a penalty of five dollars for every day's wilful or negligent omission so to expose them, to be recovered with costs from the licensee, or the master, captain, or owner of the vessel so making the default.

Inscription over door of licensed premises.

63. Every person who keeps an hotel or saloon or any other licensed place in respect of which an hotel or saloon license has duly issued and is in force, shall exhibit over the

door of such hotel, saloon or other licensed place in large letters, the words: "*Licensed to sell spirituous or fermented liquors,*" and in default thereof shall be liable to a penalty of five dollars, besides costs for each and every day on which such default continues.

Lamps over doors.

64. Every hotel-keeper shall keep a lamp affixed over the door of his licensed premises, or within twenty feet thereof, lighted during the whole of every night, from sunset to sunrise, during the time of his holding such license:

Penalty for default.

2. Every person who acts in contravention of, or who fails to comply with any provision of this section, shall forfeit and pay for each such offence a penalty not exceeding five dollars:

Exemption by Inspector.

3. The Chief Inspector may, by endorsement on his license, exempt any hotel-keeper from compliance with this provision in cases where he thinks the street or particular place where the licensed premises are situate, is otherwise sufficiently lighted.

One bar only.

65. Not more than one bar shall be kept in any house or premises licensed under this Act.

Prohibition of sales; certain days and at certain hours.

66. As respects all places where intoxicating liquors are, or may be sold by wholesale or retail, no sale or other disposal of liquors shall take place therein, or on the premises thereof, or out of or from the same, to any person or persons whomsoever, save as herein-after provided, from or after the hour of seven of the clock on Saturday night till six of the clock on Monday morning thereafter, nor from or after the hour of eleven o'clock at night until six o'clock the following morning on all the other nights of the week, save and except in cases where a requisition for medical purposes, signed by a licensed medical practitioner, or by a Justice of the Peace, is produced by the vendee or his agent; nor shall any such liquor, whether sold or not, be permitted or allowed to be drunk in any such places during the time prohibited by this Act for the sale of the same: Provided always, that in hotels liquor may be sold on Sundays to the guests *bonâ fide* residing or boarding in such houses, during meals, between the hours of one and three, and five and seven in the afternoon, respectively, to be drunk or used at their meals at the table, but this provision shall not permit the furnishing of liquor at the bar, or place where liquor is usually sold in such houses.

Proviso as to guests in hotels.

No sales on polling days of Dominion elections, &c.

2. And no sale or other disposal of liquor shall take place in any licensed place within the limits of a polling sub-division, on any polling day for or at any Parliamentary Election, or election of a member for a Legislative Assembly, or any municipal election, from or after the time of six o'clock in the morning of the said day until the following lawful day at six o'clock in the morning.

Penalty for refusing lodging, &c.

67. Every hotel-keeper failing or refusing, either personally or through any one acting on his behalf, except for some valid reason, to supply lodging, meals or accommodation to travellers, shall, for each offence, be liable, on conviction, to forfeit and pay any sum not exceeding twenty dollars.

As to mode of payment for liquor, &c.

68. If any hotel-keeper receives in payment, or as a pledge, for any liquor or entertainment supplied in or from his licensed premises, anything except current money, or the debtor's own cheque on a bank or banker, he shall for each offence pay a penalty not exceeding twenty dollars; the person to whom anything given as a pledge, as aforesaid belongs, shall have the same remedy for recovering such pledge, or the value thereof, as if it had never been pledged; no hotel-keeper shall receive payment in advance for any liquor to be supplied, and any payment so made in advance may be recovered, notwithstanding that any liquor may have been supplied subsequently to such payment.

Recovering of pledges.

Payment in advance forbidden.

Licensee not to purchase certain articles, or receive them in pledge.

Restitution may be ordered and enforced.

69. If any person holding a license purchases from any person any wearing apparel, tools, implements of trade or husbandry, fishing gear, household goods, or furniture, either by way of sale or barter, directly or indirectly, the consideration for which, in whole or in part, is any intoxicating liquor or the price thereof, or receives from any person any goods in pawn, any Stipendiary or Police Magistrate, or any two Justices of the Peace, or any parish court commissioner, on sufficient proof on oath being made before him of the facts, may issue his warrant for the restitution of all such property, and for the payment of costs; and in default thereof, the warrant shall contain directions for levying by sale of the offender's goods to the value of such property so pawned, sold, or bartered, and costs, and the offender shall also be liable to a penalty not exceeding twenty dollars.

Penalty for permitting drunkenness, &c.

70. If any person licensed under this Act permits drunkeness, or any violent, quarrelsome, riotous or disorderly conduct to take place on his premises, or sells or delivers intoxicating liquor to any drunken person, or permits and suffers any drunken person to consume any intoxicating liquor on his premises, or permits and suffers persons of notoriously bad character to assemble or meet on his premises, or suffers any gambling or any unlawful game to be carried on on his premises, he shall be liable to a penalty not exceeding fifty dollars.

Penalty for harbouring constables when on duty.

71. If any licensed person knowingly harbours or knowingly suffers to remain on his premises, any constable during any part of the time appointed for such constable to be on duty, unless for the purpose of keeping or restoring order, or in the execution of his duty, or supplies any liquor or refreshment whatever by way of gift or sale, to any constable on duty, unless by authority of some superior officer of such constable, or bribes, or attempts to bribe, any constable, he shall be liable to a penalty not exceeding fifty dollars.

Power to refuse liquor to or to eject any intoxicated person.

72. Any person licensed under this Act may refuse to admit to the premises in respect of which his license is granted, any person who is intoxicated, and may refuse to admit to and may turn out of the premises any person who is violent or quarrelsome, or disorderly, and any person whose presence on his premises would subject the licensee to a penalty under this Act; and any such person who, upon being requested in pursuance of this section, by such licensed person or his agent, or servant, or any constable, to quit such premises, refuses or fails to do so, shall be liable to a penalty not exceeding twenty dollars; and all constables are required, on demand of such licensed person, his agent or servant, to expel or assist in expelling every such person from such premises, and may use such force as may be required for that purpose.

Constables to aid.

Penalty for using prohibited internal communications.

73. Every person who makes or uses, or allows to be made or used, any internal communication between any licensed premises and any unlicensed premises which are used for public entertainments or resort, or as a refreshment house, shall be liable to a penalty not exceeding fifty dollars for every day during which such communication remains open.

Penalty for allowing liquors to be consumed on the premises by a minor.

74. Any licensed person who allows to be supplied in his licensed premises, by purchase or otherwise, any description whatever of liquor to any person apparently under the age of sixteen years, of either sex, not being resident on the premises or a *bonâ fide* guest, lodger or traveller, shall, as well as the person who actually gives or supplies the liquor, be liable to pay a penalty not exceeding twenty dollars for every such offence.

As to such offence by a shop licensee.

75. No person having a shop license to sell by retail, shall allow any liquor sold by him or in his possession, and for the sale of which a license is required, to be consumed within his shop, or within any building of which such shop forms part, or which communicates by any entrance with such shop, either by the purchaser thereof, or by any other person not usually resident within such building, under a penalty not exceeding fifty dollars.

Conditions for obtaining shop license.

2. No shop license shall be granted to any person to sell liquors in any store, shop, place or premises where groceries or other merchandise are sold, or exposed for sale, or in any store, place or premises, connected, by any internal communication, with such first-mentioned store, shop, place or premises: Provided always, that this sub-section shall not apply to any licensee in cities and towns, having a license at the time of the passing of this Act, prior to the first day of May in the year one thousand eight hundred and ninety, and elsewhere prior to the first day of May in the year one thousand eight hundred and eighty-seven.

Proviso.

Licensee not to treat any person on the premises. Penalty.

3. If any person having a shop license gives or treats any person to any liquor on the licensed premises, he shall, on conviction, incur a penalty of not exceeding fifty dollars.

Wholesale licensee not to allow liquor to be consumed on his premises.

76. No person having a license to sell by wholesale, shall allow any liquors sold by him or in his possession for sale, and for the sale or disposal of which such license is required, to be consumed within his warehouse or shop, or within any building which forms part of or is appurtenant to, or which communicates by any entrance with any

warehouse, shop or other premises wherein any article to be sold or disposed of under such license is sold by retail, or wherein there are kept any broken packages of such articles.

Punishment for allowing liquor to be unlawfully consumed on premises.

77. If any person having a license to sell liquors not to be drunk on the premises, himself takes or carries, or employs or suffers any other person to take or carry any liquor out of or from the premises of such licensed person for the purpose of being sold on his account or for his benefit or profit, and of being drunk or consumed in any other house, or in any tent, shed or other building of any kind whatever, belonging to such licensed person, or hired, used or occupied by him, or on or in any place, whether enclosed or not, and whether or not a public thoroughfare, such liquor shall be deemed to have been consumed by the purchaser thereof, on the premises of such licensed person, with his privity and consent, and such licensed person shall be punished accordingly, in manner provided by this Act:

What proof of offence sufficient.

2. In any proceeding under this section it shall not be necessary to prove that the premises, or place or places to which such liquor is taken to be drunk belonged to or were hired, used or occupied by the seller, if proof be given to the satisfaction of the court hearing the case, that such liquor was taken to be consumed thereon or therein with intent to evade the conditions of his license.

Vessel licensee not to sell in port, &c.

78. Where a vessel license is issued under this Act, no sale or other disposal of liquor shall take place thereon or therefrom, to be consumed by any person other than a passenger on the said vessel, whilst such vessel is at any port, pier, wharf, dock, mooring place or station:

Penalty for contravention.

2. In case any such sale or other disposal of liquor takes place, the said license shall *ipso facto* be and become forfeited and absolutely void, and the captain or master in charge of such vessel, and the owner or person navigating the same, as well as the person actually selling or disposing of liquor contrary to this section, shall be severally and respectively liable to a penalty of one hundred dollars; and any person who sells or disposes of any liquor contrary to the provisions of this section shall also be liable to the same penalty and punishment therefor as is herein-after prescribed in the eighty-eighth section of this Act.

ADULTERATION.

Penalty for selling, &c. adulterated liquor.

79. Every person who sells or offers for sale any liquor with which is mixed any ingredient or material injurious to health, or whereby such liquor is rendered injurious to the health of persons drinking the same, and every person who sells as unadulterated any liquor which is adulterated, shall, on conviction, be liable for every such offence to a penalty not exceeding fifty dollars:

Duty of Inspector in case of conviction when license not forfeited.

2. Where a licensed person is convicted of any offence for adulteration of drink, and his license is not forfeited for such offence, the Chief Inspector or inspector, or any constable of the district, shall cause a placard stating such conviction to be affixed to the premises; such placard shall be of such size and form, and shall be printed with such letters, and shall contain such particulars, and shall be affixed to such part of the licensed premises, as the convicting justices may think fit, and such licensed person shall keep the same affixed during two weeks after the same is first affixed; and, if he fails to comply with the provisions of this section with respect to keeping such placard affixed, or defaces or allows such placard to be defaced, or if the same is defaced and he fails forthwith to renew the same, he shall be liable to a penalty not exceeding fifty dollars for every day on which the same remains so defaced and unrenewed; and any Inspector or any constable may affix or re-affix such placard during the said two weeks, or such further time as may be directed by a court of summary jurisdiction.

Notice to be affixed on premises.

Penalty for contravention of this section, &c.

Proceedings for obtaining analysis of liquor suspected to be adulterated.

80. In order to obtain an analysis of any liquor, substance, or thing, it shall be lawful for any justice, on information on oath made to him that there is reason to believe that any such liquor is adulterated, or contains any deleterious ingredient as aforesaid, or that any such substance, matter, or thing of a deleterious character is to be found upon any licensed premises, to authorise the seizure of such suspected liquor, substance, matter, or thing, and to cause the same, or a sample thereof, to be analysed by some competent person, and to order the forfeiture of the whole of the kind of liquor analysed and found to be adulterated or to contain any deleterious ingredient, and also of any

Expenses.

substance, matter, or thing of a deleterious character found in the possession or on the premises of the person offending; and the expense of such analysis and forfeiture shall be a portion of the costs which such justice shall have power to order to be paid by any person convicted; and in every proceeding under this section, proof of the fact that any liquor was adulterated or contained any deleterious ingredient, or that any substance, matter, or thing of a deleterious character was found upon the premises shall be *primâ facie* evidence that the person in whose possession the same was found, did knowingly sell, or offer, or expose, or have for sale such liquor, or that such substance, matter, or thing of a deleterious character was kept for adulterating or mixing with the liquor sold:

What evidence shall be sufficient for conviction of person found in possession.

Proviso.

What defendant may prove in defence.

Provided always, that any person charged with any offence against this section may give evidence on his own behalf to prove that such liquor was when seized in the same condition as it was when it came into his possession by a *bonâ fide* purchase, and was not adulterated or mixed with any deleterious ingredient by him or any person acting under his authority, and that such substance, matter, or thing, was not kept for adulterating or mixing with the liquor sold.

Power of Inspector to search for and take samples of liquors.

2. Any Inspector may, at all times during business hours, and after such hours for reasonable cause, enter on any licensed premises; he may also examine every room and every part of such premises and take an account of all liquor therein, and may demand, select, and obtain any samples of liquor which may be in such house or premises,—such samples to be sealed by the Inspector in the presence of the licensee or other person in charge of the house or premises, and, if such licensee or other person so desires, with the seal of such licensee or other person; and, on payment or tender of payment for such samples of liquor, the Inspector may remove the same for the purpose of analysis or otherwise.

Powers of Inspectors and other Officers.

Power to enter and search premises.

81. Any officer, policeman or constable, or Inspector of Licenses, may, for the purpose of preventing or detecting the violation of any of the provisions of this Act which it is his duty to enforce, at any time enter into any and every part of any hotel, tavern, or other house or place of public entertainment, shop, warehouse or other place wherein refreshments or liquors are sold, or reputed to be sold, whether under license or not, and may make searches in every part thereof, and of the premises connected therewith, as he may think necessary for the purpose aforesaid:

Penalty on persons obstructing search.

2. Every person being therein, or having charge thereof, who refuses or fails to admit such officer, policeman, or constable, or Inspector demanding to enter in pursuance of this section in the execution of his duty, or who obstructs or attempts to obstruct the entry of such officer, policeman, constable, or Inspector, or any such searches as aforesaid, shall be liable to a fine not exceeding fifty dollars.

Search warrant and powers and proceedings under it.

82. Any magistrate if satisfied by information on the oath of any such officer, policeman, constable or Inspector, that there is reasonable ground for belief that any spirituous or fermented liquor is being kept for sale or disposal contrary to the provisions of this Act in any unlicensed house or place within the jurisdiction of the magistrate, may in his discretion, grant a warrant under his hand by virtue whereof it shall be lawful for the person named in such warrant at any time or times within ten days from the date thereof to enter, and, if need be, by force, the place named in the warrant, and every part thereof, or of the premises connected therewith, and to examine the same and search for liquor therein; and for such purpose such person may, with such assistance as he deems expedient, break open any door, lock, or fastenings of such premises, or any part thereof, or of any closet, cupboard, box or other article likely to contain any such liquor; and in the event of any liquor being so found unlawfully kept on the said premises, the occupant thereof shall, until the contrary is proved, be deemed to have kept such liquor for the purpose of sale contrary to the provisions of section eighty-three of this Act.

Forcing doors, &c.

Presumption if liquor is found.

Duty of officer finding liquor unlawfully kept.

2. When any Inspector, policeman, constable or officer, in making or attempting to make any search under or in pursuance of the authority conferred by section eighty-one of this Act or under the warrant mentioned in this section, finds in an unlicensed house or place any liquor which in his opinion is unlawfully kept for sale or disposal contrary to this Act, he may forthwith seize and remove the same, and the vessels in which the same is kept, and upon the conviction of the occupant of such house or place or of any other person, for keeping liquor for sale in such house or place without license, the magistrate making such conviction, may in and by the said conviction, or by a separate or subse-

Convicting magistrate may declare liquor for-

quent order, declare the said liquor and vessels, or any part thereof, to be forfeited to Her Majesty, and may order and direct that the said Inspector, policeman, constable or officer, shall destroy the same or any part thereof, and the Inspector or other person as aforesaid shall thereupon forthwith destroy the same or part thereof as directed by such conviction or order. Liquor forfeited, and order it to be destroyed.

No Liquor to be sold without License.

83. No person shall sell by wholesale or by retail any liquors without having first obtained a license under this Act authorising him so to do. License required.

2. No person, unless duly licensed, shall by any sign or notice give the public cause to believe that he is so licensed; and the use of any sign or notice for such purpose is hereby prohibited. False signs or notices prohibited.

84. No person shall keep or have in any house, building, shop, eating-house, saloon or house of public entertainment, or in any room or place whatsoever, any liquors for the purpose of selling, bartering, or trading therein, unless duly licensed thereto under the provisions of this Act. Having liquors in possession without license.

85. Sections eighty-three and eighty-four shall not prevent any brewer, distiller or other person duly licensed by the Government of Canada under the laws respecting Inland Revenue, to manufacture fermented, spirituous or other liquors, from keeping, having or selling any liquor manufactured by him in any building wherein such manufacture is carried on, provided such building forms no part of and does not communicate by any entrance with any shop or premises wherein any article authorised to be manufactured under such license is sold by retail, or wherein any broken package of such article is kept. Provision as to licensed manufacturers of liquors.

86. The said sections numbered eighty-three and eighty-four of this Act shall not prevent any chemist or druggist duly registered as such under and by virtue of "*The Pharmacy Act*" of the Province of Ontario, or any similar Act in force in any of the other Provinces, from keeping, having or selling liquors for strictly medicinal purposes, but no such sale shall be made in packages of more than six ounces at any one time, except under certificate from a registered medical practitioner; and it shall be the duty of every such chemist or druggist to record in a book, to be open to the inspection of the Commissioners or Inspector, every sale or other disposal by him of liquor; and such record shall show, as to every such sale or disposal, the time when, the person to whom, and the quantity sold, and the certificate of the medical practitioner, if any, and in default of such sale or disposal being so placed on record, every such sale or disposal shall, *primâ facie*, be held to be in contravention of the provisions contained in the said eighty-third and eighty-fourth sections of this Act: Proviso as to duly licensed druggists in Ontario. Obligations of such persons; record to be kept by them. Penalty for default.

Provided always, that no person authorised to sell liquors, as provided by this section, shall allow any liquors sold by him or on his premises, to be consumed within his shop or the premises of which such shop forms part. Further condition.

87. It shall be the duty of the Chief, or one of the Inspectors, at least once in every three months, to visit and inspect every licensed place within the district, and to report forthwith to the Board or Chairman of the Board, every case of infraction of the provisions of this Act; and every Inspector shall at once, and in conformity with the provisions herein contained, prosecute any person so offending, and shall suffer no unnecessary delay to intervene between his obtaining the information and the prosecution. Inspectors to visit and inspect licensed premises once in three months, at least.

2. It shall be the duty of the Inspector to institute prosecutions whenever he has reason to believe that this Act has been violated, and that such prosecutions can be successfully maintained, or that, at all events, the costs can be recovered. And prosecute offences.

3. Whenever he is called upon to institute a prosecution he may, if he has reason to fear that the costs cannot be recovered from the defendant, exact from the person asking for the institution of such prosecution, the deposit of a reasonable amount to cover the same. As to costs.

88. For the punishment of offences against section sixty-six of this Act, a penalty for the first offence against the provisions thereof, of not less than twenty dollars with costs, in case of conviction, shall be recoverable from, and leviable against the goods and Punishment for offences against section 66.

chattels of the person or persons who are the proprietors in occupancy, or the tenants or agents in occupancy of the licensed premises and who are found by himself, herself or themselves, or his, her or their servants or agents, to have contravened the enactments in the said section contained or any part thereof; for the second offence, a penalty shall be recoverable and leviable against the offender of not less than fifty dollars with costs; and in default of payment of the penalties in this section before set forth, the offender shall be liable on conviction, to imprisonment in the common gaol of the county or place within which the offence was committed, or the conviction takes place for the following terms, that is to say, in the case of a first conviction, fifteen days of imprisonment with hard labour; in the case of a second conviction, one month's imprisonment with hard labour.

For second offence.

Imprisonment in default of payment.

Case of purchaser drinking liquor on premises where bought, &c.

89. If any purchaser of any liquor from a person who is not licensed to sell the same to be drunk on the premises, drinks, or causes or permits any other person to drink such liquor on the premises where the same is sold, the seller of such liquor shall, if it appears that such drinking was with his privity or consent, be subject to the following penalties, that is to say :—

First offence. For the first offence he shall be liable to a penalty not exceeding twenty dollars;

Second or subsequent. For a second and any subsequent offence he shall be liable to a penalty not exceeding fifty dollars;

Interpretation. For the purpose of this section the expression "premises where the same is sold" shall include any premises adjoining or near the premises where the liquor is sold, if belonging to the seller of the liquor, or under his control, or used by his permission.

Penalty on purchaser in certain cases.

2. Any purchaser of liquors in a house or premises, to which a shop or wholesale license applies, who drinks or causes any one to drink, or allows liquor to be drunk in the shop or premises where the same has been purchased, shall be liable to a penalty not exceeding twenty dollars.

Penalty on hotel or saloon licensee keeping a disorderly house.

Information and investigation.

90. The Mayor or Police Magistrate of a town or city, the Recorder or Judge of the Sessions of the Peace having jurisdiction therein, the Stipendiary Magistrate, or the Reeve of a township with any one justice, or any two justices having jurisdiction in the township or village, or the Commissioner of a Parish Court within his jurisdiction with any one Justice of the Peace, or any two Justices of the Peace having jurisdiction in the township, parish, or village, upon information to them, or one of them respectively, that any keeper of any hotel, saloon, or other house of public entertainment, situate within their jurisdiction, sanctions or allows gambling or riotous or disorderly conduct in his house or premises, may summon the keeper of such hotel or saloon to answer the complaint, and may investigate the same summarily, and either dismiss the complaint with costs to be paid by the complainant, or convict the keeper of having an improper or a riotous or disorderly house, as the case may be, and such conviction shall, *ipso facto*, operate as a forfeiture of his license, with or without costs, as in the discretion of the convicting authority may seem just; and in case the keeper of any such hotel, saloon or place of public entertainment is convicted under this section and his license annulled, he shall not be eligible to obtain a license for the period of two years thereafter.

Conviction to forfeit license and entail ineligibility as licensee for two years.

Punishment for selling liquor without a license.

91. Any person who sells or barters liquors of any kind, without the license therefor by law required, shall, for the first offence, on conviction thereof, incur a penalty of not less than twenty dollars and costs, and not more than fifty dollars and costs; and for a second or any subsequent offence, on conviction thereof, such person shall be imprisoned in the common gaol of the county or place in which the offence was committed, to be kept at hard labor for a period not exceeding three calendar months.

Power of justices to forbid sale of liquor to habitual drunkards.

92. When it shall be made to appear in open court that any person, by excessive drinking of liquor, misspends, wastes or lessens his or her estate, or greatly injures his or her health, or endangers or interrupts the peace and happiness of his or her family, the justices holding such court shall, by writing under the hands of two of such justices, forbid any licensed person to sell to him or her any liquor for the space of one year, and such justices, or any other two justices, may, at the same or any other time, in like manner forbid the selling of any such liquor to the said drunkard by any such licensed person of any other city, town or district to which the drunkard resorts or may be likely to resort for the same.

2. Whenever the sale of liquor to any such drunkard shall have been so prohibited, if any other person, with a knowledge of such prohibition, gives, sells, purchases or procures for or on behalf of such prohibited person, or for his or her use, any liquor, such other person shall, upon conviction, incur for every such offence, a penalty not exceeding twenty dollars. Effect of such prohibition.

93. *a.* Any husband or wife, whose wife or husband has contracted the habit of drinking intoxicating liquor to excess,— Certain parties may require Inspector to forbid sale of liquor to habitual drunkards.

b. The father, mother, curator, tutor or employer of any person under the age of twenty-one years, who has contracted the habit of drinking intoxicating liquor to excess,—

c. The manager or person in charge of any asylum or hospital, or other charitable institution, in which any person so addicted resides or is kept,—

d. The curator or committee of any interdicted person or lunatic, or—

e. The father, mother, brother or sister, of the husband or wife of such person,—

may require the Chief Inspector to give notice in writing, signed by him, to any person licensed to sell liquors, that he is not to sell or deliver the same to the person addicted to such habit or to such interdicted person or lunatic :

2. If in the course of one year from the date of such notification, the person so notified, either personally or by his clerk, servant or agent, sells or delivers such liquors otherwise than on a certificate, for medicinal purposes, signed by a medical practitioner, to the person addicted to such habit, or to such lunatic or interdicted person, he shall incur upon conviction for any such offence, a penalty not exceeding fifty dollars. Penalty for selling in contravention of such prohibition.

94. Every person who, by falsely representing himself to be a lodger, buys or obtains, or attempts to buy or obtain, at any premises, any liquor during the period when such premises are required to be closed as to the sale thereof, in pursuance of this Act, shall be liable to a penalty not exceeding twenty dollars. Penalty for obtaining liquor on false pretences.

95. It shall not be lawful for the Chief Inspector or any Inspector of any License District, either directly or indirectly, to receive, take, or have any money whatsoever, for any license, report, matter or thing connected with or relating to any grant of any license, other than the sum to be paid therefor as the duty under the provisions of this Act, or to receive, take or have any note, security or promise for the payment of any such money, or any part thereof, from any person or persons whatsoever; and any person or persons guilty of, or concerned in, or party to any act, matter or thing contrary to the provisions of this section, or of sections thirty-four and thirty-five, shall be guilty of a misdemeanor, and upon conviction thereof may be punished by a penalty not exceeding two hundred dollars, and by imprisonment not exceeding twelve calendar months. Punishment of License Commissioners or Inspectors taking bribes.

96. Any Inspector, officer or other person who, contrary to the provisions of this Act, knowingly issues, or causes or procures to be issued, an hotel, saloon or shop license, or a certificate therefor, shall, upon conviction thereof, for each offence pay a penalty of not less than fifty dollars, nor more than one hundred dollars; and in default of payment of such penalty the offender or offenders may be imprisoned in the common gaol of the county or place in which the conviction takes place for a period not exceeding three calendar months. Penalty for illegally issuing license.

97. Any person who, having violated any of the provisions of this Act, compromises, compounds, or settles, or offers or attempts to compromise, compound or settle the offence with any person or persons, with the view of preventing any complaint being made in respect thereof, or—if a complaint has been made—with the view of getting rid of such complaint, or of stopping or having the same dismissed for want of prosecution or otherwise, shall, on conviction thereof, incur a penalty not exceeding fifty dollars. Punishment for compounding offences against this Act.

98. Every person who is concerned in, or is a party to the compromise, composition or settlement mentioned in the next preceding section, shall be guilty of a misdemeanor and, on conviction thereof, shall incur a penalty not exceeding fifty dollars. Punishment of parties to such offence.

Penalty for preventing lawful arrest.

99. Any one knowing, or having reason to believe, that an order to commit to gaol has been issued against any person under this Act, who prevents the arrest of the defendant, or procures or facilitates by any act or counsel, or in any other manner whatsoever, his avoidance of arrest, or who provides the defendant with the means of avoiding arrest, shall incur a penalty of fifty dollars.

Penalty for tampering with witnesses.

100. Any person who, on any prosecution under this Act, tampers with a witness, either before or after he is summoned or appears as such witness on any trial or proceeding under this Act, or by the offer of money, or by threats, or in any other way, either directly or indirectly, induces or attempts to induce any such person to absent himself, or to swear falsely, shall be guilty of a misdemeanor.

Punishment for second offences against certain sections of this Act.

Forfeiture for third offence.

101. Every second conviction for any offence against the provisions of sections sixty-six, seventy-one, seventy-three, seventy-four, seventy-five, seventy-six, seventy-seven, seventy-eight, seventy-nine, ninety-two or ninety-three, and every conviction for an offence against the provisions of any one of the said sections when there has been a previous conviction for an offence against the provisions of any other of them, and every third conviction for an offence against the provisions of this Act, or any of them, shall operate a forfeiture of the license of the offender.

Penalty in cases not specially provided for.

102. Every person who shall violate any of the provisions of this Act, for which violation no penalty is herein specially provided, shall incur and pay a penalty not exceeding twenty dollars.

PENALTIES NOT TO BE REMITTED.

No power to remit.

103. No Magistrate, License Commissioner, or Inspector, or Municipal Council or Municipal officer, shall have any power or authority to remit, suspend or compromise any penalty or punishment inflicted under this Act.

PROSECUTIONS.

Limitation of time for prosecutions.

104. All informations or complaints for the prosecution of any offence against any of the provisions of this Act shall be laid or made, in writing, within thirty days after the commission of the offence.

Prosecutions, how brought.

105. Such prosecution may be brought—

In Quebec.

a. In the Province of Quebec, if the offence was committed in the City of Montreal or in the City of Quebec, then before the Recorder or Judge of the Sessions of the Peace at Montreal or Quebec, as the case may be, or, if the offence was committed in any other part of the Province, then before a Stipendiary Magistrate, or before any two other Justices of the Peace for the district wherein the offence was committed; or, if the district is other than that of Quebec, or that of Montreal, before the Sheriff of such district;

In Ontario.

b. In the Province of Ontario before any Stipendiary Magistrate or before any two other Justices of the Peace for the county, city or district wherein the offence was committed; or, if the offence was committed in any county, city or town having a Police Magistrate, then before such Police Magistrate, or, in his absence, before the Mayor or any two Justices of the Peace; or, if the offence was committed in any city or town not having a Police Magistrate, then before the Mayor thereof, or before any two Justices of the Peace;

In Nova Scotia.

c. In the Province of Nova Scotia before a Stipendiary Magistrate or before any two other Justices of the Peace of the county in which the offence was committed;

In New Brunswick.

d. In the Province of New Brunswick before any Police, Stipendiary or Sitting Magistrate or Commissioner of a Parish Court, or before any two other Justices of the Peace in and for the county in which the offence was committed;

In Manitoba.

e. In the Province of Manitoba before the Police Magistrate within whose territorial jurisdiction the offence was committed, or before any two Justices of the Peace in and for the county in which the offence was committed;

In British Columbia.

f. In the Province of British Columbia before any Stipendiary Magistrate or before any two other Justices of the Peace for the territorial division or jurisdiction within the limits of which the offence was committed;

g. In the Province of Prince Edward Island before the Stipendiary Magistrate for the city or town, or before any two other Justices of the Peace of or for the county in which the offence was committed. In Prince Edward Island.

106. If such prosecution is brought before any such Stipendiary Magistrate, Recorder, Judge of the Sessions of the Peace, Sheriff, Police Magistrate, Sitting Magistrate, Commissioner or Mayor, no other Magistrate shall sit or take part therein. Who may not sit in such case.

107. If such prosecution is brought before any two other Justices of the Peace, the summons shall be signed by one of them; and no other Justice than one of them shall sit or take part therein, unless by reason of their absence, or the absence of one of them, nor yet in the latter case, unless with the assent of the other of them. If prosecution is before Justices.

108. The description of any offence under this Act in the words of this Act or in words of like effect shall be sufficient in law, and any exception, exemption, proviso, excuse, or qualification, whether it does or does not accompany the description of the offence in this Act, may be proved by the defendant, but need not be specified or negatived in the information; but if it be so specified or negatived, no proof in relation to the matter so specified or negatived shall be required on the part of the informant or complainant. What description of the offence sufficient; and provision as to exemptions, &c.

109. Several cases of contravention of this Act, committed by the same person, may be included in one and the same information or complaint, provided that such information or complaint, and the summons issued thereon, contains specifically the time and place of each contravention. Several cases may be included in one complaint.

Form of Informations and other Proceedings.

110. In describing offences respecting the sale or other disposal of liquor, or the keeping, or the consumption of liquor, in any information, summons, conviction, warrant, or proceeding under this Act, it shall be sufficient to state the sale, disposal, keeping, or consumption of liquor simply, without stating the name or kind of such liquor, or the price thereof, or the name of any person to whom it was sold or disposed of, or by whom it was consumed; and it shall not be necessary to state the quantity of liquor so sold, disposed of, kept, or consumed, except in the case of offences where the quantity is essential, and then it shall be sufficient to allege the sale or disposal of more or less than such quantity, as the case may require. What shall be sufficient statement in the information, &c.

111. In the event of any variance between the information and the evidence adduced in support thereof, the Magistrate may amend or alter such information, and may substitute for the offence charged therein, any other offence against the provisions of this Act; but if it appears that the defendant has been materially misled by such variance, the said Magistrate shall thereupon adjourn the hearing of the case to some future day, unless the defendant waives such adjournment. Amendment of variances.

Adjournment if necessary.

112. The forms set forth in the fourth and subsequent schedules to this Act, or any forms to the like effect, shall be sufficient in the cases thereby respectively provided for; and when no forms are prescribed by the said fourth and subsequent schedules, new ones may be framed in accordance with those appended to the Act intituled "*An Act respecting the duties of Justices of the peace, out of Sessions, in relation to Summary Convictions and Orders.*" Forms in schedule sufficient.

Or if framed on 32 & 33 Vict. c. 31.

Procedure in Cases where previous Conviction is charged.

113. The proceedings upon any information for committing an offence against any of the provisions of this Act, in a case where a previous conviction or convictions are charged, shall be as follows:— Proceedings in case of previous conviction.

1. The Magistrate shall, in the first instance, inquire concerning such subsequent offence only, and if the accused be found guilty thereof, he shall then, and not before, be asked whether he was so previously convicted, as alleged in the information, and if he answers that he was so previously convicted, he may be sentenced accordingly; but if he denies that he was so previously convicted, or stands mute of malice, or does not answer directly to such question, the Magistrate shall then inquire concerning such previous conviction or convictions: Last offence to be first tried.

As to alleged previous convictions.

Proof thereof.

2. The number of such previous convictions shall be provable by the production of a certificate purporting to be under the hand of the convicting Magistrate, or of the Clerk of the Peace, without proof of his signature or official character, or by other satisfactory evidence:

Case of second or subsequent conviction being set aside, provided for.

3. In the event of any conviction for any second or subsequent offence becoming void or defective, after the making thereof, by reason of any previous conviction being set aside, quashed, or otherwise rendered void, the Justices or other authority by whom such second or subsequent conviction was made, may, by warrant under their or his hand, summon the person convicted to appear at a time and place to be named in such warrant, and may thereupon, upon proof of the due service of such warrant if such person fails to appear, or on his appearance, amend such second or subsequent conviction, and adjudge such penalty or punishment as might have been adjudged had such previous conviction never existed; and such amended conviction shall thereupon be held valid to all intents and purposes, as if it had been made in the first instance:

Provision in case of convictions under several sections of this Act.

4. In case any person who has been convicted of a contravention of any provision of any of the sections of this Act, mentioned in section one hundred and one is afterwards convicted of an offence against any provision of any of the said sections, such conviction shall be deemed a conviction for a second offence, within the meaning of the said section, and may be dealt with and punished accordingly, although the two convictions may have been under different sections.

Conviction as for first offence *non abstante.*

114. A conviction may in any case be had as for a first offence notwithstanding that there may have been a prior conviction or convictions for the same or any other offence.

Several offences on one day. Proviso.

115. Convictions for several offences may be made under this Act, although such offences may have been committed on the same day; but the increased penalty or punishment herein-before imposed shall only be incurred or awarded in the case of offences committed on different days, and after information laid for a first offence.

Convictions, &c. not void for defects, in certain cases

116. No conviction or warrant for enforcing the same or any other process or proceeding under this Act shall be held insufficient or invalid by reason of any variance between the information and the conviction, or by reason of any other defect in form or substance, provided it can be understood from such conviction, warrant, process or proceeding, that the same was made for an offence against some provision of this Act, within the jurisdiction of the justice, justices or magistrate who made or signed the same, and provided there is evidence to prove such offence, and that it can be understood from such conviction, warrant, or process, that the appropriate penalty or punishment for such offence was intended to be thereby adjudged.

Proceedings on application to quash conviction on ground of variance, &c.

2. Upon any application to quash any such conviction, or the warrant for enforcing the same, or other process or proceeding, whether in appeal or upon *habeas corpus*, or by way of *certiorari* or otherwise, the court or judge to which such appeal is made or to which such application has been made upon *habeas corpus* or by way of *certiorari*, or otherwise, shall dispose of such appeal or application upon the merits, notwithstanding any such variance or defect as aforesaid; and in all cases where it appears that the merits have been tried, and that the conviction, warrant, process, or proceeding is sufficient and valid under this section or otherwise, such conviction, warrant, process, or proceeding shall be affirmed, or shall not be quashed (as the case may be); and such court or judge may, in any case, amend the same if necessary, and any conviction, warrant, process or proceeding so affirmed or affirmed and amended, shall be enforced in the same manner as convictions affirmed on appeal, and the costs thereof shall be recoverable as if originally awarded.

Who may prosecute.

117. Any person may be prosecutor or complainant under this Act.

Who shall not try a complaint under this Act.

118. No License Commissioner or Inspector of Licenses who is a justice, shall try or adjudicate upon any complaint for an infraction of any of the provisions of this Act committed within the limits of the License District for which he is a Commissioner or Inspector; except that this section shall not be construed to apply to a Judge, or Junior Judge or Deputy Judge of a county, a Judge of Sessions, or a Recorder.

119. All the provisions of the Act intituled "*An Act respecting the duties of Justices of the Peace, out of Sessions, in relation to Summary Convictions and Orders,*" and the Acts already passed, or which may be hereafter passed, amending the same, shall apply to all prosecutions and proceedings under this Act, so far as the same are consistent with this Act: 32 & 33 Vict. c. 31. to apply to proceedings under this Act.

2. The Magistrate shall in all cases reduce to writing the evidence of the witnesses examined before him, and shall read the same over to such witnesses, who shall sign the same. Evidence to be reduced to writing.

120. Whenever a licensee is convicted of any offence against the provisions of this Act, a record thereof shall be endorsed on the license of the person convicted, and the following provisions shall have effect, that is to say:— Endorsement of conviction on license, and its effect.

1. The magistrate before whom any licensed person is accused, shall require such person to produce and deliver to him the license under which such person carries on business, and the summons shall state that such production will be required: Production of license.

2. If such person is convicted, the court shall cause the short particulars of such conviction and the penalty imposed, to be endorsed on his license before it is returned to the offender: Conviction; and penalty imposed to be endorsed.

3. The Chief Inspector shall enter the particulars respecting such conviction, or such of them as the case may require, in the register of licenses kept by him under this Act: Entry in register of licenses.

4. Where the conviction of any such person has the effect of causing the forfeiture of the license or of disqualifying any person for the purposes of this Act, the license shall be retained by the magistrate, and notice of such forfeiture or disqualification shall be sent to the Chief Inspector of the proper District. In case of conviction disqualifying licensee.

121. The magistrate on any conviction against a licensed person, for an offence against this Act, shall send forthwith to the Chief Inspector of the proper district, a certificate of such conviction. Certificate of conviction to be sent to Inspector.

122. For the additional duties imposed by the two next preceding sections, the magistrate shall be entitled to charge as costs in the proceedings the following sums:— Allowance to Magistrate.

For making out and forwarding certificate of conviction to the Chief Inspector the sum of fifty cents. For recording the conviction on the license, the sum of fifty cents.

Appeals.

In Cases under Section 91.

123. In all cases of prosecution for any offence against any of the provisions of this Act, for which any penalty or punishment is prescribed by the ninety-first section of this Act, the conviction or order of the Justices or Magistrate, as the case may be, shall, except as herein-after mentioned, be final and conclusive, and, except as herein-after mentioned, there shall be no appeal against such conviction or order to the Court of General Sessions of the Peace, or to any other court. No appeal allowed in cases under section 91. Exception.

2. An appeal shall lie from a conviction for any offence for which a penalty or punishment is prescribed by the ninety-first section of this Act, in Ontario, Nova Scotia, New Brunswick, Manitoba, British Columbia, and Prince Edward Island, to the Judge of the County Court of the county in which the conviction is had, or to the judge of a superior court, sitting in Chambers without a jury, and in the Province of Quebec, to a Judge of the Superior Court of the judicial district in which the conviction is had, provided a notice in writing of such appeal is given to the prosecutor or complainant within five days after the date of the said conviction, subject to the following provisions. Appeal under section 91. In certain Provinces. In Quebec. Conditions.

3. The person convicted, in case he is in custody, shall either remain in custody until the hearing of such appeal before the said judge, or (where the penalty of imprisonment with or without hard labour is adjudged) shall enter into a recognizance with two sufficient sureties, in the sum of two hundred dollars each, before the convicting magistrate, conditioned personally to appear before the said judge, and to try such appeal and abide his judgment thereupon, and to pay such costs as he may order; and in case the appeal is against a conviction whereby only a penalty or sum of money is adjudged to be paid, the appellant may, (although the order directs imprisonment in default of payment,) instead of remaining in custody as aforesaid, give such recognizance as aforesaid, Offender to remain in custody or give security. Provision for recognizance or deposit in certain cases.

or may deposit with the magistrate convicting, the amount of the penalty and costs, and a further sum of twenty-five dollars to answer the respondent's costs of appeal:

Liberation of prisoner on recognizance or deposit.

4. Upon such recognizance being given or deposit made, the Magistrate shall liberate such person if in custody, and shall forthwith deliver or transmit by registered letter, post-paid, the depositions and papers in the case, with the recognizance or deposit as the case may be, to the clerk of the court of which the judge to whom the appeal is made is the judge or a member.

Procedure on appeal.

124. The practice and procedure upon such appeal, and the proceedings thereon shall, as nearly as possible, be as follows:—

Summons for cause to be shown.

1. Within ten days after the date of the conviction, but not afterwards, unless it is made to appear to the judge that the delay arose wholly from the default of the convicting magistrate, the judge, if he is of opinion from the evidence that the conviction may be erroneous, may grant a summons calling upon the County Crown Attorney, in any Province in which there is a County Crown Attorney, and the prosecutor, to show cause why the conviction should not be quashed:

Time limited.

2. Such summons shall not be granted in any case after the expiration of one month from the date of the conviction:

Proceedings on return of summons.

3. Upon the return of the summons the judge, upon hearing the parties, may either affirm or quash the conviction, or, if he thinks fit, may hear the evidence of such other witness or witnesses as may be produced before him, or the further evidence of any witness already examined, and may then make an order affirming or amending and affirming or quashing the conviction as he may think just, and may order the payment of costs, and may fix the amount thereof:

Effect of Judge's order.

4. Upon the production of the judge's order affirming or amending and affirming the conviction, the magistrate who has made the conviction shall, if the case is one in which a recognizance has not been given, issue his warrant for payment of such further sum for costs as the sum deposited with him is insufficient to pay; if the conviction is quashed the judge shall order a return of the money deposited, and shall have authority to order payment of such sum for costs, as he may tax and allow; and unless the sum is paid by the complainant, the magistrate shall issue his warrant to levy the costs:

Proceeding when imprisonment is awarded and conviction affirmed.

5. If by the conviction it is adjudged that the person convicted should be imprisoned and the conviction is affirmed, or amended and affirmed, or if the person convicted fails duly to prosecute the appeal, the judge shall issue his warrant for the commitment to the proper gaol or other place of imprisonment of the person convicted, and unless such person, within one week thereafter surrenders himself into the custody of the constable or other officer entrusted with the execution of the warrant, the condition of the recognizance shall be deemed broken and the recognizance forfeited, and upon proof of the default being made, by affidavit of the officer or otherwise, the judge may certify the default on the back of the recognizance, and shall thereupon transmit the recognizance to the Clerk of the Peace or to the proper officer in that behalf according to the practice of the court of which the judge is a member:

Escheat of recognizance and effect thereof.

6. Such recognizance shall be thereafter proceeded upon at the General Sessions of the Peace in the same manner as a recognizance taken upon an appeal to the sessions from a summary conviction may be proceeded upon; and the said certificate shall be deemed *primâ facie* evidence of the default of the defendant; but such proceedings shall not relieve the person convicted from undergoing the term of imprisonment to which he was sentenced, and the warrant of the judge issued in that behalf, or any new warrant issued by him, may be executed in any part of the Province in which the conviction was had, in the same manner and subject to the like conditions as a warrant of a justice for the apprehension of an offender:

Proceeding when money penalty only is imposed.

7. If by the conviction only a money penalty is imposed, the judge, upon being satisfied by affidavit or otherwise, that default has been made upon a recognizance given on an appeal in such a case, shall certify in like manner as is provided in sub-section five of this section, and similar proceedings shall thereupon be had in respect of such recognizance.

Term of imprisonment.

8. In case it is proved to the satisfaction of the judge that the person convicted had previously served a portion of his term, the judge shall only issue his warrant for the commitment of the defendant for the residue of the term of imprisonment to which he was sentenced; the judge may, if he thinks fit, transmit his said warrant to the

convicting magistrate in order that he may place the same in the hands of a constable for execution.

Execution of warrant.

9. Any warrant issued under this section may be directed in the same manner, and executed by the like officers, as a warrant of commitment upon a summary conviction under any Act of the Parliament of Canada heretofore passed.

Appeal to be heard on the merits.

10. In all cases of appeal to a judge from any conviction under this Act had before a magistrate, the Judge to whom such appeal is made shall hear and determine the charge or complaint on which such conviction has been had, upon the merits, notwithstanding any defect of form or otherwise in such conviction; and if the person charged or complained against is found to have been guilty, the conviction shall be affirmed and the judge shall amend the same if necessary.

Disposal of moneys deposited.

11. The magistrate shall retain any moneys deposited with him as aforesaid for the period of six months, unless judgment is sooner given, and upon the judgment in appeal being given, or upon the expiration of six months from the day of the date of the conviction, the magistrate shall pay over such moneys to the person or persons entitled thereto, in accordance with the judgment; and if the judgment in appeal is not delivered within six months from the day of the date of the conviction, the conviction shall stand, but the respondent shall not be entitled to any costs of appeal; and in case imprisonment was adjudged by the conviction, the convicting magistrate shall, or any other magistrate may, issue his warrant for the commitment of the person convicted for any portion of the term which he has not served, and no further proceedings shall be taken on the appeal.

Effect of delay of judgment.

No removal by *certiorari*, &c.

12. No conviction affirmed or amended and affirmed on appeal by the judge shall be quashed for want of form, or be removed by *certiorari* into any of Her Majesty's superior courts of record; and no warrant or commitment shall be held void by reason of any defect therein, provided it is therein alleged that the party has been convicted and there is a good and valid conviction to sustain the same.

Powers of the Judge.

13. In every process and in all proceedings before a judge under this section, the judge shall, with reference to the matters herein contained, have all the powers which belong to or might be exercised by him in the court of which he is a member; and all necessary process may be issued from the office of the clerk of the court.

Forfeiture of license on third conviction.

125. When not otherwise provided, a third conviction of a licensed person under this Act for any violation or contravention of the provisions of this Act shall *ipso facto* operate as a forfeiture of his license, and disqualify the person convicted from obtaining a license for three years thereafter.

Penalties how disposed of.

126. The penalties in money under this Act or any portion of them which may be recovered, shall be paid to the convicting magistrate, and two-thirds thereof shall by him, in case an Inspector is the prosecutor or complainant, be paid to the Chief Inspector, and in case such Inspector is not the prosecutor or complainant, then two-thirds thereof shall be paid to the treasurer of the municipality wherein the offence was committed, and the remaining one-third shall be paid to the prosecutor or complainant.

Evidence, &c.

Inspector's certificate to be evidence.

127. In any prosecution or proceeding under this Act, in which proof is required respecting any license, a certificate purporting to be under the hand of the Chief Inspector of the district shall be *primâ facie* proof of the existence of a license, and of the identity of the person to whom the same was granted or transferred; and the production of such certificate shall be sufficient *primâ facie* evidence of the facts therein stated and of the authority of the Chief Inspector, without any proof of his appointment or signature.

Resolution of Board, how authenticated.

As to copies thereof.

128. Any resolution of a Board passed under the ninth or twenty-sixth sections of this Act, shall be sufficiently authenticated by being signed by the Chairman of the Board which passed the same; and a copy of any such resolution written or printed, and certified to be a true copy by any member of such Board, shall be deemed authentic, and be received in evidence in any court of justice without proof of any such signature, unless it is specially pleaded or alleged that the signature to any such original resolution has been forged.

What shall be deemed a place where liquor is sold.

129. Any house, shop, room or other place in which it is proved that there exists a bar, counter, beer pumps, kegs, jars, decanters, tumblers, glasses, or any other appliances or preparations similar to those usually found in taverns and shops where liquors are accustomed to be sold or trafficked in, shall be deemed to be a place in which liquors are kept or had for the purpose of being sold, bartered or traded in, in contravention of the eighty-third section of this Act, unless the contrary is proved by the defendant in any prosecution; and the occupant of such house, shop, room or other place shall be taken conclusively to be the person who has, or keeps therein, such liquors for sale, barter or traffic therein.

What shall be evidence of sale or disposal.

130. In proving the sale or disposal, gratuitous or otherwise, or consumption of liquor, for the purpose of any proceeding relative to any offence under this Act, it shall not be necessary to show that any money actually passed, or any liquor was actually consumed, if the magistrate hearing the case is satisfied that a transaction in the nature of a sale or other disposal actually took place, or that any consumption of liquor was about to take place; and proof of consumption or intended consumption of liquor on premises under license, or in respect to which a license is required under this Act, by some person other than the occupier of the premises, shall be evidence that such liquor was sold to the person consuming, or being about to consume, or carrying away the same, as against the holder of the license or the occupant of the said premises.

Evidence of sale during prohibited hours.

131. In cities, towns and incorporated villages, in all cases where any person or persons other than members of the family or household of the keeper of a licensed hotel or saloon, is or are found frequenting or present, or where gas or other light is seen burning in the bar-room of such hotel or saloon where liquor is trafficked in, at any time during which the sale or other disposal of liquors is prohibited by any provision of this Act, any such fact, when proved, shall be deemed and taken as *primâ facie* evidence that a sale or other disposal of liquors by the keeper of such licensed place has taken place contrary to the provisions of the sixty-sixth section of this Act; and such keeper may thereupon be convicted of an offence against the said section, and shall, upon conviction, be subject to the punishment prescribed in and by the eighty-eighth section of this Act.

Responsibility of occupant of place where such sale is made.

132. The occupant of any house, shop, room or other place in which any sale, barter or traffic of liquors, or any matter, act or thing in contravention of any of the provisions of this Act, has taken place, shall be personally liable to the penalty and punishment prescribed in the eighty-eighth and eighty-ninth sections of this Act, as the case may be, notwithstanding such sale, barter or traffic be made by some other person, who cannot be proved to have so acted under or by the directions of such occupant; and proof of the fact of such sale, barter or traffic, or other act, matter or thing, by any person in the employ of such occupant, or who is suffered to be or remain in or upon the premises of such occupant, or to act in any way for such occupant, shall be conclusive evidence that such sale, barter or traffic, or other act, matter or thing, took place with the authority and by the direction of such occupant.

What particulars need not be deposed to.

133. In any prosecution under this Act for the sale or other disposal of liquor without the license required by law, it shall not be necessary that any witness should depose directly to the precise description of the liquor sold or bartered or the precise consideration therefor, or to the fact of the sale or other disposal having taken place with his participation or to his own personal and certain knowledge, but the justices or magistrate trying the case, so soon as it appears to them or him that the circumstances in evidence sufficiently establish the infraction of law complained of, shall put the defendant on his defence, and in default of his rebuttal of such evidence, shall convict him accordingly.

Proof of defendant's license to be given.

134. In any prosecution under this Act, whenever it appears that the defendant has done any act or been guilty of any omission in respect of which, were he not duly licensed, he would be liable to some penalty under this Act, it shall be incumbent upon the defendant to prove that he is duly licensed, and that he did the said act lawfully.

135. The fact of any person, not being a licensed person, keeping up any sign, writing, painting or other mark, in or near to his house or premises, or having such house fitted up with a bar or other place containing bottles or casks displayed so as to induce a reasonable belief that such house or premises is or are licensed for the sale of any liquor, or that liquor is sold or served therein, or that there is on such premises more liquor than is reasonably required for the persons residing therein, shall be deemed *primâ facie* evidence of the unlawful sale of liquor by such person. What shall be deemed evidence of unlawful sale.

136. The production of a license which on its face purports to be duly issued, and which were it duly issued, would be a lawful authority to the defendant for such act or omission, shall be *primâ facie* evidence that the defendant is so authorised; and in all cases the signature to and upon any instrument purporting to be a valid license shall *primâ facie* be taken to be genuine. Effect of production of license.

Witnesses.

137. In any prosecution under this Act the magistrate trying the case may summon any person represented to him as a material witness in relation thereto; and if such person refuses or neglects to attend pursuant to such summons, the magistrate may issue his warrant for the arrest of such person; and he shall thereupon be brought before the magistrate, and if he refuses to be sworn or to affirm, or to answer any question touching the case, he may be committed to the common gaol of the county or place or to a lock-up, there to remain until he consents to be sworn or to affirm and to answer. Summoning and attendance of witnesses.

138. Any person summoned as a party to, or as a witness in any proceeding under this Act, may, by the summons, be required to produce, at the time and place appointed for his attendance, all books and papers, accounts, deeds and other documents in his possession, custody or control, relating to any matter connected with the said proceeding, saving all just exceptions to such production; and shall be liable to the same penalties for non-production of such books, papers or documents, as he would incur by refusal or neglect to attend, pursuant to such summons, or to be sworn or to answer any question touching the case. Party or witness may be required to produce books, &c. Penalty for non-production.

139. Every person, other than the defendant, summoned or examined as a witness in any prosecution brought under this Act, is bound to answer all questions put to him, and which are pertinent to the issue, notwithstanding that his answers may disclose facts tending to subject him to any penalty imposed by this Act; but such evidence shall not be used against him in any prosecution. All questions pertinent to the issue must be answered.

140. On the trial of any information or complaint under the provisions of this Act the person charged, or husband of such person, shall be competent and compellable to give evidence as a witness in the said matter. Certain parties may be examined as witnesses.

Municipalities under the Temperance Act.

141. Nothing in the foregoing provisions of this Act shall be construed to affect or impair any of the provisions of "*The Canada Temperance Act*, 1878;" and no hotel, saloon or shop license shall be issued or take effect within any county, city, town, incorporated village or township in Canada within which the second part of the said Act has been brought into force as by the said Act provided, or within which any byelaw for prohibiting the sale of liquor under "*The Temperance Act of* 1864" or any other Act is in force. Provisions of 41 Vict. c. 16. not impaired.

142. A Board of Commissioners may, notwithstanding that such Act or any such byelaw affects the whole of any county, be nominated therefor; and the said Board and the Inspectors shall have, discharge and exercise all such powers and duties respectively for preventing the sale or disposal of, or traffic in liquor contrary to the said Acts or this Act as they respectively have or should exercise or perform under this Act. But Commissioners and Inspectors may be appointed under this Act.

Their duties as to the Temperance Act.

143. The Board and the Inspectors shall exercise and discharge all their respective powers and duties for the enforcement of the provisions of "*The Canada Temperance Act*, 1878," and "*The Temperance Act of* 1864," as well as of this Act, so far as the same apply, within the limits of any county, city, incorporated village or township or parish, in which the first mentioned Act or any byelaw under the secondly mentioned Act is in force.

As to wholesale license.

144. A wholesale license to be obtained under and subject to the provisions of this Act, shall be necessary, in order to authorize or make lawful any sale of liquor in the quantities allowed under the provisions of "*The Canada Temperance Act*, 1878."

Sale without license a contravention of this Act, notwithstanding Temperance Act.

145. The sale of liquor without license in any municipality, where "*The Canada Temperance Act*, 1878," is in force, shall nevertheless be a contravention of sections eighty-three and eighty-four of this Act, and the several provisions of this Act shall have full force and effect in every such municipality, except in so far as such provisions relate to granting licenses for the sale of liquor by retail.

Certain Provincial Acts to be valid until 1st May 1884.

146. Until the first day of May in the year one thousand eight hundred and eighty-four all the laws of Provincial Legislatures of the Dominion passed for regulating or restraining the traffic in liquors shall be and they are hereby made as valid and effective to all intents and purposes as if enacted by the Parliament of Canada.

When this Act shall come into force.

147. Subject to the provisions in the next preceding section contained, this Act shall come into force on the first day of January, in the year one thousand eight hundred and eighty-four, but the licenses to be issued thereunder shall not be operative until the first day of May following.

SCHEDULES.

THE FIRST SCHEDULE.

Hotel (or Saloon) License.

Whereas the Board of License Commissioners for the District have, by their certificate dated the day of , authorized the issue to of of an Hotel (*or* Saloon) License, for the house to be known as situate ; and whereas the said hath entered into the bond, with sureties, required by "*The Liquor License Act*, 1883," and paid the sum of five dollars as the fee on such license.

Now I do hereby declare that the said is licensed to sell and dispose of liquors in quantities not exceeding one quart, which may be drunk on such premises between the hours of six of the clock in the morning and seven of the clock in the evening, on Saturday; between six of the clock in the morning and eleven of the clock at night, on other week days (except on days on which polling may be had respecting the polling sub-division in which the said premises are situate, at a Parliamentary Election, or at an election for the House of Assembly, or a Municipal Election); and between 1 p.m. and 3 p.m. and 5 p.m. and 7 p.m., on Sunday, to guests *bonâ fide* residing or boarding in the said premises, to be drunk only at meals at the table.

And this license shall commence upon the day of and continue until midnight on the day of next ensuing.

Given under my hand this day of one thousand eight hundred and .

Minister of Inland Revenue.

Chief Inspector.

Shop License.

Whereas the Board of License Commissioners for the District of have, by their certificate dated the day of , authorized the issue to of of a Shop License for the house to be known as situate ; and whereas the said hath entered into the bond, with sureties, required by "*The Liquor License Act*, 1883," and paid the sum of five dollars as the fee on such license.

Now I do hereby declare that the said is licensed to sell and dispose of liquors, not to be drunk in or upon the premises for which the license is granted, in quantities not less than one imperial pint, at any one time to any one person, between the hours of six of the clock in the morning and seven of the clock in the evening on Saturday; between six of the clock in the morning and eleven of the clock at night, on other week days, except on days on which polling may be had, respecting the polling sub-division in which the said premises are situate, at a Parliamentary Election, or at an election for the House of Assembly, or a Municipal election.

This license shall commence on the day of and continue until midnight on the day of next ensuing.

Given under my hand this day of one thousand eight hundred and .

Minister of Inland Revenue.

Chief Inspector.

VESSEL LICENSE.

Whereas the Board of License Commissioners for the District have, by their certificate dated the day of , authorized the issue to , Master of the called the , of a Vessel License; and whereas the said hath paid the sum of five dollars as the fee on such license.

Now I do hereby declare that the said is licensed to sell and dispose of liquor during the passage of the said vessel between and to any passenger at the regular meals served on board the said vessel.

And this license shall commence at noon on the day of and continue until midnight on the day of next ensuing.

Given under my hand this day of one thousand eight hundred and .

Minister of Inland Revenue.

Chief Inspector.

WHOLESALE LICENSE.

Whereas the Board of License Commissioners for the District, have, by their certificate dated the day of , authorized the issue to of a Wholesale License for the house or premises to be known as , situate ; and whereas the said hath paid the sum of five dollars as the fee on such license.

Now I do hereby declare that the said is licensed to sell liquor, not to be consumed in or upon the premises to which this license applies, in quantities not less than two gallons in each cask or vessel at any one time, or, if bottled, in quantities not less than one dozen reputed quart bottles.

And this license shall commence at noon on the of and continue until midnight, on the day of next ensuing.

Given under my hand this day of one thousand eight hundred and .

Minister of Inland Revenue.

Chief Inspector.

THE SECOND SCHEDULE.

To the Board of License Commissioners of the License District of .

We, the undersigned Electors of polling sub-division number of the wherein are situate the premises in respect of which *X. Y.*, is applying for a license for the ensuing license year, do hereby certify that *X. Y.*, the applicant for the said license, is a fit and proper person to be licensed to sell liquors and to keep a ; and that the premises in which the said *X. Y.*, proposes to carry on the business for which he seeks a license, are in our opinion suitable therefore, and that the same are situate in a place where the carrying on of the said business will not be an annoyance to the public generally.

And we have hereunto appended our names, and the distances approximately, at which we respectively reside, or own property, from the said premises for which the license is sought.

Signatures,	Distance of premises respectively from premises sought to be licensed.

CERTIFICATE OF THE BOARD OF LICENSE COMMISSIONERS TO BE GRANTED TO THE APPLICANT FOR A LICENSE.

We, the undersigned, being the License Commissioners (*or* the majority of the Board of License Commissioners) for the License District of , certify that *X.Y.* has complied with the requirements of the law, and with the regulations and requirements of the Board, and in the opinion of the undersigned is entitled to a license for the house to be known as situate .

Given under our hands this day of one thousand eight hundred and .

(*Signatures.*)

THE THIRD SCHEDULE.

FORM OF BOND BY APPLICANT FOR A HOTEL, SALOON, OR SHOP LICENSE.

Know all men by these presents, that we, *T.U.*, of , *V.W.*, of , and *X.Y.*, of , are held and firmly bound unto Her Majesty Queen Victoria, Her Heirs and Successors, in the sum of eight hundred dollars of good and lawful money of Canada, that is to say, the said *T.U.*, in the sum of five hundred dollars, the said *V.W.*, in the sum of one hundred and fifty dollars, and the said *X.Y.*, in the sum of one hundred and fifty dollars of like good and lawful money, for payment of which well and truly to be made, we bind ourselves and each of us, our heirs, executors, and administrators firmly by these presents.

Whereas the above bounden *T.U.* is about to obtain a license to keep an hotel (*or* saloon, *or* shop for the sale of liquor, *as the case may be*), in the of ; the condition of this obligation is such, that if the said *T.U.* pays all fines and penalties which he may be condemned to pay for any offence against any statute or other provision having the force of law, now or hereafter to be in force, relative to any hotel (*or* saloon, *or* shop for the sale of liquor, *as the case may be*), and does, performs, and observes all the requirements thereof, and conforms to all rules and regulations that are or may be established by competent authority in such behalf; then this obligation shall be null and void, otherwise it shall remain in full force, virtue, and effect.

In witness whereof, we have signed these presents with our hands, and sealed them with our seals, this day of , A.D. one thousand eight hundred and .

T.U. [L.S.]
V.W. [L.S.]
X.Y. [L.S.]

Signed, sealed, and delivered in the presence of us

THE FOURTH SCHEDULE.

FORMS FOR DESCRIBING OFFENCES.

1. *Neglecting to keep License exposed.*

"That *X.Y.*, having a license for sale by wholesale [*or* a shop, *or* an hotel, *or* a "saloon, *or* a vessel license], on at , unlawfully and wilfully (*or* "negligently) omitted to expose the said license in his warehouse [*or* shop, *or* in the "bar-room of his hotel or saloon, *or* in the saloon, *or* cabin of his vessel," *as the case may be*].

2. *Neglecting to exhibit Notice of License.*

"That *X.Y.*, being the keeper of an hotel [*or* saloon, *or* shop] in respect of which "a license has duly issued and is in force, on at , unlawfully failed "to exhibit over the door of such hotel (*or* saloon, *or* shop), in large letters the words, "'Licensed to sell spirituous or fermented liquors,' as required by '*The Liquor License* "*Act*, 1883.'"

3. *Sale without License.*

"That *X.Y.*, on the day in the year of our Lord one thousand eight hundred and , at , in the , of , unlawfully did sell liquor without the license therefor by law required."

4. *Keeping Liquor without License.*

"That *X.Y.*, on at unlawfully did keep liquor for the purpose of sale, barter and traffic therein, without the license therefor by law required."

5. *Sale of Liquor on Licensed Premises during prohibited Hours.*

"That *X.Y.* on at in his premises [*or* on, *or* out of, *or* from his premises] being a place where liquor may be sold, unlawfully did sell [*or* dispose of] liquor during the time prohibited by '*The Liquor License Act*, 1883,' for the sale of the same, without any requisition for medical purposes as required by the said Act being produced by the vendee or his agent."

6. *Allowing Liquor to be drunk on Licensed Premises during prohibited Hours.*

"That *X.Y.* on at in his premises, being a place where liquor may be [*or* is] sold, by retail [*or* wholesale] unlawfully did allow [*or* permit] liquor to be drunk in such place during the time prohibited by '*The Liquor License Act*, 1883," for the sale of the same, by a person other than the licensee, or some member of his family, or a lodger in his house."

7. *Sale of less than One Pint under Shop License.*

"That *X.Y.*, having a shop license, on at unlawfully did sell liquor in less quantity than one pint."

8. *Sale under Wholesale License in less than Wholesale Quantities.*

"That *X.Y.*, having a license to sell by wholesale, on at unlawfully did sell liquor in less quantity than two gallons [*or*, than one dozen reputed quart bottles]."

9. *Allowing Liquor to be consumed in Shop.*

"That *X.Y.*, having a shop license, on at unlawfully did allow liquor sold by him (*or* in his possession), and for the sale of which a license is required, to be consumed within his shop [*or* within the building of which his shop forms part, *or* within a building which communicates by an entrance with his shop], by a purchaser of such liquor [*or*, by a person not usually resident within the building of which such shop forms a part]."

10. *Allowing Liquor to be consumed on Premises under Wholesale License.*

"That *X.Y.*, having a license to sell liquor by wholesale, on at unlawfully did allow liquor sold by him [*or* in his possession for sale] and for the sale of which such license is required, to be consumed within his warehouse [*or* shop, *or* within a building which forms part of (*or* is appurtenant to, *or* which communicates by an entrance with) a warehouse *or* shop, *or* premises wherein an article to be sold (*or* disposed of) under such license, is sold by retail (*or* wherein there is kept a broken package of an article for sale under such license)]."

11. *Illegal Sale by Druggists.*

"That *X.Y.*, being a chemist [*or* druggist], on at did unlawfully sell liquor for other than strictly medicinal purposes [*or* sell liquor in packages of more than six ounces at one time without a certificate from any registered medical practitioner, *or* sell liquor without recording the same], as required by '*The Liquor License Act*, 1883.'"

12. *Illegal Sale under Vessel License.*

"That *X.Y.* being authorized to sell liquor on board a vessel called the on at unlawfully did sell [*or* dispose of] liquor to be consumed by a person other than a passenger [*or* otherwise than as permitted by '*The Liquor License Act*, 1883']."

13. *Keeping a Disorderly House.*

" That *X.Y.* being the keeper of an hotel [*or* saloon, *or* house of public entertainment], situate in the City [*or* Town, *or* Village, *or* Township], of in the County of on in his said hotel [*or* saloon *or* house] unlawfully did sanction [*or* allow] gambling, [*or* riotous, *or* disorderly conduct] in his said hotel [*or* saloon *or* house]."

14. *Harbouring Constable on Duty.*

" That *X.Y.* being licensed to sell liquor, at on unlawfully and knowingly did harbour [*or* entertain *or* suffer to abide and remain on his premises] *O.P.*, a constable belonging to a police force, during a part of the time appointed for his being on duty, and not for the purpose of quelling a disturbance or restoring order, or executing his duty."

15. *Compromising or compounding a Prosecution.*

" That *X.Y.*, having violated a provision of '*The Liquor License Act*, 1883," on at unlawfully did compromise [*or* compound, *or* settle, *or* offer, *or* attempt to compromise, compound *or* settle], the offence with *A.B.* with the view of preventing any complaint being made in respect thereof [*or* with the view of getting rid of *or* of stopping, *or* of having the complaint made in respect thereof dismissed, *as the case may be*].

16. *Being concerned in compromising a Prosecution.*

" That *X.Y.*, on at unlawfully was concerned in [*or* a party to] a compromise [*or* a composition, *or* a settlement] of an offence committed by *O.P.*, against a provision of '*The Liquor License Act*, 1883.' "

17. *Tampering with a Witness.*

" That *X.Y.*, on a certain prosecution under '*The Liquor License Act*, 1883," on at unlawfully did tamper with *O.P.*, a witness in such prosecution before [*or* after] he was summoned [*or* appeared] as such witness on a trial [*or* proceeding] under the said Act [*or* unlawfully did induce, *or* attempt to induce *O.P.*, a witness in such prosecution, to absent himself, *or* to swear falsely]."

18. *Refusing to admit Policeman.*

" That *X.Y.*, on at being in (*or* having charge of) the premises of *O.P.*, being a place where liquor is sold [*or* reputed to be sold], unlawfully did refuse [*or* fail] to admit [*or* did obstruct *or* attempt to obstruct] *E.F.*, an officer demanding to enter in the execution of his duty [*or* did obstruct *or* attempt to obstruct *E.F.*, an officer making searches in the said premises, and in the premises connected with such place]."

19. *Officer refusing to prosecute.*

" That *X.Y.*, being a police officer [*or* constable, *or* Inspector of Licenses] in and for the Township of , in the County of , knowing that *O.P.* had, on at , committed an offence against a provision of '*The Liquor Licence Act*, 1883,' unlawfully and wilfully did and still does neglect to prosecute the said *O.P.*, for his said offence."

20. *Refusing or failing to supply Lodging, Meals, or Accommodation to Travellers.*

" That *F.X.*, being the keeper of an hotel, in respect of which an hotel license has duly issued, and is in force, on at unlawfully failed or refused personally (*or* through some one acting on his behalf), to supply lodging, meals, or accommodation to a traveller as required by "'*The Liquor License Act*, 1883.' "

21. *Selling Liquor to any one under Sixteen Years of Age.*

" That *X.Y.*, on unlawfully did sanction (*or* allow to be supplied, in his licensed premises, by purchase (*or* otherwise) liquor to a person apparently under the age of sixteen years, not being a resident on the premises or a *bonâ fide* guest, lodger, or traveller."

22. *Allowing Internal Communication between Licensed and Unlicensed Premises.*

"That *X.Y.*, on unlawfully did sanction (*or* allow) to be made or used, an internal communication between his licensed premises and unlicensed premises which are used for public entertainments and resort (*or* as a refreshment house)."

23. *Selling Adulterated Liquor.*

"That *X.Y.*, on unlawfully did sell (*or* offer for sale) liquor with which were mixed ingredients or materials injurious to the health of persons drinking the same."

24. *Obtaining Liquor by False Representations.*

"That *X.Y.*, on unlawfully did, by falsely representing himself to be a lodger, buy or obtain (*or* attempt to buy or obtain) at liquor during the period during which such premises are required to be closed in pursuance of '*The Liquor License Act*, 1883.'"

GENERAL FORM OF INFORMATION.

CANADA. } THE INFORMATION of *A.B.* of the of
of , } in the of , License Inspector,
To Wit: } laid before me, *C.D.*, Police Magistrate (*or as the case may be*) in and for the city of [*or* one of Her Majesty's Justices of the Peace, in and for the of], the day of , in the year of our Lord one thousand eight hundred and .

The said informant says he is informed and believes that *X.Y.*, on the day of , in the year of our Lord one thousand eight hundred and , at the , in the of , unlawfully did sell liquor without the license therefor by law required [*or as the case may be*].

A.B.

Laid and signed before me the day and year, and at the place first above mentioned.
C.D.,
P.M. or *J.P.*

THE FIFTH SCHEDULE.

FORM OF INFORMATION FOR SECOND, THIRD, OR FOURTH OFFENCE.

CANADA. } THE INFORMATION of *A.B.*, of, &c., License Inspector, laid
of , } before me, *C.D.*, Police Magistrate in and for the
To Wit: } of [*or* one of Her Majesty's Justices of the Peace in and for the of], the day of , in the year of our Lord one thousand eight hundred and .

The said Informant says he is informed and believes that *X.Y.*, on , at [*describe last offence*].

And further that the said *X.Y.* was previously, to wit: on the day of , A.D. 18 , at the City of , before *C.D.*, Police Magistrate in and for the City of [*or* at the of , in the of , before *E.F.* and *G.H.*, two of Her Majesty's Justices of the Peace for the of], duly convicted of having on the day of 18 , at the of , in the of , unlawfully sold liquor without the license therefor required by law [*or as the case may be*].

And further that the said *X. Y.* was previously, to wit: on the day of , A.D. 18 , at the of in the of , before, &c. [*as in preceding paragraph*] again duly convicted of having, on the day of , A.D. 18 , at the of , in the of having a shop license, unlawfully allowed liquor to be consumed, within a building which communicates by an entrance with his shop, by a person not usually resident within the building of which such shop forms a part [*or as the case may be*].

And further that the said *X. Y.* was previously, to wit: on the day of , A.D. 18 , at the of , in the of , before, &c. (*see above*), again duly convicted of having, on the day of , A.D. 18 , at the of , in the of (being in charge of the premises of *O.P.*, a place where liquor was reputed to be sold), unlawfully failed to admit *E.F.*, an officer demanding to enter in the execution of his duty (*or as the case may be*).

And the Informant says the offence herein-before firstly charged against the said *X. Y.*, is his *fourth* offence against "*The Liquor License Act*, 1883."

A.B.

Laid and signed before me the day and year, and at the place first above mentioned.

C.D.,
J.P.

THE SIXTH SCHEDULE.

Summons to Witness.

Canada.
of ,
To Wit:

To *J.K.*, of the of , in the of

Whereas, information has been laid before me, *C.D.*, one of Her Majesty's Justices of the Peace in and for the of , [*or* Police Magistrate for the City of ,] that *X. Y.*, being a druggist, on the of , A.D. 188 , at the of , in the of , unlawfully did sell liquor for other than strictly medicinal purposes (*or as the case may be*), and it has been made to appear to me that you are likely to give material evidence on behalf of the prosecution in this matter.

These are to require you, under pain of imprisonment in the Common Gaol, personally to be and appear on , the day of A.D. 188 , at ten o'clock in the forenoon, at the , in the of , before me or such Justice or Justices of the Peace as may then be there, to testify what you shall know in the premises [and also to bring with you and there and then to produce all and every invoices, day books, cash books, or ledgers and receipts, promissory notes or other security relating to the purchase or sale of liquor by the said *X. Y.*, and all other books and papers, accounts, deeds and other documents in your possession, custody or control, relating to any matter connected with the said prosecution.]

Given under my hand and seal this day of , A.D. 188 , at the of , in the of

C.D.
J.P. (L.S.)

THE SEVENTH SCHEDULE.

Form of Conviction for First Offence.

Canada, } Be it Remembered that on the day of , in the year
of , } of our Lord one thousand eight hundred and at the
To Wit: } of in the of , *X. Y.* is convicted before me, *C.D.*, Police Magistrate in and for the City of (*or* before us, *E.F.* and *G.H.*, two of Her Majesty's Justices of the Peace, in and for the), for that he, the said *X. Y.*, on the day of , in the year of our Lord one thousand eight hundred and , at the of , in the , in his premises, being a place where liquor may be sold, unlawfully did sell liquor during the time prohibited by "*The Liquor License Act*, 1883," for the sale of the same, without any requisition for medicinal purposes as required by the said Act, being produced by the vendee or his agent (*or as the case may be*), *A.B.* being the informant, and I (*or* we) adjudge the said *X. Y.*, for his said offence to forfeit and pay the sum of *twenty* dollars, to be paid and applied according to law, and also to pay to the said *A.B.* the sum of *six* dollars for his costs in this behalf, and if the said several sums be not paid forthwith, then* I (*or* we) order the said sums to be levied by distress and sale of the goods and chattels of the said *X. Y.*, and in default of sufficient distress in that behalf* [*or where the issuing of a distress warrant would be ruinous to the defendant and his family, or it appears that he has no goods whereon to levy a distress, then instead of the words between the asterisks*** *say* "inasmuch as it has now been made to appear to me (*or* us) that the issuing of a warrant of distress in this behalf would be ruinous to the said *X. Y.* and his family," *or* "that the said *X. Y.* has no goods or chattels whereon to levy the said several sums by distress," I (*or* we)] adjudge the said *X. Y.* to be imprisoned in the Common Gaol for the of , at , in the said , and there to be kept for the space of *fifteen days*, unless the said sums and the costs and charges of conveying the said *X. Y.* to the said Common Gaol, shall be sooner paid.

Given under my hand and seal [*or* our hands and seals] the day and year first above mentioned, at the of in the aforesaid.

C.D., (L.S.)
Police Magistrate,
or E.F.,
J.P., (L.S.)
G.H.,
J.P. (L.S.)

Form of Conviction for a Third Offence.

Canada. } Be it Remembered that on the day of in the year of our
of , } Lord one thousand eight hundred and , in the
To Wit: } of in the *X. Y.* is convicted before the undersigned *C.D.*, Police Magistrate in and for the City of , in the said [*or* or *C.D.* and *E.F.*, two of Her Majesty's Justices of the Peace in and for the said], for that he, the said *X. Y.*, on the day of , in the year of our Lord one thousand eight hundred and at the City of [*or* of] in the said (*as the case may be*) having violated a provision of "*The Liquor License Act*, 1883," unlawfully did attempt to settle the offence with *A.B.*, with the view of having the complaint made in respect thereof dismissed. And it appearing to me [*or* us] that the said *X. Y.* was previously to wit: on the day of A.D. 18 , at the of , before, &c., duly convicted of having on the day A.D. 18 , at the of unlawfully sold liquor without the license therefor by law required. And it also appearing to me [*or* us] that the said *X. Y.* was previously, to wit: on the day of A.D. 18 at the of , before, &c., (*see above*) again duly convicted of having, on the day of , A.D. 18 , at the of (being the keeper of a saloon, situate in the said of), unlawfully allowed gambling in his said saloon (*or as the case may be*).

I [*or* we], adjudged the offence of the said *X.Y.* herein-before firstly mentioned, to be his third offence against "*The Liquor License Act*, 1883," (*A.B.* being the informant) and I [*or* we], adjudged the said *X.Y.* for his said third offence to be imprisoned in the Common Gaol of the said of at , in the said of , there to be kept at hard labour for the space of three calendar months (*or as the case may be.*)

Given under my hand and seal [*or* our hands and seals] the day and year first above mentioned, at , in the of

C.D. (L.S.)
or C.D. (L.S.)
E.F. (L.S.)

THE EIGHTH SCHEDULE.

WARRANT OF COMMITMENT FOR FIRST OFFENCE WHERE A PENALTY IS IMPOSED.

CANADA. } To ALL or any of the Constables and other Peace Officers in the
of , } of , and to the Keeper of the Common
To Wit: } Gaol of the said at , in the
of

Whereas, *X.Y.*, late of the of , in the said was on this day convicted before the undersigned, *C.D.*, Police Magistrate in and for the City of , [*or C.D.* and *E.F.*, two of Her Majesty's Justices of the Peace in and for the of , *or* of , *as the case may be*], for that he, the said *X.Y.*, on at unlawfully did sell liquor without the license therefor by law required (*state offence as in the conviction*), (*A.B.* being the informant), and it was thereby adjudged that the said *X.Y.*, for his said offence, should forfeit and pay the sum of (*as in conviction*), and should pay to the said *A.B.* the sum of for his costs in that behalf;

And it was thereby further adjudged that if the said several sums should not be paid forthwith, the said *X.Y.* should be imprisoned in the Common Gaol of the said at , in the said of , there to be kept at hard labour for the space of , unless the said several sums and the costs and charges of conveying the said *X.Y.* to the said Common Gaol should be sooner paid;

And whereas the said *X.Y.* has not paid the said several sums, or any part thereof, although the time for payment thereof has elapsed.

[*If a distress warrant issued and was returned no goods, or not sufficient goods, say*
"And whereas, afterwards on the day of A.D. 18 , I the said Police Magistrate (*or we*, the said Justices) issued a warrant to the said Constables or Peace Officers, or any of them, to levy the said several sums of and by distress and sale of the goods and chattels of the said *X.Y.*;

"And whereas it appears to me (*or* us) as well, by the return of the said warrant of distress by the Constables who had the execution of the same as otherwise, that the said Constable has made diligent search for the goods and chattels of the said *X.Y.*, but that no sufficient distress whereon to levy the said sums could be found;"]

[*Or where the issuing of a distress warrant would be ruinous to the defendant and his family, or if it appears that he has no goods whereon to levy a distress, then instead of the foregoing recitals of the issue and return of the distress warrant, &c., say:*

"And whereas it has been made to appear to me (*or* us), that the issuing of a warrant by distress in this behalf would be ruinous to the said *X.Y.* and his family," *or* "that the said *X.Y.* has no goods or chattels whereon to levy the said sums by distress" *as the case may be*];

These are therefore to command you, the said Constables or Peace Officers, or any one of you, to take the said *X.Y.*, and him safely convey to the Common Gaol aforesaid at , in the of , and there deliver him to the said Keeper thereof, together with this precept.

And I (*or* we) do hereby command you the said Keeper of the said Common Gaol to receive the said *X. Y.* into your custody in the said Common Gaol, there to imprison him and keep him for the space of , unless the said several sums and all the costs and charges of the said distress, amounting to the sum of , and of the commitment and conveying of the said *X. Y.* to the said Common Gaol, amounting to the further sum of shall be sooner paid unto you, the said keeper, and for so doing this shall be your sufficient warrant.

Given under my hand and seal (*or* our hands and seals) this day of A.D. 18 , at , in the said of .

C.D. (L.S.)
or C.D. (L.S.)
E.F. (L.S.)

WARRANT OF COMMITMENT FOR SECOND (*or* THIRD) OFFENCE, WHERE PUNISHMENT IS BY IMPRISONMENT ONLY.

CANADA, } To ALL or any of the Constables and other Peace Officers in
of , } the of , and to the Keeper of the
To Wit: } Common Gaol of the said at in the of .

Whereas *X. Y.*, late of the of in the said was on this day convicted before the undersigned *C.D.*, &c. (*or C.D.* and *E.F.*, &c., *as in preceding form*) for that he, the said *X. Y.*, on at (*state offence with previous convictions as set forth in the conviction for the second or third offence, or as the case may be, and then proceed thus*): "and it was thereby adjudged that the offence of the said *X. Y.*, herein-before firstly mentioned, was his second (*or* third) offence against "*The Liquor License Act*, 1883," (*A.B.* being the informant). And it was thereby further adjudged that the said *X. Y.*, for his said second (*or* third) offence, should be imprisoned in the Common Gaol of the said of , at , in the said of , and there be kept at hard labour for the space of *three* calendar months.

These are therefore to command you, the said Constables, or any one of you, to take the said *X. Y.*, and him safely convey to the said Common Gaol at aforesaid, and there deliver him to the Keeper thereof, with this precept. And I (*or* we) do hereby command you, the said Keeper of the said Common Gaol, to receive the said *X. Y.* into your custody in the said Common Gaol, there to imprison him and to keep him at hard labour for the space of three calendar months.

Given under my hand and seal (*or* our hands and seals), this day of A.D. 18 , at , in the said of .

C.D. (L.S.)
or C.D. (L.S.)
E.F. (L.S.)

THE NINTH SCHEDULE.

FORM OF DECLARATION OF FORFEITURE AND OF ORDER TO DESTROY LIQUOR SEIZED.

If in conviction, after adjudging penalty or imprisonment, proceed thus:

"And I [*or we*] declare the said liquor and vessels in which the same is kept, to wit: two barrels containing beer, three jars containing whiskey, two bottles containing gin, four kegs containing lager-beer, and five bottles containing native wine, [*or as the case may be,*] to be forfeited to Her Majesty, and I [*or we*] do hereby order and direct that T.D., License Inspector of the of , [*or J.P.W.* License Inspector of the of the of ,] do forthwith destroy the said liquor and vessels."

Given under my hand and seal the day and year first above mentioned, at, &c.

If by separate or subsequent Order :

CANADA. } We, *E.F.* and *G.H.*, two of Her Majesty's Justices of the Peace
of , } for the of [*or C.D.*, Police
To Wit : } Magistrate, of the City of ,] having on the
day of , one thousand eight hundred and , at the
of in the said County, duly convicted *X.Y.* of having unlawfully kept liquor for sale without license, do hereby declare the said liquor and vessels in which the same is kept, to wit :—[*describe the same as above*], to be forfeited to Her Majesty, and we [*or* I] do hereby order and direct that *J.P.W.* License Inspector of the of the said , do forthwith destroy the said liquor and vessels."

Given under our [*or* my] hands and seals, this day of , at the of in the said

E.F. [L.S.]
G.H. [L.S.]
or
C.D. [L.S.]

LONDON : Printed by EYRE and SPOTTISWOODE,
Printers to the Queen's most Excellent Majesty.
For Her Majesty's Stationery Office.

CANADA (STATE-AIDED EMIGRATION).

RETURN to an Address of the Honourable The House of Commons,
dated 6 June 1884;—*for*,

"COPIES or EXTRACTS of CORRESPONDENCE between the SECRETARY OF STATE FOR THE COLONIES and the PRESIDENT OF THE CANADIAN PACIFIC RAILWAY in regard to STATE-AIDED EMIGRATION to CANADA:"

"And on the same subject between the SECRETARY OF STATE FOR THE COLONIES and Mr. F. BOYD."

Colonial Office,
June 1884.

EVELYN ASHLEY.

(*Sir Eardley Wilmot.*)

Ordered, by The House of Commons, *to be Printed*,
11 *June* 1884.

LONDON:
PRINTED BY HENRY HANSARD AND SON,
PRINTERS TO THE HOUSE OF COMMONS.

To be purchased, either directly or through any Bookseller, from any of the following Agents, viz.,
Messrs. HANSARD, 13, Great Queen-street, W.C., and 32, Abingdon street, Westminster;
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RETURN.

COPIES or EXTRACTS of CORRESPONDENCE between the SECRETARY OF STATE FOR THE COLONIES and the PRESIDENT OF THE CANADIAN PACIFIC RAILWAY in regard to STATE-AIDED EMIGRATION to CANADA:
And on the same subject between the SECRETARY OF STATE FOR THE COLONIES and Mr. BOYD.

No. 1.

MEMORANDUM by MR. GEORGE STEPHEN, President of the Canadian Pacific Railway, explaining a SCHEME for the SETTLEMENT of IRISH FAMILIES in the CANADIAN NORTH-WEST.

FOR the sum of 1,000,000*l.* sterling, 10,000 small farmers with their families, averaging five persons to each family, say 50,000 people in all, can be comfortably brought from their homes in Ireland to the New Canadian North-West, and each family provided with 160 acres of the finest wheat growing lands, a comfortable wooden house, a cow, and the implements necessary to enable them to begin the cultivation of their land, including the cost of ploughing and seeding a few acres for their first year's crop.

The money required, to be provided by the Government and advanced, by way of loan, to the North-West Land Company of Canada, and to such other Corporations interested in the Settlement of the Canadian North-West, as might wish to join in the enterprise, and be able to furnish the Government with such security for the repayment of the loan as might be required.

The loan to be for 10 years without interest.

In consideration of this loan the Land Company to undertake the work of transplanting and settling in the North-West, under the supervision of the Government, these 10,000 families, assuming all the risks incident to the business, and the responsibility of the repayment of the money advanced by the Government.

The Land Company would take a lien on the 160 acres of land given to each family to the amount of 100*l.*, on which the emigrant would be charged interest at the rate of six per cent. per annum after the first two years of his settlement; the emigrant to have the right to pay off the principal at any time.

The chief inducement to the Land Company to undertake this work lies in the increased value that would be given to its own lands adjoining those upon which the emigrants settled.

This scheme is based on the assumption that the emigrants sent out are fit for agricultural work, and have energy and ability to take care of themselves, after getting the fair start thus provided for them.

It will thus be seen that the redundant population of Ireland may be materially reduced without any further cost to the Government than the interest of 100*l.* for 10 years for each family—say 2*l.* 10*s.* per annum or 25*l.* for the whole 10 years.

No. 2.

The RIGHT HON. THE EARL OF DERBY to GOVERNOR-GENERAL THE MARQUIS OF LORNE, K.T., G.C.M.G.

TELEGRAPHIC.

May 17, 1883. Irish Emigration. Government cannot engage with companies, but will advance up to one million, repayable without interest in 10 years, provided Dominion Government engages to secure repayment and becomes responsible for treatment of emigrants according to conditions of Stephen's scheme. Can Government obtain concurrence of Parliament or undertake without it secure repayments.

No. 3.

GOVERNOR-GENERAL THE MARQUIS OF LORNE, K.T., G.C.M.G., to the RIGHT HON. THE EARL OF DERBY. (Received June 7, 1883.)

Government House, Ottawa,
May 18, 1883.

MY LORD,

I HAD the honour to send to your Lordship to-day a telegraphic message as follows :—

" 18th May. Your telegram yesterday*, my Government reply as follows. Canada gives 160 acres free to each head of family on three years' residence. Pecuniary aid up to one hundred pounds operates as statutory mortgage. Government withholds grant till mortgage satisfied. Settlers under safeguard of laws, which give ample protection to all inhabitants. Insuperable objections to Government becoming directly or indirectly creditor of settlers."

I have now the honour to enclose a copy of an approved report of a Committee of the Privy Council, on which the above telegram was founded.

I have, &c.
(Signed) LORNE.

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

Enclosure in No. 3.

CERTIFIED COPY of a REPORT of a COMMITTEE of the HONOURABLE the PRIVY COUNCIL for CANADA, approved by HIS EXCELLENCY the GOVERNOR-GENERAL in COUNCIL on the 18th May 1883.

THE Committee of Council have had before them a cable message from the Earl of Derby to your Excellency of yesterday's date, stating that Her Majesty's Government would advance up to one million pounds to be payable without interest in ten years, provided Dominion Government engages to secure repayment and become responsible for treatment of immigrants according to the conditions of Stephen's scheme.

After full consideration the Committee of Council would submit to your Excellency for your approval the following draft of reply by cable :—

" Canada gives 160 acres free to each head of family on three years' residence.
" Pecuniary aid up to one hundred pounds operates as statutory mortgage. Govern-
" ment withholds grant till mortgage satisfied. Settlers under safeguard of laws which
" give ample protection to all inhabitants. Insuperable objections to Government becom-
" ing directly or indirectly creditor of settlers." All which is respectfully submitted.

JOHN J. MCGEE,
Clerk Privy Council, Canada.

No. 4.

The RIGHT HON. THE EARL OF DERBY to GOVERNOR-GENERAL THE MARQUIS OF LORNE, K.T., G.C.M.G.

(Extract.)

Downing Street, June 16, 1883.

I HAVE the honour to acknowledge the receipt of your Despatch of the 18th ultimo,† enclosing a copy of an approved report of a Committee of the Privy Council for Canada on the subject of the proposed scheme of emigration from the west of Ireland to Canada.

A copy of your telegram of the 18th ultimo,‡ founded on the report referred to, having been forwarded to the Lord Lieutenant of Ireland for his information, he has called attention to the fact that the Canadian Government were asked to guarantee the security of the companies, not to be creditors of the settlers, and I accordingly addressed to you on the 14th instant the following telegram :—" Irish emigration. Despatch, 18th May, " Dominion Government were asked to guarantee security of companies not be " creditors of settlers."

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* No. 2. † No. 3. ‡ *See* No. 3.

No. 5.

GOVERNOR-GENERAL THE MARQUIS OF LORNE, K.T., G.C.M.G., to the RIGHT HON. THE EARL OF DERBY. (Received July 17, 1883.)

MY LORD, Cascapedia, June 30, 1883.

I HAD the honour to send to your Lordship, on the 25th instant, a telegraphic message, as follows :—

"June 25.—Canadian Government cannot borrow million or give guarantee without previous sanction of Parliament. They believe companies able to give satisfactory security without Government guarantee."

I have, &c.
(Signed) LORNE.

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

No. 6.

J. F. BOYD, ESQ., to COLONIAL OFFICE.

MY LORD, London, January 10, 1884.

THE proper moment seems to have arrived for making a fresh and definite application in regard to the scheme of State-directed emigration and colonisation, which was submitted to you by a deputation on the 18th June last.

Your Lordship then recommended consultation with the Right Hon. the President of the Local Government Board and the Chancellor of the Exchequer; and it was in consequence of what passed in conference upon the matter shortly afterwards with Sir Charles Dilke, that I recently prepared the enclosed experimental scheme, designed primarily to benefit London, where severe distress, caused by want of employment, notoriously prevails, yet applicable to the whole of Great Britain.

I addressed it by letter, dated November 21, 1883 (of which copy is attached), to Mr. Childers, who finally informed me that although he had followed the progress of the movement with strong interest, and was glad to receive my communication, yet any initiatory action would be, not for him, but rather within the province of the Colonial Office.

Accordingly, I beg to ask the favour of your Lordship's early re-consideration of the subject, and respectfully to inquire whether you are now prepared to recommend the adoption of this scheme in its actual shape or otherwise.

Your Lordship will observe from the passage marked × in my letter to Mr. Childers, that I was able, when it was written, to fortify the proposal with a valuable pecuniary guarantee. I am not to-day precisely in that position, but should you express a distinct readiness on the side of Her Majesty's Government to transact the business upon the bases indicated, I will, of course, do my best to complete the negotiations in the way originally intended, and anticipate no difficulty in doing so.

It may be useful to forward herewith a few out of many newspaper articles* advocating this particular project, and I, therefore, send herewith leaders of

The "Morning Post" - - - -	August 11.
The "Evening News" - - - -	November 5.
The "Daily Chronicle" - - -	December 1.
The "Tablet" - - - -	„ „

Although the utmost publicity has been given to this scheme, which at least two London newspapers have printed in full, there has not appeared, I believe, a single notice hostile to it, whether in the Radical, the Liberal, the Conservative, the mercantile, or the religious press; and the character and real weight of such opposition as I have encountered at some public meetings are sufficiently explained by a letter in the "Times" of November 21, from the Vicar of Shoreditch, and by another bearing my signature in the "Times," of November 8.

My opponents were last night admiring listeners at St. James' Hall of the American socialist, who found himself forced to admit the fact of that over population here for which State-directed emigration is, unquestionably, an effective remedy.

In the course of your Lordship's reply to the deputation in June 18, you pointed out the necessity for satisfying the public upon certain points. I trust you will share my opinion that none of the possible objections you enumerated can be urged against the

---

* Not printed.

accompanying scheme; offering, as it does, every desirable guarantee to the emigrant-settler, the Colony, the State, and the Treasury.

I remain, &c.

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

(Signed) J. F. BOYD.

Enclosure in No. 6.

The Right Hon. Hugh C. E. Childers, M.P., Chancellor of the Exchequer, &c.

Sir,

You are aware that on the 18th June last, a large deputation waited upon the Earl of Derby, at the Colonial Office, in order to convey to his Lordship resolutions that, on the 6th June, had been carried with enthusiasm at a crowded public meeting in the East End, attended by about 2,000 persons. The first of these resolutions was:—

"That State-directed emigration and colonisation is, for the United Kingdom, a necessity of the time; and that Mr. Boyd's scheme, dated February 14, 1883, is a practical method of aiding the unemployed poor, diminishing pauperism, reducing local rates, and developing our Colonial resources, deserving the most careful consideration of Her Majesty's Government."

The mover was Mr. H. W. Rowland, General Secretary of the Amalgamated Cab Drivers' Society, a delegate to the Trades' Union Congress, a Radical and land nationaliser; the seconder was the Vicar of Shoreditch, who is Liberal in politics; the mover of the amendment in opposition, for which from 20 to 30 persons in the great assembly voted, being a Mr. Aaron, a local beerseller. The same resolution was carried on the 10th August following at another public meeting, held in the Egyptian Hall of the Mansion House, presided over by the Earl of Shaftesbury, who was supported by the Archbishop of Canterbury, being moved on that occasion by a Liberal peer, Lord Braye, and seconded by Mr. H. S. Northcote, C.B., M.P. for Exeter; while for the opposition amendment only about a dozen hands were held up. A resolution was thereupon moved by Mr. Coope, M.P. for Middlesex, supported by Mr. Alfred Simmons, Secretary of the Kent and Sussex Labourers' Union, and Mr. George Mitchell, M.L.S.B., and carried against four opponents, to the effect that with a view, in the first instance, of aiding the unemployed London poor Her Majesty's Government should be urged to make an experimental trial of the scheme.

The substance of Lord Derby's reply to the deputation which was introduced by Sir J. E. Eardley-Wilmot, Bart, M.P. (reported verbatim in the "Times" of June 20, 1883), was that Parliament might be willing to commit itself to a large expenditure once for all if it saw a prospect of the money coming back, and being used over and over again for the like purpose; that there was now, he feared, a congestion in the labour market in the East End of London; that the difficulty to be dealt with was permanent and ever growing, since the volume of our capital and business did not increase correspondingly with the population, which grew at the rate of something like 1,000 daily, the area of the British Isles remaining a fixed quantity; that, for this, emigration was one of the best and most effective remedies; that, speaking for the Colonial Office, he did not know any great difficulty need be apprehended, while, with the Colonial Governments it would, no doubt, be possible to make arrangements; that the Local Government Board and the Chancellor of the Exchequer must be consulted; that he was prepared to express his opinion of the scheme to his colleagues; and that it would be well to keep the subject before the public.

The concluding recommendation has been followed to the best of my ability.

In submitting the project (which is applicable to the whole of Great Britain) to you, I am happy to say that it is my good fortune to be in a position now to fortify it with a proposition of a most important and an exceptional kind; one which will, I hope, both commend it especially to yourself, and invest it with very high value in the opinion of the general public.

Provided the scheme is adopted by Her Majesty's Government, I have every reason to anticipate I shall be enabled to furnish substantial and sufficient guarantees that the total interest payable to the Treasury for the eight years, as provided and shown in clause 13, upon the estimated sum of one million sterling to be advanced to the Commissioners, shall be paid by them, or in the event of any default not caused by *laches* on their part, shall be made good to the Treasury to the extent of such default; the guarantors, in the event of their being so called upon, to become creditors of the Emigration and Colonization Commission for the sums they may have had to make good; but such

claims on the said guarantors upon the Commission only to rank second to the first charge that the Treasury will have over the entire nett assets of the Commission (as explained in clause 14), and after such first charge shall have been fully satisfied, or provided for to the satisfaction of the Treasury. It follows that the taxpayers of the United Kingdom will be completely secured against loss, and the transactions will be conducted free of charge to them, while on the other hand, as will appear from clauses 8 and 14, a potential source of gain becomes theirs.

The guarantors will naturally stipulate for fair and reasonably effective control over the selection of the emigrants.

The 240,000*l.* guaranteed, to be secured in any way desired by the Treasury.

In regard to the necessity for Government intervention, and to the practicability of obtaining suitable emigrants from among the unemployed in London and other British cities or towns, I may ask your attention to my letter printed in to-day's "Times," and to the following letter addressed to me on May 3rd last, by Mr. Joseph Arch, President of the National Agricultural Labourers' Union :—

"I have carefully read and considered your scheme of State-directed emigration and colonisation enclosed in your circular-letter of the 5th April. As a practical labourer, well acquainted with Canada, I am able to say that your proposals can easily be executed if Government see fit to adopt them. In the country districts of Great Britain there is, however, now no surplus labour; on the contrary, the land needs more and better cultivation (aided by adequate capital) than it receives under the existing system. My views regarding our land laws are well known to the world, so that it is unnecessary to say more here upon that important branch of a great subject. But, from towns and cities throughout the kingdom generally (whither multitudes have been driven, by the operation of bad land laws, from village and hamlet) there is no disputing a large surplus population may be taken away to our colonies with national advantage, under the machinery and methods proposed in your scheme; very careful discrimination in selecting the people who ought to go being, of course, necessary. So far then, but to that extent only, I wish well to your proposals, and am ready to support them. It is a national misfortune that the attention of Parliament is not devoted, before everything else, to the examination of these questions, on the right answers to which such momentous issues turn."

The statement that in country districts "there is now no surplus labour" is too sweeping. It would be easy to name "country districts" in Great Britain which are afflicted by an excessive population.

From another letter, written to me by the Earl of Carnarvon, on the 25th ulto., after a tour in Canada, it is proper here to append an extract extremely relevant to the matter in hand :—

"Though quite aware of the objections which can be urged against the State taking a share in the responsibilities and expense of emigration, yet, looking to the severe distress among many classes at home, to the greater opportunities still open to colonists under our flag, and, lastly, to the advantage to the colony itself from the transference to it of some of our surplus labour, provided always that that labour be of a suitable kind, it seems to me that the time has come when the State may, within certain limits and under certain conditions, give assistance towards an emigration to English colonies.

"Among these conditions there are two of such special importance that it is, perhaps, desirable to mention them: first, that security should be taken for repayment to the State, in whole, or in part, of money advanced to the emigrant for his transport and settlement, and I believe that there is no insurmountable difficulty here; secondly, that the emigrant should be, as regards health, strength, and general aptitude, likely to become a good colonist, and consequently, welcome to the land of his adoption.

"To transplant men physically infirm, or agriculturally unfit to earn their livelihood, is simply to promote an exchange from poverty and distress in England to perhaps still greater poverty and distress in another country. In British North America, at least, the principal, if not the only, chance of success is in agricultural pursuits, and an addition to the population of a colonial town is as useless as it is unwelcome.

"I believe that there is a large field of prosperity and happiness in the colonies now open to English labourers provided that they are fit for ordinary agricultural occupations, and that they have the courage and industry to face the rough work of colonial life for the first few years. In such case they are, humanly speaking, almost certain of success."

I have thought it necessary to quote the foregoing from Lord Carnarvon, not only for the sake of the principles laid down, but in order to make it clear what qualifications will be required in the emigrants under the scheme.

There remains to add the expression of an earnest hope you will be so good as to bestow upon what I am now bringing under your notice a consideration commensurate with its importance; and to mention that the *number* of persons for whom arrangements can be made in Canada next spring and summer must depend upon the *date* at which Her Majesty's Government intimate their decision to take action.

If you are willing to receive a deputation with a view to hearing what further can be urged in favour of the accompanying scheme, I shall be glad to make the necessary arrangements for as early a day as may suit your convenience, and

I remain, &c.

(Signed) J. F. Boyd.

London, November 21, 1883.

Outlines of a Scheme of State-Directed Emigration and Colonisation.

1. The organisation to be entirely a State one, adequate for the removal, as quickly as possible, from London and other parts of Great Britain of 10,000 men (with their families), to the north-west territory of Canada, with a view to their settlement in the manner herein-after described, upon land that is offered free (*see* clause 8) by the Dominion Government.

2. The emigrants to be men under 46 years of age, of good character, and must have been at no time convicted of crime. They shall be preferentially chosen if they possess a knowledge of the cultivation of the soil; or (2) if at least they have been accustomed to out-door work; and from the unemployed. The taking single men not members of an emigrating family to be discouraged.

3. A State inspection to be organised, in order to receive applications from, select, and pass, labourers desiring to go; this inspection to be superintended by an official of the Local Government Board, or of the Local Board, as the case may be.

4. Government steamships shall, when convenient, be used for transport, and when and so often as shall be required, vessels other than those belonging to the Government shall be made use of. In both cases the subsidies offered under their system of assisted passages, by the Canadian Government Agency, are to be obtained.

5. The control of the organisation and funds to be vested in an Emigration and Colonisation Commission, consisting of three capable and salaried officials, who will make this their sole business. Two of such three officials to be appointed by Her Majesty's Government, and one to be appointed by the Dominion Government. The head office of this Commission to be in London, with a branch office at Montreal. Power shall be vested in the said Commission to appoint such local commissioners as they may deem necessary, and such local commissioners shall be subject to all such rules and regulations in receipt of such salaries as, and be stationed wherever, the said Commissioners may in their discretion deem fit.

6. After arrangements with Canada have been made, a certain number of artisans and labourers might proceed there (under agreements as to rates of wages) to assist in erecting huts, cottages, &c., under supervision of the Commission, before the first batch of emigrants arrive.

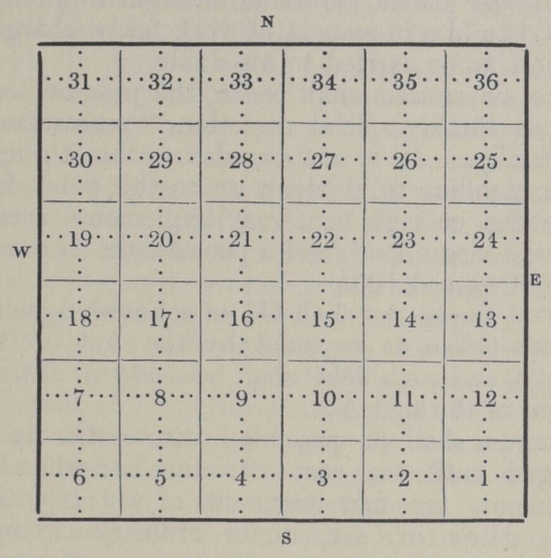
7. The head of a family, before embarking for Canada, shall sign an agreement, undertaking to repay all moneys advanced on their behalf, whether for transport, or under clause 8; and also to proceed to and settle upon the land that may be allotted to him by the Commission or their agent, in accordance with the provisions herein set forth. The emigrants to be sent from the arrival port to their place of destination immediately on arrival of the steamer.

8. The Dominion Government are prepared to co-operate in this scheme by making concessions of land to the Emigration and Colonisation Commission, situated in different parts of the north-west, reasonably near to the main line of the Canadian Pacific Railway. The total amount of such free land grants, it is agreed, shall be 1,600,000 acres. Of these, it is proposed that 800,000 acres shall be absolutely reserved by the Commission, and the remaining 800,000 acres shall be appropriated to the settlement of the emigrants, on farms of 80 acres to each of the 10,000 heads of families.

The Canadian north-west is laid out in townships, six miles square, each containing 36 sections of 640 acres each, and these are subdivided into quarter sections of 160 acres.

The diagram **A** shows the township, with the sections numbered.

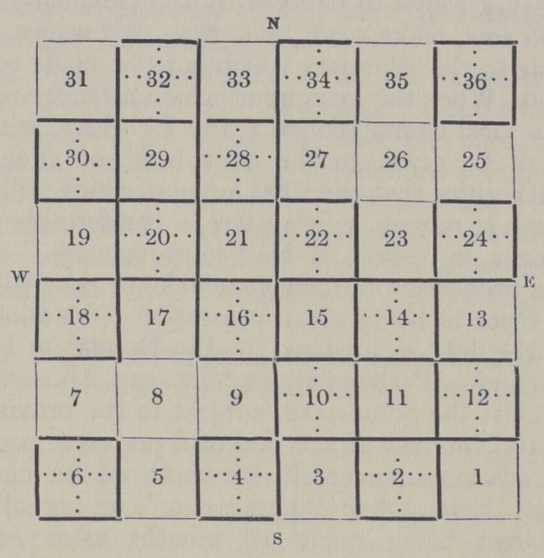
A.



The dotted lines show the division of the sections into quarter sections.

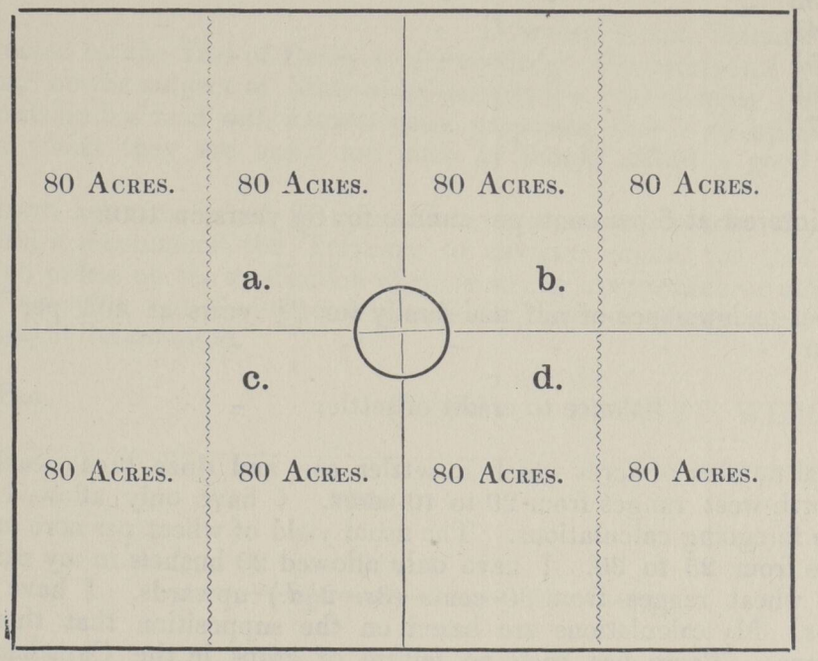
Of the 36 sections, as shown above, the Dominion Government holds those numbered 2, 4, 6, 10, 12, 14, 16, 18, 20, 22, 24, 28, 30, 32, 34, and 36, all the even numbers, in fact, exeept 8 and 26, for free grants and pre-emptions. The Canadian Pacific Railway, Canadian North-west Land, and Hudson's Bay Companies hold the remaining sections, with the exception of Nos. 11 and 29, which are reserved by the Government solely for school purposes. It is these even numbers, in many townships, that would be conceded to the Emigration and Colonisation Commission as shown in B.

B.



The sections marked by the thick and the dotted lines here represent the lands conceded by the Dominion Government.

The following diagram shows the system to be followed in dividing and allotting each section :—



A, B, C, D, are the settlers' lands. The four cottages and byres would be together in the centre shown by the ring. The four outside divisions are the reserved " Commission

lands." In disposing of these the original settler, next adjoining each, might have the option of pre-emption. Every man will, on reaching his destination, be set to work, at weekly wages to be fixed by the Commission, under official direction, in order to plough and sow, make roads, &c., &c. All wages paid to him in respect of work fairly chargeable to the allotment which is to be made to him, to be carried to his debit.

9. When the farm upon which a family is to be settled shall be, in the judgment of the local commissioner, ready for them, without further official direction, "possession" shall be given to the male head of such family. It is estimated by the highest authorities that the total amount which will be standing to his debit up to this point, for passage money, railway fare, a comfortable wooden cottage, necessary implements, seed, wages, in respect of his "improvements" of the virgin land, and a per-centage to cover his proportion of management expenses, will not exceed 100*l.*

Prior to being given possession of his allotment the settler shall file an acknowledgment of the debt so incurred, in the Dominion Lands Office, as required by the Act of the Dominion Parliament, 44 Vict. cap. 16. sec. 10*b*, and such debt shall be made a charge against the homestead, subject to the provisions of the said Act.

10. Interest at the rate of 6 per cent. per annum shall be payable by the settler upon all advances, except that it shall not be charged until one year after the date when he shall have taken "possession" of his allotment, the first payment of six months' interest being made 18 months after such date: or, say, under ordinary circumstances - - - - - - - - - - 2 years
after leaving England.
During the following - - - - - - - - 6 years,
interest to be payable by the settler regularly every six months.
The subjoined table, prepared by a gentleman who has himself had many years' experience as a resident in the Canadian North-west, will show the settler's probable position at the end of these - - - 8 years

from the date of leaving England.

"In the following calculations, I have made use of the minimum acreage broken by a settler and the minimum yield of wheat per acre. I have taken wheat as my basis, as other grains are about equally profitable:—

1st year of settlement he would have his house and byres erected, and himself and family comfortably settled. In addition to this, if he went out in early spring, he would have 5 acres, say, broken and a partial crop to pay a portion of his first expenses. This partial crop I count for nothing.

			£
2nd year	15 acres.	Twenty bushels wheat to acre, at 3*s.* per bushel of 60 lbs. = $225 - - - - =	45
3rd	„ 25 „	- - - - - =	75
4th	„ 35 „	- - - - - - - =	105
5th	„ 45 „	- - - - - =	135
6th	„ 55 „	- - - - - - - =	165
7th	„ 65 „	- - - - - =	195
8th	„ 75 „	- - - - - - - =	225
			945"
Less interest at 6 per cent. per annum for 6½ years on 100*l.* -			39
			906
Deduct maintenance of self and family for 7½ years at 40*l.* per year - - - - - - - -			300
Balance to credit of settler - - -			£606

"The usual number of acres which a settler can and does break each year in the Canadian North-west ranges from 20 to 40 acres. I have only allowed 10 acres per annum in the foregoing calculations. The usual yield of wheat per acre in the Canadian North-west is from 25 to 30. I have only allowed 20 bushels in my calculations, and the price of wheat ranges from 80 cents (3*s.* 2½*d.*) upwards. I have only allowed 75 cents or 3*s.* My calculations are based on the supposition that there will be no failure of crops. There has been no failure of crops in the Canadian North-West during the past 10 years."

The capital sum represented by the mortgage on the homestead to become due and payable within six months from the end of this period of seven and a half years from entering on possession of the farm; but it may be paid off at any time previously. Until payment in full the patent for the land will not be issued.

11. In the case of the head of a family dying before conveyance of the allotment, his family might be allowed to name somebody to take his place and liabilities: to the local commissioner being reserved a right of veto. Should it be exercised, then the land to lapse into the category of "Commission lands." The cost of the labour actually expended upon such lapsed land would, as a rule, have added to its intrinsic value not less than the total amount of such expenditure. And real loss arising from death, accident, or sickness could be provided for by a special system of insurance at trifling cost, and ought to be so provided against in every case by the Commission, the premiums being carried to the debit of the assured.

12. Some training farms, in size varying up to 960 acres each, ought to be organised by the Commission, to which lads from English orphanages, and able-bodied men quite ignorant of agricultural work might be sent.

13. The funds necessary for executing these plans, according to the methods herein traced, should not exceed one million sterling. They would have to be advanced from the Treasury to the Commission as required (subject to proper control and audit, under regulations to be prescribed by the Treasury), and bear interest at the rate of 3 per cent. per annum. The total interest payable to the Treasury on the advance would not therefore exceed 8 × £30,000 = £240,000 (*see* Clause 10).

The total estimated amount receivable by the Commission as interest from the settlers is 10,000 × £39 = £390,000 (*see* Clause 10), so that there is ample margin for defaulters.

14. The security for the funds advanced would include not merely the first charges over the 10,000 farms, with the buildings and improvements, amounting only to=twenty-five shillings per acre; but, in addition, the freehold of the 800,000 acres "Commission lands" (*see* Clause 8), together with the crops, and in fact the entire nett assets of every kind, of the Emigration and Colonisation Commission. Over these assets the Treasury would hold a first charge to secure their advance.

J. F. Boyd.

London, November 19, 1883.

No. 7.

COLONIAL OFFICE to J. F. BOYD, Esq.

Sir, Downing Street, January 23, 1884.

I am directed by the Earl of Derby to acknowledge the receipt of your letter of the 10th instant,* on the subject of State-aided emigration, and in reply I am to inform you that his Lordship has read with interest your proposals, and is of opinion that the principles upon which they are based are such as should afford a good prospect of success.

This department, however, is not in a position to promote actively any emigration scheme, nor could it recommend the Treasury to advance capital for that purpose as suggested by you unless on the application of some strong corporation or other organisation capable of carrying out the scheme practically, and of giving such security for repayments as might be required.

I am, &c.

J. F. Boyd, Esq. (Signed) EDWARD WINGFIELD.

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* No. 6.

No. 8.

J. F. BOYD, Esq., to COLONIAL OFFICE.

Sir, London, January 29, 1884.

I beg to thank you for your letter dated 23rd instant,* and to express the satisfaction with which I learn that my scheme of State directed emigration, dated November 19, 1883, is approved in principle by the Earl of Derby.

I gather that his Lordship is disposed to recommend its adoption subject to "some strong corporation" engaging to carry out the practical work of selecting, removing, and settling the emigrants, and I have therefore applied to the Canadian Pacific Railway Company for co-operation. The directors here have no power to act in such a matter, but copy of your letter was forwarded to the President, Mr. George Stephen, at Montreal, by the last mail.

I am anxious to send him full explanations as to the requirements of the Government by the next mail, and should be much obliged if you would, therefore, be so good as to inform me as soon as convenient whether I correctly interpret Lord Derby's views in supposing that what the Canadian Pacific Railway Company would have to do would be to select, remove, and settle the emigrants under the supervision of the Commissioners to be nominated as provided in clause 5 of the scheme:—

"5. The control of the organisation and funds to be vested in an Emigration and Colonisation Commission, consisting of three capable and salaried officials, who will make this their sole business. Two of such three officials to be appointed by Her Majesty's Government, and one to be appointed by the Dominion Government. The head office of this Commission to be in London, with a branch office at Montreal."

the actual expenses incurred, and interest, being refunded to them by the Treasury.

The following extract from the Dominion Lands Act, 1883 (46 Vict. chap. 17, sec. 38), explains the mode of creating charges on the settlers' allotments in order to secure repayment (in this case, I presume, to the Treasury) of such actual expenses:—

Governor in Council may order advances to immigrants for certain purposes to be a lien upon their homesteads.

"38. If any person or persons thereunto authorised by the Minister of the Interior place immigrants as settlers on homestead lands in Manitoba or the north-west territories, free of expense to the Government, the Governor in Council may order that the expenses or any part thereof, incurred by such person or persons, for the passage money or subsistence in bringing out an immigrant, or for aid in erecting buildings on his homestead, or in providing horses, cattle, farm implements or seed grain for him, may, if so agreed upon by the parties, be made a charge upon the homestead of such immigrant; and in such case the claim for expense incurred on behalf of such immigrant, as above, together with interest thereon, must be satisfied before a patent or certificate for patent shall issue for the land: Provided as follows:—

Proviso.

Conditions on which such lien be allowed.

"(*a*) That the sum or sums charged for the passage money and subsistence of such immigrant shall not be in excess of the actual cost of the same, as proved to the satisfaction of the Minister of the Interior;

"(*b*) That an acknowledgment by such immigrant of the debt so incurred shall have been filed in the office of the local agent."

So soon then as an immigrant reached his destination in the North-West, the Company would obtain from him and file in the land office an "acknowledgment of the debt" incurred up to that point for transport and subsistence, and the official certificate of claim thus "made a charge upon the homestead of such immigrant," when vouched by the Commission, might constitute the "security" against which the Treasury would reimburse the Company the amount specified in the said document; a like course being followed from time to time, in each case, as regards other outlay, for buildings, wages, &c.

Under this system of re-imbursing the Company there would be no advance of capital by the Treasury except against mortgage security.

I should be glad to know whether this modus operandi is acceptable to Lord Derby,

and I remain, &c.

The Under Secretary of State for the Colonies. (Signed) J. F. BOYD.

* No. 7.

No. 9.

COLONIAL OFFICE to J. F. BOYD, Esq.

Sir, Downing Street, February 7, 1884.

I am directed by the Earl of Derby to acknowledge the receipt of your letter of the 29th ultimo* stating that you have applied to the Canadian Pacific Railway Company for their co-operation in your scheme of State-aided emigration, and inquiring whether you correctly interpret his Lordship's views in supposing that what the Company would have to do would be to select, remove, and settle the emigrants under the supervision of the Commissioners to be nominated as provided in clause 5 of the scheme, the actual expenses incurred and interest being refunded to them by the Treasury.

In reply I am to inform you that Lord Derby regrets that he is not in a position to state on behalf of Her Majesty's Government whether your present scheme of State-aided emigration or any particular scheme would receive their support, and he had intended in the letter addressed to you from this Department on the 23rd ultimo,† to explain that he could not recommend any scheme to his colleagues unless it were brought forward by persons having the power to carry it into effect.

Personally, as his Lordship has said, he does not object to the general principles of your proposals, but he could not give any opinion on its details until they had been adopted by an efficient association.

I am, &c.

J. F. Boyd, Esq. (Signed) EDWARD WINGFIELD.

No. 10.

The CHIEF SECRETARY to the LORD LIEUTENANT OF IRELAND to COLONIAL OFFICE.

Sir, Dublin Castle, March 7, 1884.

With reference to previous correspondence I am directed by the Lord Lieutenant to state that the attention of his Excellency has been called by members of Mr. Tuke's Committee to communications they have received from Mr. Spence, the Secretary of the Ontario Emigration Department, of which I enclose a copy.

His Excellency would be glad if you would be good enough to call the immediate attention of the Secretary of State for the Colonies to the subject.

Lists of emigrants are now being made out, and much dissatisfaction would be caused if those who are provisionally selected for Canada should subsequently be refused.

His Excellency would be quite prepared, should the Dominion Government agree to such a course, to appoint an agent or agents to look after the emigrants on their arrival in Canada; but he desires to act entirely in accordance with the Dominion Government in the matter, and would be unwilling to take any step which has not their entire concurrence and co-operation.

It further occurs to his Excellency that some arrangement might be made with the High Commissioner, under which emigrants desiring to proceed to Canada should be personally inspected by agents of the Colonial Government before they are finally approved.

As time is of great importance in this matter his Excellency would suggest that the Canadian Government should be communicated with by telegram, or, if this is not possible, that a Despatch should be sent to them immediately by post, to which their answer might be sent by wire.

I am, &c.

The Under Secretary of State for the Colonies. (Signed) R. G. C. HAMILTON.

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* No. 8. † No. 7.

Enclosure in No. 10.

Department of Immigration, Ontario.

Dear Sir, Toronto, February 13, 1884.

I have the honour to enclose a copy of a letter sent to H. Hodgkin, Esq., in reference to the immigration of pauper immigrants. This is sent to you in order that you may see that the Government of Ontario found it necessary to withdraw any special privileges that may have been granted under an arrangement with you, to immigrants sent out under the auspices of the Imperial Government. Will you, therefore, regard this letter as addressed to yourself, and act according to contents.

I have, &c.

Major Gaskell, (Signed) DAVID SPENCE,
Local Government Board, Dublin. Secretary.

Immigration Department, Ontario.

Dear Sir, Toronto, February 13, 1884.

I have the honour, under instructions from the Hon. the Commissioner of Immigration, to acknowledge the receipt of your letter of the 27th October last, in reference to the prospects of Immigration for the approaching season. It was deemed advisable to wait and see how the immigrants sent out last year under the auspices of the Imperial Government, would fare during the winter, before encouraging more of the same class to follow. So far, their condition is not encouraging, as many of them are now living on charity, and public feeling has been somewhat strongly expressed, in the public press and otherwise, concerning them. This remark really applies to the people sent out by the Unions; but they are so closely associated in the public mind with those sent out by you, that it will be hard to find employment for either class next summer, as the farmers place but little value on their labour, and the people of the cities are afraid of laying the foundations of pauperism. What makes matters worse, a considerable number of families who went to the United States last summer have been sent back to Toronto, and have now to be supported by charity.

The Ontario Government has, therefore, decided that it will no longer be possible to give assistance to any class of workhouse or "union" people either in the way of meals or railway passes. This will apply to the agency at Quebec as well as to all agencies in this Province, nor will this Department assume the responsibility of settling them, or finding employment for them.

Should you send any of that class on your own responsibility, it may be well to appoint an agent here to find work for them, and pay their landing money, &c. Indeed, this would appear to the undersigned to be necessary.

The numbers of union or workhouse people sent out appear to the Commissioner to have considerably exceeded the numbers of that class suggested by Major Gaskell, when here, as likely to be forwarded. They are also inferior, as a class, to those described by him. I do not, in any sense, wish to impute to Major Gaskell a desire to mislead in any way. The difficulties arising in selection are quite understood and appreciated. For these reasons it will not be possible any longer to continue the arrangement made with Major Gaskell in reference to the workhouse or union people who may be forwarded, and therefore, the special privileges which they have been granted under that arrangement must necessarily be withdrawn.

I take the opportunity of stating, for the benefit of your Committee, that while there is ample room in this Province for all able-bodied persons of both sexes who are willing and able to work, yet these two features are essential to the procuring of a livelihood here, namely, ability and willingness to labour. Many persons in the older countries drift into the workhouse from their inability or their unwillingness to earn a livelihood by labour. It is impossible to provide a home here for such people.

I am extremely anxious that you should understand that the foregoing observations are not intended to apply to other than workhouse or union people.

I have, &c.

H. Hodgkin, Esq., (Signed) DAVID SPENCE,
12, Hereford Gardens, Secretary.
London, W.

No. 11.

The Right Hon. the EARL OF DERBY to Governor-General the MARQUIS OF LANSDOWNE, G.C.M.G.

Downing Street, March 13, 1884.

My Lord,

With reference to your Despatch of the 30th of January last,* on the subject of Irish emigration to Canada, I have the honour to transmit to you the accompanying copy of a letter† addressed to me by the Lord Lieutenant of Ireland enclosing a copy of communications received by Mr. Tuke's committee from Mr. Spence, the Secretary of the Ontario Emigration Department.

I shall be glad to be informed by telegraph of the views of your Government with respect to the suggestions made by the Lord Lieutenant.

I have, &c.

The Marquis of Lansdowne.

(Signed) DERBY.

No. 12.

Governor-General the MARQUIS OF LANSDOWNE, G.C.M.G., to the Right Hon. the EARL OF DERBY. (Received March 31, 1884.)

(Telegraphic.)

Dominion Government will give no assistance to emigrants of pauper class; policy otherwise unchanged.

No. 13.

COLONIAL OFFICE to the CHIEF SECRETARY to the LORD LIEUTENANT OF IRELAND.

Downing Street, April 2nd, 1884.

Sir,

With reference to the letter from this Department of the 13th ultimo‡ on the subject of the emigration to Canada of paupers from Ireland, I am directed by the Earl of Derby to transmit to you, for the information of the Lord Lieutenant of Ireland, the accompanying copy of a telegram§ which has been received from the Governor General of Canada in reply to the Despatch addressed to him on the 13th ultimo‖ requesting to be furnished with the views of his Government with respect to the suggestions contained in your letter of the 7th ultimo.†

I am, &c.

The Chief Secretary to the Lord Lieutenant.

(Signed) EDWARD WINGFIELD.

No. 14.

Governor-General the MARQUIS OF LANSDOWNE, G.C.M.G., to the Right Hon. the EARL OF DERBY.

(Received April 14, 1884.)

Government House, Ottawa, March 31, 1884.

My Lord,

With reference to your Despatch of the 13th of March‖ and enclosures upon the subject of Irish emigration to Canada, I have the honour to inform you that after communication with my Ministers I addressed to you this day a telegram§ to the effect that the change in the arrangements of the Government of the province of Ontario announced by Mr. Spence in his letter to Mr. Hodgkin, of February the 13th,¶ would not affect the policy of the Dominion Government in regard to the promotion of emigration during the present season, and that these arrangements would continue in force except in regard to emigrants of the pauper class.

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* Not printed. † No. 10. ‡ Not printed. § No. 12. ‖ No. 11.
¶ Enclosure in No. 10.

The action of the Ontario Government in this matter has no doubt had its origin in the dissatisfaction created by the presence during the winter in the city of Toronto of a considerable number of families who have subsisted upon charity; it is also to be in some measure attributed to the jealousy with which, at a time when wages are lower than they have been, the operatives of the province view any considerable accession to the wage-earning class. The action of the province has however been entirely independent of that of the Dominion Government.

It was indeed decided as long ago as 1874 at a conference of the representatives of the various Provincial Governments that the control and direction of all matters connected with the promotion of emigration from Great Britain and Europe to Canada should be vested in and exercised by the Minister of Agriculture at Ottawa.

The Provincial Governments have borne the expense of inland transport after the arrival of the emigrants at the various Dominion agencies. In cases where emigrants have been selected at the port of debarkation by agents employed by the several provinces, these have paid the railway transport from that port. Where such selection has not taken place at the port of debarkation, the Dominion Government has forwarded the emigrants to those points where work was most likely to be obtained. All emigrants are considered to be under Dominion care until they have been delivered either at the provincial agency or at the place of their destination.

In the case of the assisted Irish emigrants who came over last year, special arrangements were made and the province of Ontario assumed the responsibility for a certain number specified by it.

It is to these provincial arrangements for the reception and transmission of emigrants that Mr. Spence's letter has reference.

I have now the honour to enclose copy of a Privy Council Order in which the future policy of the Dominion Government in regard to immigrants from Ireland is stated. I would observe that the stipulation that no assisted passages will in future be given to "inmates of workhouses or persons subsisting on workhouse relief" is intended to guard against the importation, not of persons who during a time of temporary difficulty may have been relieved out of the union funds, but of persons habituated to such assistance and having the usual attributes of chronic pauperism. I have assured my Ministers that it has never been the intention of the Irish Government to send such persons to this country; it is however the case that owing to circumstances which I have already described a widespread impression prevails that persons of this class have been designedly sent here. The use of the expression "union emigrants" to distinguish those who have been sent out through the agency of the Poor Law unions from those selected by other agencies, has I think led to an erroneous impression that the whole of the former class are of the pauper type and consequently objectionable.

It would, I think, be very desirable that every opportunity should be taken of reassuring public opinion here upon this point, and that some steps should be taken, such perhaps as those indicated by Mr. Hamilton, in his letter of the 7th of March,* in order to afford evidence of the desire of the Irish Government to meet in the fullest possible manner the requirements of the Dominion in these respects. An arrangement under which an agent of the Canadian Government would personally inspect and if necessary investigate the antecedents of the emigrants before they proceed to Canada would I think be well received. Such an arrangement might, as Mr. Hamilton suggests, be discussed with the High Commissioner on his return to London.

I observe that in the annual report of the Minister of Agriculture for this year it is stated that the charge for inland transportation from Quebec to Manitoba will be reduced from $30 to $12.

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

I have, &c.
(Signed) LANSDOWNE.

Enclosure in No. 14.

CERTIFIED COPY of a REPORT of a COMMITTEE of the HONOURABLE the PRIVY COUNCIL for CANADA, approved by his EXCELLENCY the GOVERNOR GENERAL on the 31st March 1884.

THE Committee of the Privy Council have had under consideration a Despatch dated 13th March 1884, from the Earl of Derby, covering correspondence on the subject of the settlement in Canada of assisted emigrants from Ireland.

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* No. 10.

The Acting Minister of Agriculture, to whom the Despatch was referred, reports that in view of the fact of the difficulties which were found in the way of satisfactory settlement of a considerable per centum of the assisted emigrants from the congested districts of the south and south-west of Ireland sent out last year by the Poor Law unions arising from the unsuitability or indisposition of those persons to earn a subsistence for themselves; and also in view of the fact of the prejudice which has been created from this cause against the class of assisted emigrants from the districts in question, he recommends that the dominion assisted passages should not be afforded to inmates of workhouses, nor to persons subsisting on workhouse relief, and further that the Dominion Government should not take any responsibility of settling such persons.

The Acting Minister observes if, however, the Irish Emigration Commissioners send out such persons it should be upon the understanding that they provide the expense of maintenance during the winter in Canada following their arrival, and that one or more of the members of each family, and individual emigrants, shall be of physical ability to earn a living.

The Acting Minister states that the arrangement which has hitherto existed as respects other classes of emigrants remains.

The committee concur in the foregoing report and the recommendations therein made, and they respectfully advise that your Excellency be moved to despatch a cable message in the sense of this report, if approved, to the Earl of Derby, in answer to his Despatch of the 13th of March instant.

I have, &c.
(Signed) JOHN J. McGEE,
Clerk, Privy Council for Canada.

No. 15.

COLONIAL OFFICE to the CHIEF SECRETARY TO THE LORD LIEUTENANT OF IRELAND.

SIR, Downing Street, April 17, 1884.

WITH reference to previous correspondence on the subject of the emigration to Canada of paupers from Ireland, I am directed by the Earl of Derby to transmit to you, for the information of the Lord Lieutenant of Ireland, the accompanying copy of a Despatch* from the Governor-General of Canada, transmitting a copy of a report of a Committee of the Privy Council for Canada in which the future policy of the Dominion Government in regard to immigrants from Ireland is set forth.

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

The Chief Secretary to the Lord Lieutenant.

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* No. 14.

CANADA (STATE-AIDED EMIGRATION).

COPIES or EXTRACTS of CORRESPONDENCE between the SECRETARY OF STATE FOR THE COLONIES and the PRESIDENT OF THE CANADIAN PACIFIC RAILWAY in regard to STATE-AIDED EMIGRATION to CANADA; and on the same subject between the SECRETARY OF STATE FOR THE COLONIES and Mr. F. BOYD.

(*Sir Eardley Wilmot.*)

Ordered, by The House of Commons, *to be Printed*,
11 *June* 1884.

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210.

1084

EMIGRATION (MR. BOYD'S SCHEME).

RETURN to an Address of the Honourable The House of Commons, dated 20 June 1884;—*for*,

"COPY of the SCHEME of Mr. *Boyd*, dated 14th February 1883, relating to EMIGRATION, which was submitted to the Secretary of State for the Colonies by a Deputation from Metropolitan and other Districts on the 18th day of June 1883, and is referred to in page 8 of a RETURN printed by Order of the House of Commons (No. 210), June 1884."

Colonial Office, June 1884. EVELYN ASHLEY.

SCHEME OF STATE-DIRECTED EMIGRATION AND COLONIZATION.

1. THE necessity for a large national system of emigration is found in the fact that the population of the United Kingdom is excessive, and increases at a prodigious rate; hence widely spread distress, much crime and drunkenness (usually allied to misery), and unreasonable competition, evils for which the only practicable ready remedy, if a general upheaval of social foundations is to be avoided, will be found to be national emigration.

2. It is well known that unless new markets are called into being, our foreign trade is likely to decrease steadily; because (*a*) protective duties hamper us everywhere, and (*b*) most countries yearly manufacture more of the sorts of goods they used to buy from us. A "new channel" is also indispensable, because there has been such great activity during the last quarter century in building and reconstructing stupendous public works, railways, machinery, manufactories, and maritime tonnage, of a total value impossible to state, but as to which some notion may be gathered from the knowledge that on railways alone 400,000,000 sterling have been expended, all affording means of living for myriads; that little remains to be demolished, erected, or remodelled. Yet the population has increased by 8,000,000, and the agricultural produce of the soil has probably diminished. Such a new channel would be created by systematically colonising Canada, whose unoccupied virgin lands are capable of maintaining perhaps a number equal to the total population of Europe.

3. I propose that the organisation be entirely a State one, adequate for removal annually of 200,000 individuals (of all ages) from the United Kingdom, and their settlement in Canada and the North West Territory of the Dominion, where sufficient land is offered free by the Dominion Government. The poor, who are without, or have next to no resources, are those who would be (on their voluntary application, and on approval) selected; the system to be one of family emigration; and, since five can be reckoned as the average number in a family, 150,000 at least out of the whole number would be composed of aged persons, women and babes, very few among them breadwinners. Thus the country could lose nothing by the departure of people, no small proportion of whom are now partly maintained at the cost of ratepayers and of the benevolent, while all are what is currently (although not technically) called "paupers." Certainly we can easily spare, say, 50,000 able-bodied men and youths every year, and their dependents.

4. The emigrants proper, to be men (with their families), acquainted with the cultivation of the soil. A slight knowledge might suffice; nor can it be disputed

puted that the poor quarters in our cities and towns would supply large contingents of men, born and reared in the country, accustomed to farm work. Only men of good character, not convicted of crime, nor more than twice of drunkenness, under 46 years old, and with not exceeding five accompanying members of family, to be eligible; single women to be ineligible; the taking single men to be discountenanced; and young people to be encouraged to marry, in order to become eligible.

5. A State inspection to be organised in order to "pass" applicants. There could be an authorised official in every town; the superior superintendence of this department to be confided to selected persons among the trade union leaders, appointed for the purpose by Government as permanent officers. Their special knowledge of the labour market would be useful in order that surplusage only might be drawn away.

6. For transport, many of the Government steam transports would no doubt be available; other large steamships to be purchased, so as to supply a fleet capable of providing a departure of a steamer carrying, say, 1,000 emigrants daily during the seven suitable months, the departures to be from Glasgow (once), Liverpool (twice), Milford (once), and Southampton (thrice) weekly.

7. The first step of arranging with the Canadian Government being taken, the second, after Parliamentary sanction, would be to send out an adequate staff of artisans and labourers, with their families, under agreements for five years at present trades' rate of wage, in order to erect huts or cottages, houses, stores, &c., before the first batch of emigrants arrive, from two to three months later. These mechanics would be under Government supervision, and must move from place to place as required.

8. The control of the whole organisation and the funds, to be vested in a board, or Imperial Emigration and Colonisation Commission, consisting of five capable and adequately paid gentlemen prepared to make this the business of their lives—two to be Canadians; headquarters, of course, in London; a head Canadian office at Ottawa, with one Canadian and one English Commissioner; local commissioners with sufficient subordinates to be quartered at the various settlements.

9. The average cost of transport, upon the scale and, as indicated, from railway station here to destination in Canada, need not much, if at all, exceed 5 *l.* per head of all ages; because special emigration rates would be obtainable from the railways on both sides of the Atlantic, the steamers, specially fitted and carrying no cargo, being worked at prime cost.

10. A due number of "centres" being selected in the Dominion, each to have a nucleus settlement of 4,000 souls, the emigrants on reaching Quebec or Halifax would be there furnished with a destination, and at once sent on by the daily through trains. There would be also appointed through emigrant trains on this side to the various ports of embarkation.

11. Prior to embarking, each head of a family to sign articles of indenture binding himself to repay to the Emigration Commission all moneys advanced to him or his family. Should passage be repaid? I think not, but am open to correction on this difficult point.

12. The lands to be brought under cultivation will not maintain a family for several months, or even for a year after cultivation begins. How then are the people to live? Thus: The Canadian Government must co-operate in this work by agreeing to convey to the Emigration Commission the 160 acres they at present offer free for every separate family to be settled. Eighty acres to be absolutely reserved by the Commission as "B. Government lands;" and upon the remaining 80 (or 50 wherever only 100 acres are obtained) the head of the family to be set to work under official superintendence to clear, sow, make roads, &c., all for a fixed weekly wage, being the amount upon which he could live with reasonable carefulness. I estimate this wage at 12*s.* for a single man, 16*s.* for a married couple, 20*s.* for the same with two children, and so on. All such payments as wages to be carried to the debit of the person receiving them, in books kept like the millions of separate post-office savings bank accounts for far smaller

smaller sums. Copies would be sent from the settlements to Ottawa; and thence they might even be sent to London; so that at the head office here the exact state of the accounts in each settlement would be known under an organisation like the Post Office Savings Bank system.

13. Whenever the parcel of land upon which a family had been domiciled should be, in the judgment of the local inspector, fit to maintain them without further official "nursing"—then, but not sooner, a conveyance of the ground to be executed to the peasant who had been working upon it, chargeable, by way of mortgage, with the total standing to his debit for wages, seed, stocking, &c., including passage-money (should it be considered right the cost of it be also reimbursed). This total, in the case of a family of five, would not be likely, even including passage-money, to exceed 100 *l.* In the case of a couple without children it would be much less. In this way, assuming only 50 acres were conveyed to each settler, and the average mortgage amounted to 100 *l.*, the man would obtain in a year or so after leaving home 50 acres of freehold land saddled with 100 *l*, mortgage at 6 per cent. per annum, equal to a yearly rent of 2 *s.* 6*d.* per acre for very fertile land. He would become by independent effort, thanks to judicious help, a peasant proprietor at a cost which he would have been able to regulate himself to a certain important extent. The transaction, once completed, there would be no difficulty experienced by the Commission in selling the mortgage bond to private persons or financial corporations to be formed hereafter for the purpose of dealing in these securities, and thus all money advanced would be recouped. Redemption of the bonds might easily be effected within 10 years from issue. No doubt there might be difficulty in selling the bonds, or obtaining repayment of the funds expended which they would represent, if the settlements were few, scattered far apart, and thinly peopled. There would be none if the chief features of the scheme be adhered to; namely, its magnitude and continuity.

14. In the case of the head of a family dying before his allotment were ready for conveyance, his family might be allowed to name somebody to take his place and liabilities; to the local Commissioner being reserved a right of veto. Should it be exercised, then the land to lapse into the category of "B. Government lands." The cost of the labour actually expended upon such lapsed land would, as a rule, have added to its intrinsic value not less than the total amount of such expenditure. And real loss, arising from death, accident, or sickness, could be provided for by a special system of insurance at trifling cost.

15. Another resource for reimbursement and profit would be the "British Government lands." These would be at least equal in acreage to "allotted lands." They would be cultivated for the ultimate benefit of the British Government, representing the taxpayers here, by day-labourers specially engaged here or taken from such among the emigrants as could not well be trusted to farm for themselves; or by volunteer labourers presenting themselves on the spot. These lands could be leased or sold. While they were farmed the crops derived from them would be disposed of for the Commission through usual trade channels.

16. If any man at the first blush should doubt whether returns of this kind could be adequate to outlay, let him reflect that all cities, London itself, and all civilised countries, were once virgin land without value. Their incalculable money value and the enormous revenues they yield now have been brought about precisely in the way I propose to render valuable the valueless North West Territory, namely, by the exercise upon their territory of human labour. The objection, then, is idle, upon the two indispensable conditions that the settlements be on a large scale, and that there be skilled responsible supervision and, as a part of it, rules and discipline.

17. Crime and waste are already guarded against by laws specially passed in the Dominion and Provincial Parliaments whereby local option prevails in every part of Canada, except the North West Territory, wherein it is forbidden to introduce alcoholic or vinous stimulants. This beneficent provision was intended to protect the Indians, of whom about 100,000 still remain. Removal to Canada would consequently mean rescue and redemption for numbers of

our people who would gladly quit present surroundings, associations, and temptations, had they the chance.

18. In order to make good the drain on our agricultural population, an essential part of the scheme must be the formation, under some proper system, of large or small training-farms at suitable points throughout the three kingdoms. To these places might be drafted all lads from orphanages, street youths from our great cities, men who hang about the streets picking up a precarious livelihood, and the like, to learn farm-work—the natural occupation of a great majority of mankind.

19. Parliamentary powers would have to be asked to enable the Government of the day to borrow, when required, sums not exceeding 20,000,000 sterling in all, by creating a new Emigration Stock to bear interest at the rate of three per cent. During the first two years about 5,000,000 sterling would be wanted; the interest upon which sum, to be borne by the taxpayers, is only 150,000 *l.* sterling per annum. The funds raised in this manner to be employed in England and Canada for the general purposes indicated, under proper control and audit in the customary way; the expenses of official staff to come out of these funds, and a percentage to be charged upon the allotted land to defray those expenses. All moneys received by the Emigration Commission as reimbursement of loans, sales of mortgage bonds, of produce raised on "Government lands," or of such lands themselves, to be paid over *per contra* to the National Debt Commissioners in order to purchase and extinguish consols. I think it fair to expect that, before the power to raise 20,000,000 had been fully used, returns would flow back to us; that the 20,000,000 sterling, if called up, would be all reimbursed before expiry of 10 years; and that, far from any loss of capital resulting from these transactions, there might be immense profits.

20. To attain the ends I have described, a country like ours, which threw away, for the sake of a policy of the moment, 100,000,000 sterling in the Crimea, might sacrifice much. But I cannot see that any sacrifice whatever is needed. For, supposing 200,000 men, women, and children left our shores in the first year, and that 10 *l.* yearly per head be put as the average cost of maintaining them here, then surely society is benefited to the extent of 2,000,000 *l.* sterling for that one year alone (to say nothing about the future) by their departure. The food they consume, if they remain, ceases to be imported.

21. If it should be objected a point will be reached when the exodus will cease to be a benefit to us, I answer it can be stayed at that point, for it would be the duty of the Emigration Commission to keep State advantage in view, such being the *raison d'être* of their office.

22. But the foundation of a new populous and wealthy society, on the other side of the Atlantic, must benefit this country in another way. They will purchase our manufactures from us, thus adding to our wealth, instead of consuming it, as they do while here. For, of course, every individual in Great Britain, be the population 20,000,000 or 30,000,000, has to be fed somehow. And owing to this necessity we are rapidly sinking into national and personal poverty because nothing is done or attempted, by legislators and statesmen, in order to preserve a reasonable proportion between the people and the land they live on. Had we no colonies it would be another matter. The truth of the controversy respecting imports and exports lies here. We import a greater excess year by year, and thus grow poorer instead of richer, simply because we have more mouths to feed each year. While this goes on vast territories belonging to the Empire remain deserts, and others are given away.

23. The existence of great fleets of steamers of vast size which could not have been had a few years ago, the political difficulties and pressing yearly increasing distress in England, the wish of the Dominion Government to settle the North West Territory, which was owned by an exclusive private corporation only 12 years ago, the certainty of a German and probability of a Chinese immigration thither

thither* unless we utilize it ourselves instead of abandoning it to the wolf and the jackal, are all considerations favouring the realisation of my scheme.

24. Although the settling may proceed during as many years as there remains unoccupied land, the principal trouble will be during the first two or three years. Once the rudiments of hamlets, towns, and cities are formed, there will be little trouble and not nearly so much expense.

25. The scheme would be greatly helped by the approaching construction or completion of the Canadian Pacific Railway, which will traverse the territory to be settled in order to unite the two oceans, and will provide work for large numbers of labourers. Primarily designed though it is for the poor who have no resources, the fact need not preclude our attracting (by the offer of assistance in the colony) a limited number among classes possessing some small but insufficient capital. Such people would provide employment for labouring peasants whose mental qualifications did not offer sufficient inducement to trust them with land of their own. In short, the whole management requires the exercise of skill and judgment. Many farmers would be well qualified to act as superintendents of some of the departments, and, doubtless, be glad to accept such positions.

26. Upon some collateral aspects of this many-sided scheme it is well to lay stress. This would not be a haphazard, fitful business, now well, now badly done. The emigrants are not to be turned loose on the prairie to do as they please; protection, direction, control, are essential elements in the scheme, which, before all things, is to be entered upon for State advantage. A considerable organisation of skilled educated minds is therefore indispensable. Upon this side of the ocean there will be the *personnel* devoted to selection, transport and shipment: clerks who must keep the accounts, storekeepers, and so forth. Then come the commanders, officers, engineers, besides crews, of the steamships. To conduct the service with efficiency not fewer than 30 vessels must compose the fleet. On the other side there will be *employés* who must receive and distribute through the territory the continual arrivals. There will be surveyors and civil engineers, architects and builders, farming superintendents and overseers, resident local commissioners, travelling inspectors, and a respectable battalion of clerks of various grades, some of whom could be chosen from those already in the Government service here. There must also be warehouse keepers, as well as men accustomed to trade operations; since the Colonisation Commission will have crops and produce and lands to dispose of, seeds and stock and implements to buy; the last-named from England. Most of these numerous officials would naturally be drawn from the ranks of the middle classes. Then comes the supreme direction, the posts in which will doubtless be filled from the upper class. It is impossible to catalogue with exactness all the positions that will be necessarily created, and must be filled, greatly to the advantage of the mother country, considered as one community, and to separate families whose heads are nowadays in so many instances thoroughly perplexed to know what is to be done with their young men. My rapid sketch, however, shows that this system of colonisation will find legitimate permanent occupation for much more than mere bone and sinew. Brains are indispensable. Education and natural ability of very diverse kinds and orders could thus obtain a field of exercise hitherto undreamed of; and the widely spread mental, technical, and scientific training that has distinguished the England of the past dozen years will not have been fruitless after all, as many latterly began to fear it might prove to be. But for this training, indeed, it is questionable whether there would be, as there now certainly is, the proper material available to constitute the large body of superintendents and functionaries that is necessary, while, had the scheme been broached in 1870, every one would at once have pronounced it to be impracticable on the scale I propose,

* The prevision (expressed in 1880) has become accomplished fact. "From Victoria, Vancouver's Island, we have reports that ships and steamers are constantly arriving with many Chinese on board. The immigrants are immediately forwarded to the main land of British Columbia, chiefly for railway work. Twenty-four thousand are expected by August, when the Chinese in the province will amount to 32,000, outnumbering the whites. Fears are expressed that the Province will be Mongolianized."—("Times," 11th May 1882.)

pose, if only because the large steamers now built were not even projected; while the cost of "sailing" the smaller boats then in vogue was probably about double what the march of invention has made it to-day, and sea-risks were also greater.

27. The climate of Mexico, or even a large portion of the United States scarcely suits Englishmen or Scotchmen, and a serious mortality might result from shipping hosts of old and very young persons to torrid regions. What can be begun in our possessions on the American can be afterwards adapted to those on the African and Australian continents, in New Zealand and Tasmania.

28. It must be remembered the "new channel" discovered and opened by the Stephensons, the Brasseys, the Hudsons, who have gone, is filled and developed to about its utmost extent. We want another. By opening this prolific channel, of far greater intrinsic worth than all the El Dorados ever dreamed about, we should feed the poor, the middle class, and the class above, who are alike crying for bread, in one sense or another.

29. Not only so, but we can justly inscribe upon our emigration and colonisation flag the motto which was once made to ring in the ears of the whole world, "For the interests of England." Her political interests are so manifestly to be promoted by planting her sons and daughters in homes where they shall prosper and be happy, and, doubtless, be loyal, that it is needless to say anything on that head. Is it not almost as plain that, if Canada, with her present population of 4,000,000, can import British merchandise worth 8,000,000 of pounds sterling (besides merchandise from the United States worth nine), she will be enabled and bound to import incalculably more when we shall have raised her population?

30. Furthermore, a great settlement of Canadian territory will inevitably call for numerous public works (new railways among them) of great magnitude over there, for new banks, insurance companies, &c. The capital may, largely, be raised here, and fresh, sound openings for investors be created.

London, 14 February 1883. (signed) *J. F. Boyd.*

EMIGRATION (MR. BOYD'S SCHEME).

COPY of the SCHEME of Mr. *Boyd*, dated 14 February 1883, relating to EMIGRATION, which was submitted to the Secretary of State for the Colonies by a Deputation from Metropolitan and other Districts on 18 June 1883, and is referred to in page 8 of a RETURN printed by Order of the House of Commons (No. 210), June 1884.

(*Sir Eardley Wilmot.*)

Ordered, by The House of Commons, *to be Printed,*
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UNITED STATES. No. 3 (1884).

CORRESPONDENCE

RESPECTING THE

TERMINATION OF THE FISHERY ARTICLES

OF THE

TREATY OF WASHINGTON

OF THE

8TH MAY, 1871.

Presented to both Houses of Parliament by Command of Her Majesty.
1884.

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

No. 1.

Mr. West to Earl Granville.—(*Received April* 3.)

My Lord, *Washington, March* 18, 1883.

I HAVE the honour to inclose copies of the Resolution, as passed by both Houses of Congress and approved by the President, providing for the termination of Articles XVIII to XXV, inclusive, and Article XXX of the Treaty between the United States of America and Her Britannic Majesty, concluded at Washington on the 8th May, 1871.

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

Inclosure in No. 1.

PUBLIC RESOLUTION—No. 20.

Joint Resolution providing for the Termination of Articles numbered XVIII to XXV, inclusive, and Article numbered XXX of the Treaty between the United States of America and Her Britannic Majesty, concluded at Washington, May 8, 1871.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,—That, in the judgment of Congress, the provisions of Articles numbered XVIII to XXV, inclusive, and of Article XXX of the Treaty between the United States and Her Britannic Majesty, for an amicable settlement of all causes of difference between the two countries, concluded at Washington on the 8th day of May, A.D. 1871, ought to be terminated at the earliest possible time, and be no longer in force; and to this end the President be, and he hereby is, directed to give notice to the Government of Her Britannic Majesty that the provisions of each and every of the Articles aforesaid will terminate and be of no force on the expiration of two years next after the time of giving such notice.

Section 2. That the President be, and he hereby is, directed to give and communicate to the Government of Her Britannic Majesty such notice of such termination on the 1st day of July, A.D. 1883, or as soon thereafter as may be.

Section 3. That on and after the expiration of the two years' time required by said Treaty, each and every of said Articles shall be deemed and held to have expired and be of no force and effect, and that every Department of the Government of the United States shall execute the laws of the United States (in the premises) in the same manner and to the same effect as if said Articles had never been in force; and the Act of Congress approved on the 1st March, A.D. 1873, entitled "An Act to carry into effect the provisions of the Treaty between the United States and Great Britain, signed in the city of Washington the 8th day of May, 1871, relating to the fisheries," so far as it relates to the Articles of said Treaty so to be terminated, shall be and stand repealed and be of no force on and after the time of the expiration of said two years.

Approved, March 3, 1883.

No. 2.

Mr. Lowell to Earl Granville.—(*Received April* 20.)

My Lord, *Legation of the United States, London, April* 18, 1883.

I HAVE received to-day from Mr. Frelinghuysen a despatch inclosing the copy of a joint Resolution of both Houses of Congress of the United States, providing for the termination of certain Articles of the Treaty between the United States of America and Her Britannic Majesty, concluded at Washington on the 8th May, 1871, which Articles, under the Protocol signed on the 7th June, 1873, took effect on the 1st July, 1873, and, by the terms of the original Treaty, are subject to termination by either party on two years' notice given at the expiration of ten years from the 1st July, 1873. This Resolution, which was approved on the 3rd March, 1883, directs the President to give notice to the Government of Her Britannic Majesty that the provisions of each and every of the Articles numbered XVIII to XXV, inclusive, and of Article XXX of the Treaty of the 8th May, 1871, will terminate and be of no force on the expiration of two years next after the time of giving such notice, which the President is further directed to give on the 1st July, 1883, or as soon thereafter as may be.

I am therefore instructed to comply with the directions of Congress in this matter, as set forth in this Resolution, by giving the notice required, and as the 1st July falls on Sunday, I am directed to give this notice on the next succeeding day.

I beg also, in compliance with further directions, to inform your Lordship of the purport of this instruction, and of my contemplated action under it.

I have, &c.

(Signed) J. R. LOWELL.

No. 3.

Earl Granville to Mr. Lowell.

Sir, *Foreign Office, April* 27, 1883.

I HAVE the honour to acknowledge the receipt of your note of the 18th instant, in which you acquaint me that, in compliance with the instructions you have received from your Government, you propose to give notice on Monday, the 2nd July (the 1st July falling on a Sunday), of the intention of the United States to terminate Articles XVIII to XXV, inclusive, and Article XXX of the Treaty of the 8th May, 1871, between Great Britain and the United States, which will cease to be in force on the expiration of two years from the date of such notice being given.

I have, &c.

(Signed) GRANVILLE.

No. 4.

Mr. Lowell to Earl Granville.—(*Received July* 2.)

My Lord, *Legation of the United States, London, July* 2, 1883.

REFERRING to my note to your Lordship of the 18th April last, and to your Lordship's reply of the 27th of the same month, I have the honour to recapitulate the statements I made in that note, to the following effect: That I received on the said 18th April a despatch from Mr. Frelinghuysen, inclosing the copy of a Joint Resolution of both Houses of Congress of the United States, providing for the termination of certain Articles of the Treaty between the United States of America and Her Britannic Majesty, concluded at Washington on the 8th May, 1871; which Articles, under the Protocol signed on the 7th June, 1873, took effect on the 1st July, 1873, and, by the terms of the original Treaty, are subject to termination by either party on two years' notice given at the expiration of ten years from the 1st July, 1873. This Resolution, which was approved on the 3rd March, 1883, directs the President to give notice to the Government of Her Britannic Majesty that the provisions of each and every of the Articles numbered XVIII to XXV inclusive and of the Article XXX of the Treaty of the 8th May, 1871, will terminate and be of no force on the expiration of two years next after the time of giving such notice; which the President is urther directed to give on the 1st July, 1883, or as soon thereafter as may be.

I am, therefore, instructed by the President of the United States to comply with the directions of Congress in this matter, as set forth in the Resolution, by giving the notice required; and as the 1st July falls on Sunday, I am further instructed to give this notice on the succeeding day.

I do, therefore, this second day of July, 1883, on behalf of the President of the United States, hereby give notice to the Government of Her Britannic Majesty that the provisions of each and every of the Articles numbered XVIII, XIX, XX, XXI, XXII, XXIII, XXIV, XXV, and XXX of the Treaty of the 8th May, 1871, between the United States of America and Her Britannic Majesty, will terminate and be of no force on the expiration of two years next after the time of giving such notice.

I have, &c.

(Signed) J. R. LOWELL.

No. 5.

Earl Granville to Mr. Lowell..

Sir, *Foreign Office, August* 22, 1883.

I HAVE the honour to acknowledge the receipt of your note of the 2nd ultimo, in which you give notice that the provisions of Articles XVIII, XIX, XX, XXI, XXII, XXIII, XXIV, XXV, and XXX of the Treaty of the 8th May, 1871, between Great Britain and the United States will terminate and be of no force on the expiration of two years next after the date of the said notice.

In accepting this notice on behalf of Her Majesty's Government, I have the honour to inquire whether Her Majesty's Government correctly understand the intention of the United States' Government to be that the provisions of Article XXXII, which relate to Newfoundland, shall cease to be in force and operation at the same time as the Articles recited in the notice, which relate to the Dominion of Canada.

I have, &c.

(Signed) GRANVILLE.

No. 6.

Mr Lowell to Earl Granville.—(*Received November* 19.)

My Lord, *Legation of the United States, London, November* 16, 1883.

REFERRING to your Lordship's note of the 22nd August last, in which your Lordship inquired whether, in accepting the notice which I gave to Her Majesty's Government on the 2nd July last that the provisions of Articles XVIII, XIX, XX, XXI, XXII, XXIII, XXIV, XXV, and XXX of the Treaty of the 8th May, 1871, between the United States and Great Britain, will terminate and be of no force on the expiration of two years from the date of said notice, Her Majesty's Government correctly understand the intention of the United States' Government to be that the provisions of Article XXXII, which relate to Newfoundland, shall cease to be in force and operation at the same time as the Articles recited in the notice, which relate to the Dominion of Canada, I have the honour to acquaint you that I lost no time in transmitting a copy of your Lordship's note to the Department of State.

I have now received a reply from Mr. Frelinghuysen, in which I am instructed to inform your Lordship that Her Majesty's Government correctly understand the intention of the Government of the United States to be that the provisions of Article XXXII of the Treaty of Washington which relate to Newfoundland shall cease to be in force and operation at the same time as the Articles recited in the notice of the termination given by me on the 2nd July last, which relate to the Dominion of Canada.

Mr. Frelinghuysen states that your Lordship's inquiry does not appear to invite any discussion of the points involved, or to ask anything more than a simple declaration of the intention of the United States' Government as to the scope of the notice of the termination so given. He states, however, for my information, the reasons why the XXXIInd Article must be considered as in force only so long as the other Articles which are specifically terminable are in force. As his views on this subject may be

interesting to your Lordship, I venture to send you a copy of his despatch, although I have no instructions to do so.

I have, &c.
(Signed) J. R. LOWELL.

Inclosure in No. 6.

Mr. Frelinghuysen to Mr. Lowell.

Sir, *Department of State, Washington, October* 16, 1883.

ANSWERING your despatch of the 28th August last, I have to instruct you to inform Earl Granville that Her Majesty's Government correctly understand the intention of the United States' Government to be that the provisions of Article XXXII of the Treaty of Washington, which relate to Newfoundland, shall cease to be in force and operation at the same time as the Articles recited in the notice of termination given by you on the 2nd July last, which relate to the Dominion of Canada.

His Lordship's inquiry of the 22nd August does not appear to invite any discussion of the points involved, or to ask anything more than a simple declaration of the intention of this Government as to the scope of the notice of termination so given. For your information I may, however, observe that, while the Treaty itself does not in terms provide for terminating Article XXXII, that Article, so far as it concerns the extension of the fisheries stipulations to Newfoundland, is dependent wholly upon the Articles specified as terminable, and that such extension can only last so long as the privileges to be extended continue to exist, as they do, by virtue of the Treaty and of the ascertained and proclaimed fact of legislation being in force for the execution of the Treaty in both the United States and Newfoundland. The United States' Statute to that end of the 1st March, 1873, in terms continues effective so long as the specifically terminable Articles of Treaty shall continue, and no longer. The XXXIInd Article, therefore, loses all valid operative force with the removal of the sole bases of conjoined Treaty and legislation upon which it rested.

I am, &c.
(Signed) FREDK. T. FRELINGHUYSEN.

No. 7.

Earl Granville to Mr. Lowell.

Sir, *Foreign Office, January* 16, 1884.

I HAVE the honour to acknowledge the receipt of your note of the 16th November last, in which you state that it is the intention of the Government of the United States that the provisions of Article XXXII of the Treaty of Washington which relate to Newfoundland shall cease to be in force and operation at the same time as the Articles recited in the notice of termination given by you on the 2nd July last, which relate to the Dominion of Canada.

I have to state to you, in reply, that Her Majesty's Government accept this notice as applying to Newfoundland as well as to the Dominion of Canada.

I have, &c.
(Signed) GRANVILLE.

UNITED STATES. No. 3 (1884).

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

Presented to both Houses of Parliament by Command of Her Majesty. 1884.

LONDON:
PRINTED BY HARRISON AND SONS.

1098

CANADA.

REPORTS

ON THE

FORESTS OF CANADA.

With Précis by Dr. Lyons, M.P., of certain Papers submitted therewith.

(*A Map will be found at page* 7.)

Presented to both Houses of Parliament by Command of Her Majesty,
April 1885.

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1885.

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Map showing proportion of forests yet standing throughout Ontario	To face page 7

CANADA.

REPORTS ON FORESTS.

GOVERNOR-GENERAL THE MOST HON. THE MARQUIS OF LANSDOWNE, G.C.M.G., to the RIGHT HON. THE EARL OF DERBY, K.G. (Received December 22, 1884.)

Government House, Ottawa,
December 9, 1884.

MY LORD,

WITH reference to the concluding paragraph of my Despatch of the 28th June last,* on the subject of the proximate exhaustion of forests so far as the question relates to the Dominion of Canada, I have now the honour to forward to your Lordship herewith a copy of a communication from the Department of the Secretary of State for Canada, enclosing copies of the replies received from the Lieutenant-Governors of the various provinces on the subject. 31st Oct. 1884.

On receiving these reports I caused the papers to be referred back for some directions to the Department of the Secretary of State, from which they have now been returned.

I have, &c.

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

(Signed) LANSDOWNE.

Enclosure 1.

DEPARTMENT of SECRETARY of STATE for CANADA to the GOVERNOR-GENERAL'S SECRETARY.

MY LORD,

Ottawa, October 31, 1884.

WITH reference to Lord Derby's Despatch to his Excellency the Governor-General, of the 21st November last, on the subject of the proximate exhaustion of forests as far as the question relates to the Dominion, a copy of which was referred to this Department, and to the Order of his Excellency in Council with regard thereto of the 14th June last, I have the honour to transmit to your Lordship herewith a copy of the replies received by the Secretary of State from the Lieutenant-Governors of the various provinces of the Dominion on the subject.

Accompanying the reply from the Lieutenant-Governor of Quebec are a number of Acts and pamphlets.*

I have, &c.

The Viscount Melgund,
Governor-General's Secretary.

(Signed) G. POWELL,
Under Secretary of State.

Enclosure 2.

Government House, Charlottetown, Prince Edward Island,
July 7, 1884.

SIR,

I HAVE the honour to acknowledge the receipt of your Despatch of the 2nd July instant, transmitting to me for the information of my Government, and in order that the information sought for may be supplied for transmission to the applicant, a copy of a Despatch from the Right Hon. the Secretary of State for the Colonies, enclosing a copy of a note addressed by R. D. Lyons, M.P., requesting to be supplied with such information as is obtainable on the reported proximate exhaustion of forests, so far as the question relates to the Dominion of Canada, I beg to state that

---

* Not printed.

c 16427. Wt. 22934.

there are now no forests of any extent in the province of Prince Edward, where they have disappeared under the axes of the settler and the lumberman.

I have, &c.

G. Powell, Esq.,
Under Secretary of State,
Ottawa.

(Signed) T. Heath Haviland,
Lieutenant-Governor.

Enclosure 3.

Government House, Winnipeg, Manitoba,
October 21, 1884.

Sir,

I have the honour to enclose herewith a letter from my Minister of Agriculture, in reply to a copy of a Despatch from the Right Honourable the Secretary of State for the Colonies, transmitted to me in your Despatch of the 2nd July last, requesting to be supplied with such information as is obtainable on the approximate exhaustion of forests.

I have, &c.

Hon. J. A. Chapleau,
Secretary of State, Ottawa.

(Signed) J. C. Aikins.

Winnipeg, September 9, 1884.

Sir,

I have the honour to state in further reference to your letter of July 14th last, transmitting to this Department a copy of a Despatch from Earl Derby to the Governor-General in reference to the reported proximate exhaustion of forests, as follows:—

The forest and timber limits in this province are entirely under the control and administration of the Dominion Department of the Interior, which is therefore in possession of all official information in reference to them.

During the rapid construction of the main line of the Canadian Pacific Railway, during the years 1882 and 1883, large quantities of timber were used, but as the main line has now reached the Rocky Mountains the progress of construction is necessarily slower and much less timber is required, and the principal portion of it is obtained from those mountains. This Department has adopted means to prevent as much as possible the destruction of timber by fire, and is endeavouring to secure the rigid enforcement of the Prevention of Fire Act. Steps have also been taken for the establishment of an annual arbor day, on which the general planting of trees throughout the province will be encouraged.

Your obedient servant,

(Signed) A. A. C. La Riviere,
Minister of Agriculture, Statistics of Health.

Enclosure 4.

Government House, Halifax, Nova Scotia.
July 29, 1884.

Sir,

Referring to Mr. Under Secretary Powell's Despatch of the 2nd instant, in which information respecting the proximate exhaustion of forests in Canada was applied for, for the purpose of being forwarded to the Right Honourable the Secretary of State for the Colonies, to be transmitted by him to Mr. R. D. Lyons, M.P., I have now the honour to state that, having requested my Government to furnish me with any information in their power, I have received two reports, one from the present and the other from the former Deputy Commissioner of Crown Lands, which I beg to enclose herewith.

I have, &c.

The Hon. the Secretary of State for Canada,
Ottawa.

(Signed) M. H. Richey,
Lieutenant-Governor.

Crown Land Office, Halifax,
July 25, 1884.

Sir,

In reference to the letter of Mr. R. D. Lyons, M.P., referring to the reported proximate exhaustion of Canadian forests, I beg to say that, having made inquiry of several gentlemen engaged in the lumbering business in this province, I find that in all probability all, or nearly all, the timber lands will have been cut over, for the first time by or perhaps before the expiration of six years from this date; but it does not follow that the timber supply will then be exhausted. It is found that by carefully husbanding those trees which are too small for conversion into lumber at the time of the first cutting, after 15 or 20 (years), a second cut nearly equal to the first can in many localities be obtained, consequently, if it were not for forest fires, those lands which are carefully looked after would never become denuded of their timber.

It is true, however, that the supply of pine and spruce is rapidly becoming exhausted, and that the lumbering interests of our province will ere long become of less importance as each year rolls by.

There is a considerable quantity of hemlock timber in this province, but in many sections of the country it is being rapidly destroyed for the purpose of securing the bark, which is extensively used for tanning leather.

This province a few years ago could boast of a large quantity of heavy birch, but of late years much of it has been converted into ton timber and exported.

Of late years portable saw mills have been somewhat extensively used, and, if I am not mistaken, much smaller timber is cut by them than by the Gang Mills.

A large proportion of the area of our province is held by agriculturists, who hitherto appear to have taken but little interest in the preservation of the forests; the most of them have stripped more land of its timber than was actually necessary and have not been as careful of the remainder as they should.

As it is well known, forest fires have done an immense amount of damage in our province, and large tracts of country once covered with a stately growth of pine, spruce, &c., &c. are now almost barren.

It is to be regretted that the lumbering and agricultural portion of our population was not more fully alive to the importance and necessity of preserving the forests of the country. Had proper care been taken to prevent forest fires, and preserve the growing timber, the forests would be in a much more thriving condition than they are to-day.

I have, &c.

Honourable C. E. Church,
Provincial Secretary, Halifax.

(Signed) James H. Austin.

A few generations ago the greater part of the continent of North America was an unbroken forest from ocean to ocean. That those great forests are being rapidly depleted is well known, and the fact is fully recognised by men well informed and in a position to know the evils resulting, physically as well as commercially, from the insensate destruction of forests. Many sections of country in the Old World now sterile were prosperous and fertile before the destruction of their forests, and without proper care and forethought the language put into the mouth of the Indian many years ago (referring to stripping the soil of its trees) may in a degree become true—

"The realms our tribes are crushed to get,
"May be a barren desert yet."

This knowledge is well evinced by the much and able writing in the North American press, by able and exhaustive official reports on the subject, and by the various legislative enactments at Washington, Ottawa, and in the several states of the Union. The law of Massachusetts passed in 1878 to encourage plantations of timber trees on land not worth over $15.00 per acre is here referred to, as the climate and trees of that State, as also New Hampshire and Maine, are very similar to those of Nova Scotia, and we may very properly follow their example in this matter.

It is matter of record that the forests of Nova Scotia had not been visited by any great fires until 1784, just 100 years ago. The few Indians then in the province had the forests divided among their families.

The country was then nearly all covered by a soft wood forest. The most thin and rocky portions had a fair mixture of white pine with spruce and fir. The deeper soils of

the soft wood land were chiefly occupied by hemlock, with a few large spruce and black birch.

The aborigines, as well as the early French settlers, were careful never to make fires in the woods in the dry season of summer. In 1783, however, a great number of refugees and discharged soldiers came into the country and many new settlements were formed. The following year no rain fell in June, the latter part of May and first ten days of July. Fires were kindled in the clearings by the new settlers, and it is reported that within a fortnight two thirds of the province were burnt over.

Except what is cultivated or under water every part of the peninsula of Nova Scotia would now be covered with trees were it not for the destruction by fires, which scourge the country more or less every season.

Forests create and gradually improve the soil and climate of a country. The axe makes sad havoc, but may be regulated; fires are terrible. It is to be hoped, however, that an earnest effort to do so on the part of those in authority may prevent a repetition of the destruction from that source.

The writer had occasion upwards of 42 years ago to travel over a large section of wilderness country lying east of Halifax, and in doing so he traversed many miles of open barrens. The burnt stumps, trunks, and roots of spruce and white pine trees, many of large dimensions, were at that time scattered all over the barrens, and their remains may still be seen; although the surface has been burnt over many times within the last 45 years, still the forest goes on reproducing itself and being burnt down and will continue to do so until active means are resorted to for having the forest fires put out as soon as observed.

Nova Scotia as a timber producing country will rank favourably with any section of North America, the trees may not be as large because they are younger, but the timber lands of Nova Scotia possess powers of reproduction that can hardly be surpassed, example:—

Suppose 18 inches diameter to be the standard adopted by a lumberman in felling trees, that is, he will fell no tree of a less diameter, and that he cuts from his land every tree of that dimension and upwards (generally about 50 trees to the acre), let the forest then rest for 15 years when the same quantity of that dimension and upwards may again be taken. If active measures were adopted to put a stop to the ravages of forest fires and to prevent the felling of trees of a less size than inches diameter at 10 feet from the butt, I am sure that Nova Scotia will continue to be a timber producing and exporting country for all time to come, as our best timber lands can never be used for profitable agricultural purposes.

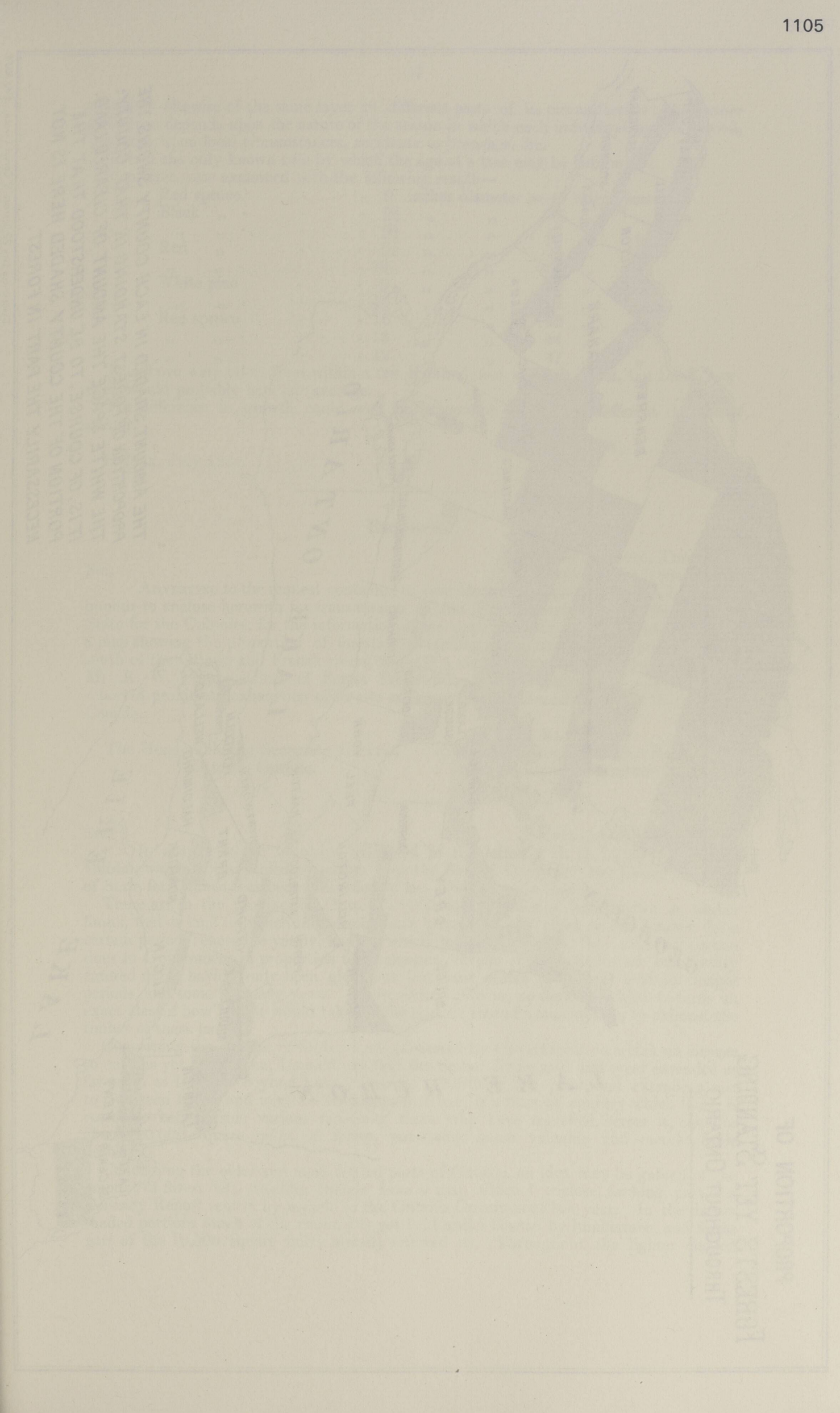
As an instance of the marvellous productiveness of our forests I would instance a small section of 8 or 10 square miles through which the Sackville River flows. Up to the year 1840 every house in Halifax was built of timber from that section, and, as every one knows, it has produced an enormous amount of cordwood, house frames, boards, deals, wharf logs, shingles, &c. ever since. Within three years the writer has travelled through every part of the section referred to, and it appears as far from exhaustion now as it did 40 years ago. The trees are not large, but they are tall and healthy; perhaps, not many up to two feet diameter. When a tree has got to be one foot in diameter it makes wood very fast, and is profitable to cut after it exceeds two feet. This may be assumed as a fair sample of our lumber lands. It is a shortsighted reckless love of gain and a lack of care for the future that induces the cutting down of young trees--the loss is simply enormous.

There is no discretion practised or any protection to the forest in Nova Scotia. Every man is allowed to cut as he pleases. Saw mills of every form and variety are to be found wherever a stream exists large enough to turn a wheel for a few months a year, and the trees are cut and carried to the mill from seven inches diameter and upwards, those not large enough for small deal are made into staves, laths, or shingles.

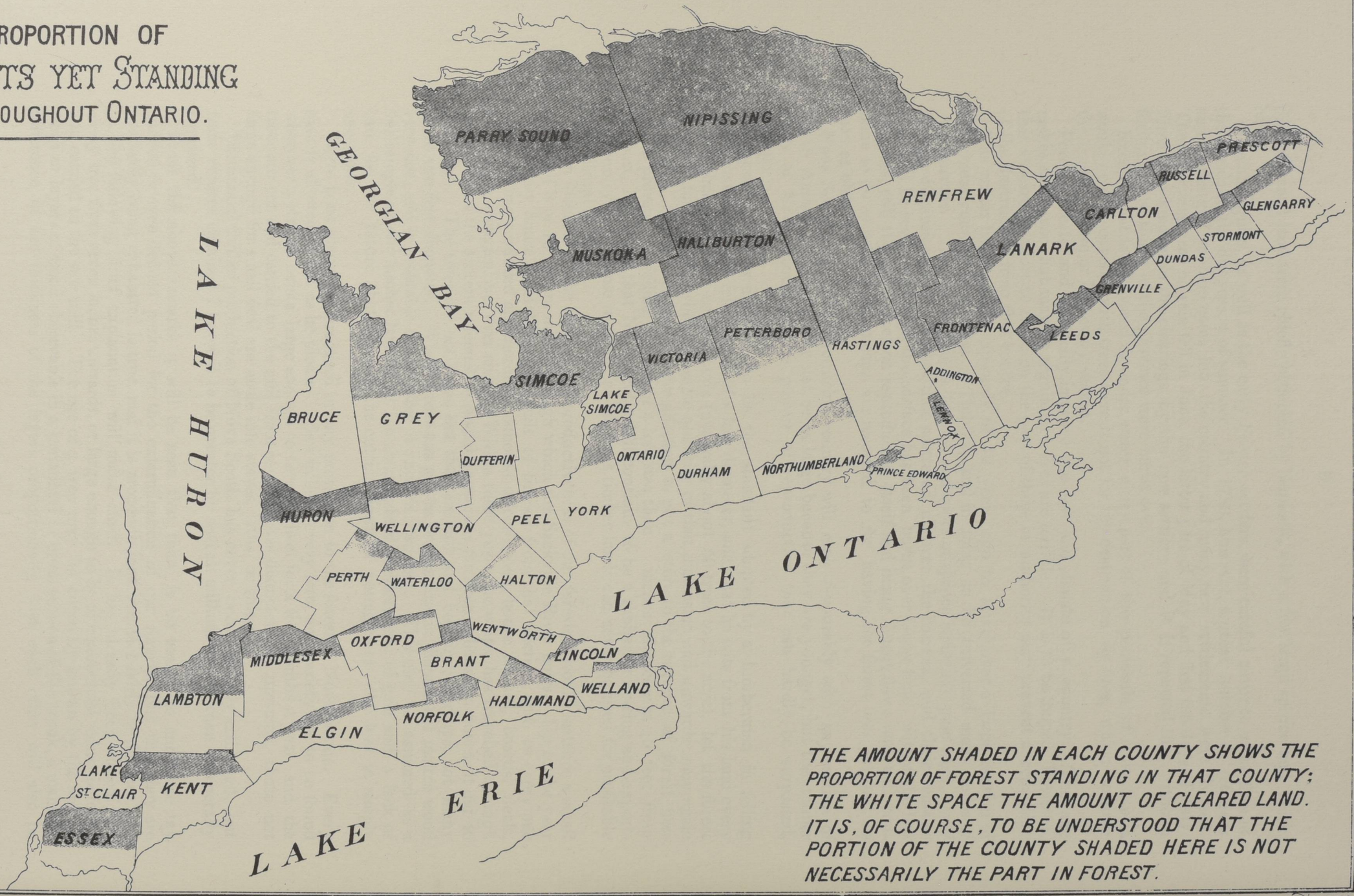
The annual timber production of Nova Scotia has never been correctly estimated, but from returns obtained I know it to be greater by several millions of feet than is generally supposed.

From the above remarks it will be seen that there is no reason to anticipate any sudden or even defined period for the extermination of our forests, but that they are gradually being exhausted is true, and it is proper to look this fact fairly in the face.

The following brief explanation will make clear. It has already been stated that every tree from seven inches upwards, or large enough to be of commercial value, is felled and carried to the saw mill. The age of a tree may be correctly known by the annual rings or layers of wood observable in a horizontal or cross section of the trunk, a manifest difference in the thickness of the layers proportionally with each other will also be



PROPORTION OF FORESTS YET STANDING THROUGHOUT ONTARIO.



THE AMOUNT SHADED IN EACH COUNTY SHOWS THE PROPORTION OF FOREST STANDING IN THAT COUNTY; THE WHITE SPACE THE AMOUNT OF CLEARED LAND. IT IS, OF COURSE, TO BE UNDERSTOOD THAT THE PORTION OF THE COUNTY SHADED HERE IS NOT NECESSARILY THE PART IN FOREST.

DANGERFIELD LITH 22. BEDFORD ST COVENT GARDEN. 3/85.9558.

observed, likewise of the same layer in different parts of its circumference; the former difference depends upon the nature of the season in which each individual layer is formed, the latter upon local circumstances, accidents to branches, &c.

This is the only known rule by which the age of a tree may be determined.

Ten trees were examined with the following result—

Red spruce	- -	9	inches diameter =	43	rings (years).
Black „	- -	$9\frac{1}{2}$	„ „	51	„ „
„ „	- -	$9\frac{3}{4}$	„ „	54	„ „
Red „	- -	$9\frac{1}{4}$	„ „	54	„ „
„ „	- -	10	„ „	58	„ „
White pine	- -	9	„ „	58	„ „
„ „	- -	16	„ „	72	„ „
Red spruce	- -	16	„ „	43	„ „
„ „	- -	13	„ „	44	„ „
„ „	- -	12	„ „	47	„ „

The above were taken from within a few hundred feet of each other, but these, however, would probably be a fair average.

The difference in growth could well be accounted for by the different degrees of shelter.

(Signed) W. A. Hendry.

Halifax, July 1884.

Enclosure 5.

Government House, Toronto,
September 3, 1884.

Sir,

Adverting to the request contained in your Despatch of the 2nd ultimo, I have the honour to enclose herewith for transmission to the Right Honourable the Secretary of State for the Colonies, for the information of the applicant, Mr. R. D. Lyons, M.P., (1) a map showing the proportion of forests yet standing throughout that portion of Ontario south of the Ottawa and French rivers, and (2) a copy of a report specially prepared by Mr. R. W. Phipps, Clerk of Forest Preservation, Ontario, upon the subject of the reported proximate exhaustion of forests as far as the question relate to the Dominion of Canada. 15 Aug. 1884.

I have, &c.

The Honourable the Secretary of State, Ottawa, Ontario.

(Signed) John Beverly Robinson,
Lieutenant-Governor of Ontario.

Sir,

Toronto, August 15, 1884.

In answer to the inquiries contained in the letter of R. D. Lyons, Esq., M.P., Dublin, which, accompanied by letters from the Earl of Derby and the Under Secretary of State for Canada, has been forwarded to me, I beg to reply that—

There are in the province of Ontario 18,000 square miles of land known as timber limits, that is land on which lumbermen have purchased the right to cut lumber for a certain period, renewable yearly, and on which lumber, when cut, they also pay certain dues to Government in proportion to its amount. Some of these limits are but freshly entered upon, having only been given out last year, others have been held for longer periods, and some for many years. There exist, however, no data by which to form an exact idea of how long it would take, at the present rate of consumption, to exhaust the timber of these lands.

Concerning the amount of timber lands possessed by Government on which no license to cut has yet been given, I would say that the timber limits sold last year extended as far north as 15 miles beyond Lake Nipissing. North of this point, and extending east to Sturgeon River, and west to Michipicoten River, is a tract of country which there is reason to believe from various reports of those who have travelled across it, contains about 20,000 square miles of forest, possessing much valuable and merchantable timber.

Concerning the older and more settled parts of Ontario, an idea may be gained of the amount of forest left standing therein from a map which I enclose, forming part of a Forestry Report sent in by myself to the Ontario Government last year. In the darker shaded portions much of the country is yet held under license by lumbermen, and forms part of the 18,000 square miles already referred to. Throughout the lighter shaded

districts, which are of course the longest settled, there still remain many small portions of valuable timbered land, now far from the track of the lumberman, used for little but local purposes, and not adding an appreciable item to the amount exported, such large pine trees as grew in these in fact, pine furnishing the principal lumber exported, have to a great extent been removed thence. It would be difficult to estimate the aggregate area of these scattered portions in the hands of private owners, but they would hardly amount to 1,000 square miles.

As the letter of Mr. Lyons asks information concerning Canada generally, as well as the United States, it may be remarked that the province of Quebec possesses 48,000 square miles of timber land which are under license, and 44,000 not under license.

That part of Canada known as the North-west Territories, including Manitoba, and lying beyond Ontario, and this side of the Rocky Mountains, possesses here and there tracts of well wooded land, not containing, however, more timber than, even if these forests be well preserved, will be required for the use of the inhabitants of those regions.

Many of the slopes of the Rocky Mountains are well wooded, and beyond them British Columbia contains very large forests of almost untouched pine and other valuable woods. No exact data, however, exist as to what area the amount of forest in the North-west Territories and British Columbia would comprise.

In the province of New Brunswick there are 9,000 square miles of forest area not under license and 3,500 miles under license.

In Nova Scotia there is no special lumbering law, and though I have written to officials of that province for late information, I have not yet received it. In 1878 the amount of ungranted lands in Nova Scotia was 3,800 square miles.

In the United States the timber lands yet remaining in the possession of the Government amount to 132,000 square miles. Some statistics lately issued by the United States Forestry Department give the amount of pine lumber in 13 of the principal pine producing states of the Union as 248 billion feet, and the last year's cut as 8½ billion feet, or about 28 years' supply.

With regard to the duration of the timber supply of the Dominion of Canada, no accurate calculation can be made, as no data exist whereby to determine the amount of merchantable timber standing in the forest area. To obtain this would require surveys more extensive and costly than any which have yet been attempted. A general idea can be given by observing that altogether the area of timber lands in the Dominion is calculated to be about 280,000 square miles.

For many years past statements have been made concerning the possible exhaustion of Canadian forests, and very diverse opinions have been expressed on the subject by persons of apparently equal experience and knowledge. It appears to me that when it has been stated that there is but five or there is but ten years' supply remaining, this may fairly be understood to refer to the possibility of obtaining timber of the same sizes as we have hitherto cut. It is probable that over a great extent of this territory many of the largest trees have been taken out. But it should be remembered that the forest has great reproductive power, that young trees continually replace the old, and that in 20 years' time trees now but of medium size will furnish excellent timber. The duration of our timber supply also largely depends on the measure of care to be taken in the future in the preservation of our wood lands. For many years little or no pains were bestowed in this matter, and throughout large districts, the settler having followed the lumberman, the field took the place of the forest. The ravages of forest fires, too, have in many places greatly injured our timber lands. Of late years more attention has been paid, and it is probable that throughout all the provinces active measures will shortly be taken for the preservation of the forests. These measures, it is likely, will include the setting aside of large districts for forest purposes, and the regular maintenance of officials charged with the duty of preventing the occurrence of fires. The Ontario Government have been active in prosecuting inquiries concerning this important subject, and further legislation thereon may immediately be expected. Undoubtedly if the careless methods of lumbering pursued in former years were to be still continued, no means of forest preservation adopted, nor any methods employed to prevent the ravages of fire, the duration of the Canadian timber supply would be greatly lessened. But this is not likely to be the case, public attention having been called to the necessity of a more careful method of procedure. In my opinion there is no doubt that if care be taken of the remaining forests of Canada a very large portion of them will continue in a perpetually reproductive condition, capable of furnishing an annual yield equal to the present yearly cut. It is probable that the districts already cut over will not for many years furnish trees of as large a size as some of those originally found there, but they will, with care, constantly yield much excellent timber. On the other hand the forests of British Columbia when railroad and shipping facilities shall have

given them better access to markets, will give, it is stated, timber of a size larger than most yet exported.

Yours respectfully,
(Signed) R. W. PHIPPS,
Clerk of Forest Preservation,
Ontario.

Geo. E. Lumsden, Esq.,
Assistant Secretary.

Enclosure 6.

Government House, Victoria,
Angust 30, 1884.

SIR,

I HAVE the honour to enclose a Minute of my Executive Council, dated the 16th instant, upon the subject of the reported proximate exhaustion of forests within the Dominion referred to in a Despatch of the Right Hon. the Secretary of State for the Colonies, dated November 21st, 1883.

I have, &c.
(Signed) CLEMENT F. CORNWALL,
Lieutenant-Governor.

The Hon. the Secretary of State,
Ottawa, Canada.

REPORT of a Committee of the Honourable the Executive Council, approved by his Honour the Lieutenant-Governor the 16th August 1884.

THE Committee of Council have had under consideration a Despatch from the Right Hon. the Secretary of State, dated 21st November 1883, addressed to his Excellency the Governor-General of the Dominion, concerning the reported proximate exhaustion of forests within the Dominion, a copy of which was forwarded to his Honour the Lieutenant-Governor of British Columbia, and referred to the Hon. the Chief Commissioner of Lands and Works, who reports as follows:—

The southern and western portion of British Columbia is a densely-wooded country, both mountains and plains being covered with thick and stately forests. To the north and east there is less timber and of an inferior quality.

The prevailing timber throughout is coniferous, and of different varieties.

The forests of British Columbia of economic value embrace an area situated between the Cascade range of mountains and the sea coast, and extending from the 49° to the 55° parallel of north latitude, together with Vancouver and adjacent islands and the Queen Charlotte Group.

The Douglas pine, or red fir (A. Duglasii),—which is esteemed the most valuable timber for masts, spars, and lumber, and of which it has been written: "So closely do the trees "stand, and withal so tall and straight, that the united navy yards of the world might "draw thence their supplies for years without more than partially exhausting these "spacious and majestic forests,"—covers that portion of the above area between the southern boundary of the province and about a parallel drawn through the northern extremity of Vancouver's Island.

North of this line, including Queen Charlotte Islands, the Douglas fir does not occur in large areas. Here yellow cypress, red and white cedar, and white pine predominate, and are perhaps of little less commercial value than Douglas fir.

The geographical formation of the coast presents numerous and far-reaching inlets, which afford access to the forests and greatly facilitate lumbering.

The interior of the province is but sparsely timbered. The eastern portion, watered by the Columbia and Kootenay rivers and their tributaries, contain large areas of timber of great commercial value.

In refutation of the assertion that Canadian forests are within six years of exhaustion, so far as this province is concerned an extract may be quoted from the Government prize essay of 1872, by the late A. C. Anderson:—

"The forests of British Columbia are productive of an *inexhaustible* supply of timber of the most serviceable kind."

Exported and milled timber have so far made no diminution in the available supply.

The Committee concur in the Ministers' Report, and recommend that a copy of this Minute, if approved, (be forwarded ?) to the Hon. the Secretary of State for Canada, with a request that it be transmitted to the Right Hon. the Secretary of State for the Colonies.

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

Enclosure 7.

Département des Terres de la Couronne,
Section des Bois et Forêts.

Monsieur, Québec, 2 Octobre 1884.

J'ai l'honneur d'accuser la réception de la dépêche du Très Honorable Secrétaire d'Etat pour les Colonies, en date du 21 Novembre dernier, demandant tous les renseignements possibles relativement à l'epuisement des forêts du Canada.

En reponse j'ai reçu instruction de vous transmettre une Copie du Rapport de Mr. A. J. Russell, ex Agent des bois, à Ottawa, sur la condition dans laquelle se trouvent actuellement les forêts de la Province de Québec, ainsi que Copies des lois et règlements de ce département, concernant la vente et l'administration des bois sur les terres de la Couronne.

Au sujet des Communications de Mr. Little publiées dans le "Times" de Londres, allant à dire que les forêts de l'Amérique du Nord seraient détruites sous une période de six ans, je dois aussi vous dire que ce Monsieur dans une entrevue avec l'Honorable W. W. Lynch, Commissaire des Terres de la Couronne pour la Province de Québec, a declaré que l'avancé en question se rapportait aux forêts des Etats Unis et non a celles du Canada.

Jai l'honneur, etc.
(Signé) Taché,
Asst. Commissaire T. C.

A L'Honorable Secrétaire Provincial,
&c. &c. &c.
Québec.

Memorandum on the Crown Timber Forests of the Province of Quebec and the Subjects submitted at the American Forestry Congress, at Montreal, in August 1882 that might be applicable thereto.

Before proceeding to consider how far the experienced and scientific information and practical suggestions contained in the addresses delivered and the articles read at the meetings of the Forestry Congress, and the discussions that followed, may be of use to us, it may be well to take a glance at the extent and character of our own forest regions; to assist us in judging of their capacity to meet the demand for home use and exportation likely to be made upon them in future.

Laurentian Forest zones.

Commencing on the north shore of the Gulf of St. Lawrence, at the boundary between Canada and Labrador, we first come in view of the great broad band of Laurentian Forest Highlands. After skirting the Gulf and River of St. Lawrence for 650 miles, it falls back above Cap Tourment, and sweeping round westward, in rear of the old Seignorial Settlements that occupy the northern portion of the great plain of the St. Lawrence, strikes the Ottawa below Grenville, and following it, more or less closely, crosses that river at Portage du Fort, covering all that part of Ontario north and east of Lakes Huron and Superior, and extending, throughout, back to the northern boundary of the Provinces and far beyond it, sweeping northward with great breadth, between Lake Winnipeg and the Silurian low lands of Hudson's Bay to the Arctic Ocean.

As the territories included in the 190,000 square miles or thereby that the Province of Quebec embraces of this vast region, though more or less alike in geological and physical formation, differ materially in the character and value of their timber forests, it may be suitable to consider each of them separately before speaking of that part of the Province lying south of the St. Lawrence. It differs from them on the important particular of being a country generally suitable for cultivation, and largely so occupied, while the territories on the north side, though about 177,800 square miles in extent, exclusive of the settled country between the Laurentides and the St. Lawrence and on the Ottawa, and the fertile basin of Upper Saguenay, do not contain a portion of arable land fit for cultivation equal to one fourth part of their area. And much even of that small proportion, from coldness of climate in the northern parts or from difficulty of access and inter-communication where scattered in small blocks, or from both causes combined, will long be too far below the ordinary standard of agricultural value to attract settlement or admit of cultivation being profitable or of the settlers living permanently even in moderate comfort, excepting through the means of the market for produce and the employment afforded them, by a continuance of the manufacture of timber, which to be permanent must be carried on, on a moderate scale, with that ever

increasing care for the preservation of the forests, which it is now manifest that the permanent interests of the timber trade, the settlers, the public revenue, and of the country generally will in future require. Generally unarable.

It is evident therefore that by far the greatest portion of this vast forest region of upwards of 177,800 square miles in area, fit for nothing else, must remain a timber forest for ever, increasing in value as timber becomes more scarce elsewhere; though capable nevertheless of maintaining a sparse but hardy population in comparative comfort by the development of the resources of its mines and of its forests, if cared for and preserved. Fit for forest farming for ever.

Returning to our point of commencement, the first or gulf section of this vast forest region may be described as extending from the eastern boundary of the Province of Quebec westward to the line of longitude 65° west, 320 miles in direct length, and its area may be estimated as 32,000 square miles. From the very little we know of it owing to its interior waters being unsurveyed, it seems as yet comparatively valueless as a timber yielding country. Gulf section of it. Laurentian Forest zone.

It is watered by several large rivers, but with little exception there is no information about them before the public, beyond the position of their mouths, of them more is known about the River St. Augustin than any of the others. On it timber of a fair quality is said to abound at 15 miles up from the shore of the gulf, along which the intervening country to a great extent, from actual absence of soil of any kind, is described as excessively barren, likewise the upper parts of the hills, and the same is said of much of the interior plateau. The St. Augustin is the Indian highway to the Ashuawipi, the great River of Labrador, that flows eastward to the Atlantic. There are also the more powerful rivers, the Natasquan, the St. John, and the River Romaine (which is the greatest), and the River à la Pie, or Magpie, which from the ascertained position of its sources seems the longest. Gulf section. Its chief rivers.

The country on these rivers is described by Mr. Chisholm, who had forty years' experience in that country, as being very mountainous, for a hundred miles back, in ridges winding in all directions, and between them glens or ravines in many parts thickly wooded with fir, spruce, and birch, with, in other parts, swamps, where the larch grows tall, though of no great size, being crowded closely. Ascending to the interior, he says the country becomes more level, thinly interspersed with black spruce trees in groves. I would here remark that the black spruce tree, the "Abies nigra" of Michaux, though generally very small, is more valuable for its strength and durability than the white or the grey spruce, and I may add that I found the balsam fir, or sapin, grown near the gulf far more durable than that grown in the interior townships south of Quebec; and I have heard it said by men of experience that vessels built of timber that grew in the maritime parts of Quebec and the Lower Provinces lasted longer than those built at Quebec and Montreal of timber of the same kind from the interior of Canada. Laurentian Forests. Gulf section. Character and superior durability of its timber.

This is a question that merits investigation, as greater strength and durability would render the spruce and larch trees of this territory under consideration much more valuable for use as railway ties than like timber grown in the interior of the Province, and we know the demand for railway ties (which require renewal so frequently) will in future increase enormously, as it has done in the United States, and with it the value of such timber in this territory may become of importance. Gulf section. May yield superior railway ties abundantly.

As the timber of this territory is generally small, and far from abundant, and the rivers are obstructed with high falls and rapids, and even the ruggedness of the country will be an obstruction, lumbering operations on it will be expensive compared with the value of the timber when got out, but expensive river improvements will be much less necessary for the descent of saw logs and railway ties than for square timber. River obstructions less important for them.

The adjoining territory embraced between the line of longitude 65° west and a north-westerly line from the mouth of the River Manicouagan, with a frontage on the Gulf and River St. Lawrence of about 180 miles and a maximum depth back from the mouth of the Manicouagan to the height of land at its source of about 250 miles, is about 48,460 square miles in area. The Manicouagan section.

Though resembling the preceding in physical character, it differs from it in being rather better known, from having had its main rivers generally surveyed or explored by judiciously ordered surveys, but which from the great extent of the country necessarily left extensive tracts between them quite unknown. It differs considerably also in having lumber of a good quality in greater abundance, especially in the southern part of it, say for 40 miles north of the St. Lawrence, including even scattering pine of value.

Mountainous.

The reports of the surveyors show this territory to be more or less mountainous throughout. Near the gulf the summits of the ranges rise occasionally from 1,000 and 1,300 to 1,700 feet in height, and the plateau at the watershed is from 1,500 to 1,700 feet in height, with mountain summit near the sources of the River Moisie, the Outarde River, and the Manicouagan of 3,000 and 3,700 feet above the level of the sea.

Moderate river improvements wanted.

Much expenditure in improvements would be necessary to make these rivers and others of this territory fit for the descent of square timber, but much less would be required for getting out saw logs, and they will no doubt ultimately be got out with profit, and probably flatted tamarac and spruce. Both are to be found occasionally of a fair size even in the northern parts of this territory.

Large birch, spruce and larch on parts.

Professor Hind on descending a hill, burnt bare above, passed through a luxuriant forest of birch, spruce, and larch trees of a size that would have done creidt to Western Canada, and a little before that he found "birch of a "fine growth not less than 15 inches in diameter at an elevation of not less than 1,700 feet, "and a belt of spruce, some very fine, that averaged 18 inches in diameter;" on the other hand he speaks elsewhere of the trees being generally stunted further south (about latitude 51° north), and of the great brulé extending to the plateau of Labrador.

Manicouagan section.

Large spruce on parts, elsewhere timber stunted.

At top of the Ridge Lake he speaks of distant mountains of great height (with well wooded valleys between) on which vegetation ceases at two thirds up their sides.

The River Outarde.

Poorly wooded.

Rear parts may be found better as in other cases.

On the River Outarde Mr. Bignell reports the timber to be fir, spruce, bouleau, aspen, and cypress for 200 miles up from the coast, and beyond that the timber was small black spruce to its source near the height of land. The general character of the timber here shown is not favourable, but we know that the timber on the tributaries of some rivers is better and more abundant than on the main rivers, and I have known extensive timber limits rejected on first exploration as worthless, and wooded only with poplar and birch, that afterwards, when better known, commanded fair prices for timber found on them.

Manicouagan and Outarde are twin rivers in position and character.

The River Manicouagan is a twin river to the Outarde. Their mouths and their sources are adjoining respectively.

River Manicouagan valley fit for settlement in parts.

The timber on them is much alike, only pine is mentioned as occurring occasionally on the lower and middle course of the Manicouagan, the banks of it are more rugged and it flows in a lower bed, which may perhaps be the cause of some appearance of pine, and also of frost in the fall not setting in early which would admit of grain and root crops being raised on some tracts of good land upon its banks. Beyond the long lakes on its two upper banches the timber is only small spruce and tamarac up to the height of land.

River Pentecote has better land and timbers.

On the River Pentecote, which enters the gulf 65 miles north-eastward of the Manicouagan, though the country is mountainous, there is more good land along the river than on the Manicouagan and the timber is better; (some very fine) spruce and tamarac along its course of 80 miles with a little pine near the coast, and the land and timber seems even better on the Trinité, which enters half way between the Pentecote and the Manicouagan, and more pine is to be found on it as reported by Mr. Bignell.

River Trinité still better.

Area of Manicouagan section and general characters.

This territory and the one described before it form together the less known, inferiorly wooded and comparatively untouched, as yet, portion of the vast forest region of the province of Quebec. They embrace an area of about 80,460 square miles. The general inferiority, and (in) parts, absence of timber, is due to the poverty and shallowness and in parts to the entire absence of soil where successive fires have burned off the thin covering of vegetable matter from the rocks, and not the coldness of the climate, which is really most suitable for the growth of spruce, and fairly so for tamarac.

General character of the Gulf and Manicouagan sections unfavourable in many parts.

The thinness of the coating of vegetable matter over the rocks in parts of these two territories causes it to dry up in hot weather and become exceedingly combustible, greatly aggravating the tendency to wide-spreading forest fires, while the absence of moisture stunts the growth of the trees, such parts of these two territories will necessarily always be unfavourable for the growth of wood; but in the other parts of them, forming the greater part of their area, where the soil is more generally sufficient to sustain even a moderate growth of wood of kinds there prevalent, great quantities of it will, no doubt, be taken out with profit for purposes for which such timber, though generally small, may be serviceable as the timber of more favourable forests becomes scarce and high in price.

Great Central section behind the old settlements.

The next great portion of the northern forest region of the province of Quebec it may be convenient to take a view of as a whole, is that commencing at a north-westerly line from the mouth of the River Manicouagan, and extending westward to the eastern watershed of the River Gatineau, including the Saguenay, the St. Maurice, and the Lower

Ottawa territories, leaving the Upper Ottawa territory to be considered separately for statistical convenience.

Great Central division, including the Saguenay, St. Maurice, and Lower Ottawa territories.

This great division, containing an area of 81,128 square miles, is distinctly different from the foregoing; lumbering operations having for many years been successfully carried on in various parts of it; in its forests pine of the best quality is, or in some parts may be said has been, more abundant, and they adjoin the rear of the older or are associated with the advancing new settlements of the province.

The north-westerly line from the mouth of the Manicouagan is arbitrarily assumed as the eastern boundary of this great division as (though imperfectly) indicating the general position of the gradual and irregular transition to the better wooded country, whose forests have already been more or less lumbered upon or are, to a considerable extent, held under license from the Crown for that purpose.

This great central division embraces the Saguenay, the St. Maurice, and the Lower Ottawa territories.

The Saguenay territory.

The Saguenay territory, embracing two Crown timber agencies, is the first in ascending the St. Lawrence.

In the eastern part of it, between the assumed boundary line, from the mouth of the Manicouagan and the River Saguenay, the chief rivers that fall into the St. Lawrence are the Betsiamites (of which nearly the whole of its course of probably 260 miles flows through this division) the Portneuf, the Sault aux Cochons, and the Escoumains.

Rivers below the Saguenay.

The three latter, though much smaller, have yielded proportionally much more good timber (including some pines), though in parts denuded by old forest fires, and though originally well wooded the future supply from them must be very small.

River Betsiamites

On the Betsiamites, above the 40th mile, the timber is very small and vast brulés are prevalent, which cannot yield timber of value till reproduced in the remote future.

Area of the Saguenay Valley.

The area from which the Saguenay draws its waters seems, as far as known, to be about 24,000 square miles, and its most important feature is its great geological trough or basin (in which Lake St. John is situated) containing over three millions of acres of fertile arable land.

Cause of warm climate around Lake St. John.

As the depression of this basin below the mean surface of the earth, as represented by that of the mountainous country around it, is such as to give it, on Humboldt's data, a climatic temperature equal to that of a latitude two and a half degrees further south, which, together with the richness of the soil, besides making it the best wheat growing country in the province of Quebec, gave it originally a fine growth of wood, including pine of a good quality, which was found on the River Mistassini 85 miles further north than the limit of the growth of pine in the valley of the River St. Maurice.

Pine grows far north on the River Saguenay owing to climate admitting.

Owing to my practical experience I was most forcibly struck with these advantages of soil and climate 30 years ago, while making an exploration in the interior by order of Government for the purpose of verifying the truth of what seemed almost incredible statements on the subject made by a few public spirited clergymen and gentlemen of high standing from the Lower St. Lawrence, which I had the opportunity of most amply sustaining. But, owing to these advantages and the demands of the lumber trade, what remains of the best timber forest of the Saguenay must soon be swept away to make room for what should be the most prosperous settlements in the province.

Other woods prevail in higher parts of this territory. Will yield much spruce and larch.

However, from the generally mountainous character and extensive area from which the many large branches of the Saguenay draw their waters, there will always, with proper care, be a sufficient supply of spruce and larch and other wood, after its pine is almost or altogether cut away, to sustain a considerable export trade in lumber. For there will always be a great preponderance of unarable forest land remaining in the surrounding country, and we know from explorations made, that larch of a great size is found occasionally as far north as the height of land between the St. Lawrence and Hudson's Bay waters.

Saguenay territory continued.

Fine poplar on parts.

And, notwithstanding that there are great tracts desolated by fires, even they, when there is soil enough, are undergoing nature's process of restoration by a vigorous growth of deciduous trees, chiefly poplar and birch, whose falling leaves restore fertility. I saw much poplar and white birch of a fine growth for making saw logs in some parts of the Saguenay country, where the land is doubtless now under cultivation, that would be most valuable in prairie lands for house building. Forty years ago I examined, down to the foundation, the walls of an old house then being cut open; they were of hewn poplar, and all perfectly sound. It was built by missionaries 180 years ago, but had ever since then been inhabited.

On the southern tributaries of the Saguenay that interlace with those of the St. Maurice there is much good soil, and where the trees fit to make saw logs of have been cut away, the small trees left, if not destroyed by fire, will soon be of a useful size.

Undersized pine left uncut matures rapidly. Striking instances.

This remark is applicable to all timber regions as I have had ample occasion to notice. In one case where no error could occur, a small timber berth with well marked outlines, which had been stripped of every tree fit to be a saw log under an able manager, was cut over again by him eight years afterwards, when, by the increased size of the small trees formerly left as unfit, a greater number of saw logs were made from them than were got by the first cut eight years before; this could not take place where settlement was advancing, where the small pines are more convenient for settlers' use in building and fencing than large ones are. On the Gatineau I passed through an extensive grove of young red pine trees of fine growth that had previously been three times completely cut over since the commencement of lumbering there.

Saguenay territory.

Reverting to the Saguenay, there is an extensive unknown tract, probably upwards of 15,000 square miles in area, commencing about 60 miles north from Lake St. John, seemingly drained on the east side by the head waters of the Paribouka, and westward by the large branches of the Mistassini and of the Chomouchuan. We may safely assume that it is covered by a broad band of poplar, birch, spruce, and tamarac (larch). Much of it, as seen on the south side of it, of a fair growth, and behind that, towards and about the height of land, the there prevalent stunted black spruce with extensive brulés interspersed throughout. The character of the timber of the two Saguenay agencies will be best seen by the totals cut on Crown lands from 1856 to 1881 inclusively, viz., of square timber 7,969 pieces, of which 343 were of white pine, 3,531 of red pine, and 4,095 of spruce and other kinds of wood; of saw logs there were 1,164,844 of pine and 3,432,185 of spruce, or, say, three times as many spruce as pine logs.

Timber and saw logs on which Crown dues were paid 1856 to 1881.

The minor descriptions of wood goods are omitted as unnecessary for this comparison, nor does it include the timber and saw logs of pine and spruce from private lands, the quantity of which from private lands where settlement is advancing is very considerable. In 1856 and 1857 there were nearly twice as many pine logs cut as spruce. In the following 20 years, the proportion of spruce logs gradually increased, and more rapidly during the last five years, in which there were very nearly 13 times as many spruce logs as pine taken out, the annual cut of pine logs during the last five years having fallen irregularly to about half what it was in the early years, indicating that the pine is becoming scare, while the spruce continues abundant in the Saguenay country. The total of Crown timber revenue that accrued from the two Saguenay agencies during the whole period was $369,670\frac{16}{100}$. Of what may have been collected during the several years prior to 1856 that lumbering was carried on in the Saguenay country I have not been able to find any published record.

Saguenay territory. Decrease of pine logs and great increase of spruce.

Crown timber revenue, 1856 to 1861.

The area of them held under licenses from the Crown to cut timber is 4,462 square miles.

St. Maurice territory.

The next section of the great central division of our northern forest region is that of the St. Maurice. Consisting chiefly of the area of 16,000 square miles drained by that river and its tributaries, with the addition of the waste lands of the Crown on the River Batiscan and lesser streams between it and the rear of the seigniories on the St. Lawrence. The area under license from the Crown to cut timber is 9,824 square miles. The St. Maurice territory, though it has no such extensive tract equal in fertility and climate behind its old settlements on the St. Lawrence as the Saguenay has at Lake St. John, surpassed the Saguenay originally in the value of its timber forests, owing to the greater proportion of pine on its middle and lower course and on the tributaries therein joining it. In general position the St. Maurice is from one degree in its upper course to two degrees in its lower course south of the Saguenay, though inferior to the Saguenay in climate, owing to the advantage the latter has in temperature from its comparative depression below its surrounding country. At Kikendatch, on the Upper St. Maurice, potatoes seldom or scarce come to maturity, though it is, on the same latitude as the settlements on Lake St. John in Upper Saguenay, the best wheat growing country in the province of Quebec. The same broad band of poplar, birch, spruce, and tamarac forest, interspersed with extensive brulés already mentioned as prevailing along the northern limit of the growth of pine, sweeps down southward as the line of colder temperature does, covering the head waters of the St. Maurice down to Weymontacheuc, and northward behind this zone of poplar and birch there is here, as elsewhere along the height of land and beyond it, the country where scrubby stunted black spruce woods, interspersed with burnt barrens predominate. But even there, at the height of land, a fine grove of larch trees (some of them of great size) was found by P. L. Surveyor Bignell, in accordance with the important fact that on suitable soil larch could be successfully cultivated in the coldest parts of the province far north of the limits of the growth of pine.

Area.

Licensed do.

St. Maurice territory.

Climate.

Stunted wood and barren at source. But larch trees of great size found there.

Though the country drained by the St. Maurice and its tributaries is less than two thirds of that of the Saguenay, the growth of pine in its forests has been greater, notwithstanding the unfavourable character of the upper and more elevated part of its valley. But the pine on its lower tributaries has been very much cut away; but where there is a young growth preserved from fire and the axe its yield will doubtless be considerable.

St. Maurice territory—*continued.*

Timber from Crown lands, 1851 to 1882.

Great decrease of pine and increase of spruce cut.

The quantities of timber cut on Crown lands alone in the St. Maurice territory, from 1856 to 1881 inclusively, have been, of square timber, white pine, 56,921 pieces and red pine 5,453 pieces (up to the year 1864, no square pine taken out since). Of other woods, 9,257 pieces. Of white pine saw logs, 4,190,895 pieces. Spruce saw logs 1,740,546 pieces. In the first 15 years the quantities were 2,110,527 pine saw logs against 562,071 spruce, and in the last 10 years 2,080,368 pine against 1,178,475 spruce saw logs. In 1881 the number of pine saw logs was 114,371 and of spruce 112,224, or nearly equal. From which we may infer that it is becoming more difficult to maintain the same superior production of pine, as formerly, over spruce.

Crown timber revenue, 1856 to 1881.

The Crown timber revenue that accrued from the St. Maurice territory, from 1856 to 1881 inclusively, as shown by departmental returns, was $1,103,970\frac{73}{100}$, including dues on all descriptions of wood goods from Crown lands, ground rents, &c., &c.

Lower Ottawa territory.

The next district of this central division of the great Laurentian forest region is that designated the Lower Ottawa territory or agency, including the vacant and the waste lands of the Crown on the northern tributaries of the Lower Ottawa, from the boundary of the St. Maurice territory to the watershed dividing the valley of the Rivière aux Lièvres from that of the Gatineau. It embraces the valleys of the River Assomption, the River du Nord, the Rouge, the Petite Nation, the Blanche, and the du Lièvre, with other smaller tributaries of the Ottawa, the total of the included areas being 11,256 square miles, of which 6,035 square miles are covered by licenses from the Crown to cut timber, and there is much private land.

Lower Ottawa territory.

Area.

Chiefly in pine zone.

These rivers mentioned lie altogether within the pine growing zone, excepting Rivière du Lièvre, the main branch of which for 40 miles, in direct distance down from its source, is in the poplar, birch, spruce and tamarac region, which, sweeping over from Weymontacheuc on the St. Maurice and the Manouan, intersects the du Lièvre at the head of Lake Megomangoos, and continues westward over to and across the east and west branches of the Gatineau in the Upper Ottawa territory adjoining. The predominant pine bearing character of the Ottawa country begins to be apparent in the returns of timber cut in this territory on which dues accrued to the Crown from 1856 to 1881 inclusively, which were squared white pine 106,398 pieces, squared red pine 943 pieces, other woods, principally birch, 38,459. White pine saw logs, 5,735,931 pieces. Spruce saw logs, 383,354, or one to 15 of pine very nearly. Of the square white pine, 95,155 pieces were cut in the first 15 years, and 11,243 in the following 10 years to 1881 inclusive. Of squared red pine, 809 pieces in the 15 years and 134 in the 10 years following. Of other squared timber, 22,125 were cut in the 15 years and 16,334 in the last 10. Of the pine saw logs, 3,374,896 were cut in the 15 years and 2,361,035 in the last 10. Showing a decrease of about 10 per cent. in the average annual cut of pine logs. While of the spruce saw logs, 35,501 only were cut in the 15 years and 347,853 during the 10 years stated, showing an increase to about 14 times the annual average of the 15 years preceding. It is noticeable that the total of pine saw logs from the Lower Ottawa territory during the whole period is about one fourth greater than that from the St. Maurice territory, though the latter has about double the area of the former.

As shown by timber from Crown lands from 1856 to 1881.

Increasing proportion of spruce logs cut.

Lower Ottawa territory.

Crown timber revenue for 1856 to 1881.

General remark. Timber from private lands or in previous years to large amount not included hitherto.

The Crown timber revenue from the Lower Ottawa territory from 1856 to 1881 inclusive, including ground rents on timber licenses, &c., amounted, by departmental returns, to $1,093,297. It is to be borne in mind, with respect to the quantities of timber from Crown lands here given for the years mentioned in the foregoing territories, for the purpose of showing the character and capacity of their forests, that, in addition to what is shown, these territories, but especially the St. Maurice and Lower Ottawa, have yielded large quantities of square timber and saw logs cut on private lands during the period stated and for many previous years; and that, apart from what was actually cut on Seigniories, timber and saw logs were occasionally passed as being so, if brought down streams flowing through the Seigniories, though really cut on Crown lands behind. It is also especially to be remarked as important in relation to subjects of forestry, and the future lumber trade of the province of Quebec, that, apart from the old Seigniories, or parishes on and near the St. Lawrence and in its great plain, only one

quarter of the areas of the foregoing three sections is arable land fit for settlement, and the remainder can be profitable only as timber forests for ever.

Before proceeding further westward it may be proper to take a glance at the part of the province of Quebec, south of the St. Lawrence, from Gaspé inclusively upwards. The area of which is about 34,200 superficial miles.

Area of Quebec, south of the St. Lawrence, more suitable for cultivation.

Notwithstanding that it is traversed by the Great Shikshak or Notre Dame Range, broken in groups of varied character and elevation, it is well known that fully three quarters of its area, owing to its more favourable geological formation and character of surface, is more or less suitable for successful cultivation.

Even in the district of Gaspé, barley much exceeding in weight and (as found on careful analysis completely made) containing 10 per cent. more saccharine matter than barley grown in the district of Montreal could be cultivated as profitably as wheat in the interior of the province.

Pine in Gaspé.

Pine grows well in the peninsula of Gaspé, including the county of Bonaventure; but, owing to the general prevalence in many parts of a heavy growth of brown birch and maple, and other hardwood trees pine was originally less abundant, and is now scarce, much of it having been cut away; but large brown birch is abundant and the growth of cedar in Gaspé is unequalled in size and quality. I measured one over 15 feet in circumference, and it was straight and without a branch for about 40 feet. Excellent sound cedar is abundant, and is the best wood for building of the fishing boats of the coast, owing to its lightness and durability; and brown birch is increasing in value now that walnut has become scarce.

Cedar and hardwood large and sound.

River Restigouche. Pine much cut away.

Westward the pine on the tributaries of the Restigouche has been very much cut away for square timber. The rivers falling into the St. Lawrence, though long lumbered upon for saw logs, still yield a considerable proportion of pine. As the populous old settlements of the Seigniories on the St. Lawrence, the Yamaska, and the Richelieu, and of the eastern townships and Megantic, and the increasing new settlements behind them, occupy the chief part of the country west of the Chaudière Valley, there is but little timber cut on Crown lands there, and much of what remains will be required for local consumption. In the whole of the part of the province of Quebec south of the St. Lawrence the timber and saw logs cut upon Crown lands, from 1856 to 1881 inclusively are as follows, viz.:

Eastern townships and Megantic.

Crown timber cut in the districts south of the St. Lawrence, 1856 to 1881.

Of square timber, 52,162 pieces of white pine, 3,828 pieces of red pine, and 102,788 pieces of all other woods. Of saw logs, pine, 1,563,353 pieces, and of spruce pine, 6,326,346, of which respectively, of squared white pine during the first 15 years 44,530 pieces and 7,632 during the last ten years; and of other woods 48,151 pieces in the first 15 years and 54,635 pieces during the last ten years. Of pine saw logs 952,030 pieces in the first 15 years and 611,323 pieces in the last ten years. Of spruce saw logs 2,793,894 pieces in the first 15 and in the last 10 years 3,532,452 pieces.

Area under timber licenses.

The extent now under license from the Crown to cut timber in this division of the province is only 7,575 square miles, and the total revenue from timber and saw logs, from 1856 to 1881 inclusively, is $\$1{,}467{,}974\frac{54}{100}$.

As much of this south division is already settled country, or rapidly becoming so, and the moderate proportion of the pine it contained orginally is largely cut away, it cannot continue long to yield any considerable supply. But as spruce is of quick growth, besides being still abundant, the annual yield of it may be continued for many years with little diminution, and the supply of birch be much increased with the probable increase of demand.

Spruce timber still abundant.

Upper Ottawa Territories.

Reverting to the north side of the St. Lawrence, the Upper Ottawa territory remains to be considered. As the whole of it for 25 years previous to confederation was included in one Crown timber agency, under the same system of management and under one common revenue accounts, till divided between Quebec and Ontario by their old boundary, the Ottawa, on confederation, as two separate agencies, but under my charge as previously and as they have been jointly and severally for upwards of 30 years, it may be appropriate, in relation to forestry as the general subject of this memorandum, to take a general view of the whole as a forest country of chief importance, while carefully distinguishing the yield of timber from each, and the revenue therefrom, as closely as practicable through periods of mixed account and early obscurity that required much labour in investigation for results of little value.

The River Ottawa as surveyed is about 790 miles in length from its principal mouth at Bout de l'Isle below Montreal to the source of its east branch, but the source of its north branch reported by fur traders to be the main stream may, when ascertained by

survey, prove the Ottawa to be over 800 miles in length, measuring by its very involved and tortuous course. Nevertheless the source of its east branch is less than 200 miles in direct distance from its mouth. It nearly equals the Rhine in length of course and the area it draws its water from, but the mean volume of water it discharges into the St. Lawrence is about three times the mean outflow of the Rhine as given by D'Aubuisson. There are geographical and meteorological causes which, combined with the universal prevalence of forests and the length of unbroken cold in winter, seem to account for this difference. The area drained by the Ottawa and its tributaries, as far as ascertained and shown in the latest official maps, is about 60,080 superficial miles. Before the surveys of late years it was estimated at 80,000, of which 19,757 are in the Province of Ontario and about 40,334 are in the Province of Quebec.

The River Ottawa.

The following are the principal tributaries of the Ottawa and their lengths of course in miles (including sinuosities of their channels), from the head of Lake Temiscaming downwards. On the Quebec or north-east side. The Kippawa 123, M. Dumoine 130, Black River 128, Coulonge 140, Gatineau 340 probably, Du Lièvre 244, North Nation, Rouge 140, North River 77, L'Assumption 117. The last five in the Lower Ottawa territory. On the Ontario side the Blanche, Montreal River 186, Matawan 60, Petewawe 155, Bonnechere 110, Madawaska 255, Mississippi 110, Rideau 116, South Nation 135. The tributaries of the Ottawa above Lake Temiscaming are few, generally small, and their courses mostly unsurveyed and unknown.

Its tributaries.

The Upper Ottawa territory of the province of Quebec extends from the eastern watershed of the River Gatineau, dividing its tributary waters from those of the Rivière du Lièvre up to the head of Lake Temiscaming and the line there established at the western boundary of the province of Quebec, having an extreme breadth westward of 200 miles and 200 in depth northward from the mouth to the source of the Gatineau. Its depth thence westward for nearly 200 miles is almost altogether unknown, and till the position of the height of land dividing the Ottawa waters from those of Hudson's Bay is determined by survey throughout that distance the area of the Upper Ottawa territory can only be imperfectly approximated as 29,523 square miles. The area here given is calculated on the last published Departmental map of the provinces, though, as stated in my report to the Department of Crown Lands of 6th May 1880, it has been already discovered that the waters of Hudson's Bay extend far south of the supposed boundary thereon delineated, covering not only a considerable portion of Block A, but also 209 square miles of timber berths granted by the Department; on the other hand it is stated by some who profess to have seen it that there is a large branch, apparently the main stream, that enters Lake Bouchette from the north, up which the narrator, a fur trader, said he had canoed three days, on his way to Mecisean, in the Hudson's Bay territory; it was widely distant, he said, from the east branch which he had also ascended. Of the northern tributaries of the Upper Ottawa mentioned the entire courses of the Kippawa, Dumaine, Black River, and Coulonge, and three-quarters of that of the Gatineau lie within the pine growing zone, and embrace by far the best pine growing forests in the province in extent and in the size and quality of the timber. In the township of Thorne, 20 years ago, I measured a pine tree 18 feet 4 inches in circumference at 5 feet from the ground, and within sight of the Parliament Hill, Ottawa, I measured some about 16 feet in circumference and 180 feet in height, but trees of such girth are scarce. On a lot containing 197 acres, 17,383 pine saw logs were proved to have been cut in four years, or about 88 logs to an acre; and on 21st instant four timber berths, containing together an area of 145 square miles, situated about a hundred miles up Black River, were sold at public auction for $208,100 to experienced saw-mill owners of Ottawa. That is at the rate of of $2 ·24 an acre, lakes and streams included. Besides which the purchasers have to pay the usual annual ground rent of $2 a square mile, and the ordinary Crown dues or price of each log they may cut of 11 or 22 cents according to the size of them. The sale was by order of Chancery on decision of a suit in law (such timber berths were to be had for the asking, free of price, when these were first acquired from the Crown). It will be seen that pine must be abundant to yield a profit on such a purchase, besides the cost of manufacturing it into sawn lumber, and berths as well wooded as these are numerous in the pine growing region of the Ottawa. There are tracts, however, where hardwood predominates, with pine interspersed, which is of the best quality from the richness of the soil and not being crowded. But towards the northern limits of its growth, where it is intermingled with poplar birch and cypress, it diminishes in size and quality. The upper quarter of the course of the Gatineau lies within the broad zone of poplar, birch, cypress, and tamarac (larch) country that extends towards the height of land. The country at the source of the west branch of the

The Quebec, Upper Ottawa territory.

Its area still not fully ascertained.

Large sized pine.

Great yield of saw logs per acre.

Very high price of limits at public auction.

Pine absent on Gatineau.

Head waters.

Great central summit of surrounding country from which the main rivers diverge.

Gatineau is the great central summit of the high lands, between the waters of the Ottawa and those of Hudson's Bay. This is prominently indicated by the fact that within a distance of 20 miles rise the east branch of the Ottawa, flowing to Lake Temiscaming, the Gatineau flowing south to the Ottawa, the Meciscan branch of the Notaway flowing north to Hudson's Bay, and the St. Maurice flowing east before turning south to the St. Lawrence, and beyond them the Rupert River flowing north and then westward to Hudson's Bay, and the Saguenay flowing east to the Lower St. Lawrence,—all rivers of 300 or 400 miles in length diverging from the high summit region, the elevation of which gives it a temperature too cold for the growth of pine, though tamarac and spruce in parts attain a great size.

River Ottawa, towards its source.

Much of the country at the sources of west branch of the Gatineau is bare rocky brulé. Near the Gatineau, but 25 miles south of its source, is the source of the east branch of the Ottawa (in a lower and more fertile valley), near which there are some pines, then flowing westward in a more fertile valley for 50 miles, through inferior woods, pine begins again to appear, increasing in quantity and quality, though generally scattering among other woods that prevail of an inferior description.

Broad depression in height of land towards Abittibi.

Respecting the height of land for 170 miles west from the source of the Gatineau we have almost no information till approaching the Labyrinth Lake portage to the River Abittibi, where it sinks into the broad plateau of about 900 feet in height above the sea level, which, with in parts detached hills, extends westward by the sources of the Blanche to the north angle of the Montreal River. Here, owing apparently to advantage in climate, due to less elevation above the sea, and actual comparative depression, pine of a fair growth abounds in groves, and continues to appear occasionally northward to one degree beyond the latitude where it is last seen in the high country on the head waters of the Gatineau.

River Quinze or main Ottawa above Lake Temiscaming.

The River Quinze or Main Ottawa enters the head of Lake Temiscaming, near the west boundary of the province of Quebec, 42 miles south of the height of land or north boundary, and 31 miles south of latitude 48° north. The source of its east and possibly main branch at the head of Lake Capemachigama, 32 miles south of the height of land and 21 south of latitude 48° north, is 190 miles in direct distance from the mouth of the Quinze, though 366 by the exceedingly crooked course of the river.

Good pine in Block A.

The superior character of timber and abundance of good pine above mentioned is more or less prevalent in Block A., which occupies 2,141 square miles between the Quinze and the height of land. About 60 miles in direct distance up that river pine becomes gradually scarce and scattered, and white birch, spruce, poplar and fir prevail. Though much more pine than is supposed may as usual be found on more complete exploration, it is evident but little pine will be furnished from the remaining tract of a hundred and thirty (130) miles in length, lying upon and north of the Quinze and between it and the height of land. But ultimately it will yield permanently a very considerable supply of spruce and other wood.

Scarcer above it, but spruce abounds.

Areas licensed and unlicensed.

The area licensed in the Quebec Upper Ottawa territory, under 529 Crown timber licenses, is 19,269 square miles, of unlicensed waste lands 7,773 square miles (estimated), besides private lands. As the Upper Ottawa territory of Ontario, as before mentioned, formed so long part of the same agency as to administration and accounts as that of Quebec, and its trade has been so long linked with that of Quebec as its market, having hitherto furnished about two thirds of the whole supply of square timber which sustains its export trade, it may be proper to take our proposed notice of it here, and then exhibit the product in timber and revenue of each of the Upper Ottawa territories together.

The Upper Ottawa territory of Ontaria.

The Upper Ottawa territory of Ontario includes within its outlines an area of 17,463 square miles, apart from the area of 2,294 square miles on Ottawa waters below it. Its chief rivers—the Blanche, the Montreal River, the Matawan, the Petewawe, the Bonnechere, the Madawaska, the Mississippi, the Rideau—have been already enumerated, and their lengths, of course, stated as tributaries of the Ottawa.

River Blanche.

The Blanche flows through an unusually fertile arable country covered with a fine growth of hard wood trees, with no pine on its course except a few trees at a lake at its source on the height of land, but on the head waters at the Quebec boundary good pine becomes abundant.

The Montreal River.

On the Montreal River good pine originally extended up to the 62nd mile, but even since 1866 fires have done much damage. North of that poplar, birch, and spruce prevail. The country between the Montreal River and Lake Temiscaming is held to be valuable timber land, but at the western watershed bounding this territory pine is absent. Pine is abundant in the country on the west side of the Ottawa down to the Matawan and all below it, back to the rear boundary of the territory and beyond it.

General characters of Upper

The chief part of the Upper Ottawa agency of Ontario, forming about three-quarters of its entire area, is that lying southward of the River Matawan, including the valleys

of its south branch, the Amable du Fards, the Petewawe, the Indian River, the Madawaska, the Bonnechere, the Mississippi, and the Rideau, which, like the valleys of the Moira and the Trent in the adjoining agency westward, originally contained the most extensive and richest pine forests in the old provinces of British North America. On the River Bonnechere, for instance, I passed through two large timber berths, equal to a large township in area, generally covered with hardwood trees often 100 feet in height; yet they yielded in the course of 40 years' dues on square pine timber and saw logs, paid into my office, equal to nearly three dollars an acre; and they are still yielding some dues and ground rents, being still of value though much cut up by settlers and lumbering. On the Quebec side there are tracts that long ago yielded as much. On both sides of the Ottawa there are pieces and considerable tracts of unarable land, though rich in the soil, so wooded that should be reserved carefully as forests for ever, under careful management, gleanings, and thinnings utilised, and the surplus young trees transplanted to replace the larger ones taken away as soon as private enterprise, with such encouragement as Government may be able to afford, may see that it would be worth while to do so. Beyond the Ottawa valley and French River north-westward Ontario has but little pine to contribute, it is limited to a belt extending from 30 to 40 miles north from Lake Nippissing and Lake Huron, beyond which recurs a zone of 120 miles in breadth, which extends to Lake Superior, that, with the country behind it, has no pine to contribute.

Ottawa territory in Ontario.

Exceedingly rich in pine. Instance.

Similar tracts on Quebec side.

Upper Ottawa, Ontario.

But from the country on Hudson's Bay waters, claimed by Ontario, great quantities of excellent spruce, tamarac, and yellow birch timber and sawn lumber, will doubtless be brought out by rail, before very many years from what is called the level clay country of the north, which also contains much good land fit for settlement, and there is good coal in the lower valley of Moose River. The country between the northern boundary of the province of Quebec and Hudson's Bay, though it has a good growth of pine for 20 miles north of the Quebec boundary, about the portage to Lake Abittibi has much less timber of value or land fit for cultivation owing to the fact recently discovered that the fine growth of wood seen along its rivers, especially north of Lake Abittibi, often extend less than a mile back, and that the greater part of the country between and behind, is covered by low peat bogs of great depth, the wetness of the climate being highly favorable to the growth of the plant, the decay of the under parts of which as it grows produces the bogs gradually increases their depth. They may become of incalculable value for the enormous supply of fuel stored up in them, which might be furnished at a moderate price in our cities for domestic use, and many manufacturing purposes, and the soil that underlies these bogs being of a retentive and durable kind, will, where it may be uncovered, yield heavy crops of hay and oats, barley or rye, like the lands reclaimed from "Blairs Drummond Moss" in Scotland and others.

Limited range of pine zone, north of Lakes Nipissing and Huron.

Much richer in wood is the territory on the Hudson's Bay waters claimed by Ontario.

Country north of Quebec has less wood owing to peat bogs.

But the supply of timber it can yield at any future time will be much less than what the country claimed by Ontario will yield, especially with Canada Pacific Railway to carry it out in the form of sawn lumber.

Value in future of peat bog regions north of the province of Quebec.

Very little information of any kind is before the public respecting the country east of Lake Abittibi and the valley of the River Hurricanaw, the head waters of which reach down below lat. 48° north to within 10 miles of Lake Victoria on the Ottawa. It would seem very desirable to have an exploratory reconnaissance made of the valley and course of that river. Its waters extend about 20 miles further south than those of the Abittibi where much good pine was found. It seems desirable also to learn something as to its minerals. A copper formation was discovered considerably to the eastward of it by Mr. Richardson of the Geological Department. Profitable mining in that region, if possible, might be of value to the province of Quebec to which it naturally belongs.

Little known country north of provincial boundary.

Cursory explorations of its waters desirable.

The following exhibits the total numbers of pieces of squared white and red pine and other woods, and of pine saw logs cut in the Upper Ottawa territories of Quebec and Ontario, on Crown lands, and also on private lands from 1826 to 1881 (30th June) inclusively, that is, before and since confederation as closely as can be learned from the records of the Crown Timber Office, Ottawa:—

Upper Ottawa territory, Quebec.

Summary of timber and saw logs from Crown and private lands since 1826.

From 1826 to 1866 inclusively.

	Square Timber.		Pine Saw Logs (only).	
	Ontario.	Quebec.	Ontario.	Quebec.
White pine - - - -	3,048,382	1,739,094	4,084,258	2,230,056
Red „ - - - -	1,714,412	978,064	—	—
Other wood - - - -	255,950	146,019	—	—
Totals - -	5,018,744	2,863,177	4,084,258	2,230,056
Deduct from private lands - -	1,074,418	612,931	874,349	498,804
Cut on Crown lands - - -	3,944,326	1,751,246	3,209,909	1,731,252

From 1867 to 1881 inclusively.

	Square Timber.		Pine Saw Logs (only).	
	Ontario.	Quebec.	Ontario.	Quebec.
White pine - - - -	1,925,247	1,119,382	17,920,850	17,277,103
Red „ - - - -	485,141	118,626	—	—
Other wood - - - -	238,874	63,319	—	—
Totals - -	2,649,262	1,301,327	17,920,850	17,277,103
Deduct from private lands - -	615,879	244,895	3,380,275	2,679,412
Crown timber - - - -	2,033,383	1,056,432	14,540,575	14,597,691

Total recorded product, Upper Ottawa Agency, 1826 to 1881, 30th June.

Ontario,	7,173,182 pieces pine.	494,824 other woods.	22,005,108 saw logs.
Quebec,	3,955,166 „	209,338 „	19,507,159 „
Total	11,128,348 „	704,162 „	41,512,267 „

Upper Ottawa territory—*continued.*

It will be seen that the foregoing table gives a more complete exhibit of the yield of timber from the Upper Ottawa territories than I had the means of making for the other territories, owing to its being compiled from the records of my own office, and my transactions as agent for the two Upper Ottawa territories for upwards of 30 years, with the records of my predecessors for 26 preceding years, though imperfect. As the transactions and the revenue of the Crown Timber Office of Ottawa annually, are greater than the totals in the remainder of the two provinces taken together, and extend over a much longer period, and the Ottawa agency was more regularly systematised from the commencement, its records afford a more perfect view of this branch of the public service, especially as regards the effect of injudicious systems of settling lands for settlement.

Advantage of selling land subject to duties on timber, if adopted when recommended.

In illustration of which, I beg to refer to the line of quantities of timber and saw logs cut on private lands (of which proof was given) in the period from 1867 to 1881 at the foot of the foregoing table, by which it will be seen that there passed as private (free of duty) during these 15 years, 244,895 pieces of square timber and 2,679,412 saw logs from the Quebec side of my agency, and 6,815,879 pieces of square timber and 3,380,275 saw logs from the Ontario side of it, and that if they had been subject to duty at the rate of $1\frac{1}{4}$ cents a foot on the square timber, computing them at the minimum rate as averaging 50 cubic feet each, and the saw logs at the old lowest rate of 10 cents each (not $12\frac{1}{2}$ cents, the ordinary average in Quebec) the duty on them accruing to Quebec would have been $\$421{,}000\frac{37}{100}$, and to Ontario $\$722{,}921\frac{50}{100}$, making together $\$1{,}143{,}951\frac{87}{100}$, which I am necessarily in condition to say decidedly was unnecessarily lost to the public. Had the principle of selling public lands at a reduced price, subject to the conditions that the timber cut on them should be paid for at the usual rates of dues to the Crown when it went to market, been adopted when officially suggested, and

sustained by detailed demonstrative definite evidence in 1852, or even when again submitted, and its applicability and advantages demonstrated in the 10th clause of my evidence before a committee of the Legislature in 1855, on the management of the public lands, had it been then adopted, not only would the above amount have been saved to the provinces, but also necessarily a nearly similar amount in the other Crown timber agencies, whose timber transactions are, taken together, nearly as great as those of my late agency, but also, in addition thereto, the dues that would have accrued on timber and saw logs cut during the previous 15 years on lots sold between 1852 and 1866, amounting with this addition in all to over $3,000,000. Besides which, there is the large amount which would accrue had the principle been established on timber that must continue in future to be cut on the part of the lands more lately purchased, especially which would cover any reduction in the price of the lands sold.

Loss by its not being adopted.

I am led to express myself so fully and decidedly here, because, as my 36 years' experience has necessarily made me thoroughly acquainted with the matter, I feel it to be my duty to vindicate to the utmost the action taken last spring by the Government of Quebec and the Legislature in passing the enactments of 45 Vict. c. 10. It may be thought that the above estimate of the amount that would have accrued had the sale of Crown lands, subject to payment of the usual dues on timber cut on them, been established 20 or 30 years ago, as it embraces duties on all kinds of timber besides pine, would give an exaggerated view of the profit to the revenue to be expected from the enactments of last spring, which reserves only the pine. But it will be found, on computing dues in the quantities of squared pine timber and pine saw logs given in the annual return of timber from Crown lands in the Departmental Report for 1881, by the increased rates established by Order in Council of 28th November 1880, as since modified, that the dues on pine timber and pine saw logs alone, at the new rates, will amount to several thousand dollars more than the total of dues that accrued on timber and saw logs of all kinds for that season at the previous rates. Notwithstanding a slight decrease on the quantity of pine in some parts of the province, cut from Crown lands, together with a great increase in the proportion of spruce saw logs made, the quantity of pine saw logs and squared pine timber when reduced to a common measure, has been on the whole increasing, though at an uneven rate. Thus, when the number of pieces of squared pine cut in the province as returned for 1881 is cast into saw logs by computing that the tree from which each piece was made would have yielded three saw logs (as the finer trees only are used for making squared timber), and the number so obtained is added to the number of pine saw logs returned for that year, the sum will be found to be over 5 per cent. greater than the yearly average of pine timber and saw logs, from Crown lands deduced from the totals of them as recorded for 15 years past, computed in the same manner.

Increase of pine cut—*continued.*

As the yield of pine continues to increase, though in a fluctuating manner, it will be many years before the revenue from the pine reserved by the enactment of last spring permanently declines; for as, even when the yield of pine diminishes through scarcity of it, the rate of dues on it may justly be augmented on account of its then necessarily increased value. It is to be observed in favour of the reservation that it is notorious that very many lots of Crown lands, whether subject to the conditions of actual settlement or not, are purchased simply for the purpose of lumbering upon them. Of course the very best timbered lots are selected, where the duties on the timber (the payment of which is in this way evaded) may or rather would, if paid, amount to from four to 12 times the price of the lot.

Nearly all this is lost to the province that seldom secures an actual settler in return; for such pine land is generally unfit for settlement and is exactly of the kind which for the common good of the country should be carefully preserved from the fires of clearing and reserved, and its young timber be allowed to grow up in forest for ever.

Reservation of pine will prevent purchase of lots under pretence of settlement but only for the pine.

The Act reserving the pine will put a simple self-acting stop to all such purchases to the injury of public interest and revenue in future. By analyzing the return of ordinary dues on timber cut on Crown lands, in 1881 it will be found that three quarters of the amount is derived from white and red pine timber and pine saw logs, and the remaining quarter from all other kinds of timber and saw logs, and minor descriptions of wood goods of all kinds. In the foregoing table it is to be observed that square timber and saw logs only are included, and all other wood goods are omitted as unimportant for the object of the foregoing brief table. The dues accrued from them are, however, included, of course, in the following equally brief exhibit of the revenue accrued from Crown timber dues in the upper Ottawa territories of Quebec and Ontario respectively from 1826 to 1881 inclusively, being from the remotest period of which there are any records in the Crown Timber Office, Ottawa.

Upper Ottawa territories of Quebec and Ontario summary of dues accrued on each since 1826.

Period.	Ontario.	Quebec.	Totals.	Years.
	$	$	$	
1826 to 1834 - -	169,078	46,023	215,101	9
1835 to 1851 - -	934,735 56/100	460,643 79/100	1,395,379 35/100	17
1852 to 1857 - -	453,058 42/100	282,879 21/100	735,937 63/100	6
1858 to 1866 - -	896,096 27/100	609,861 15/100	1,505,957 42/100	9
1867 to 1881 - -	3,279,538 22/100	3,439,832 88/100	6,719,371 10/100	15
1826 to 1881 - -	5,732,506 47/100	4,839,240 3/100	10,571,746 50/100	56

Not having yet received the usual annual returns of collections of timber dues made at Quebec by the Collector of Crown timber and slide dues for 1882, on clearances transmitted by me, of rafts from my Quebec and Ontario agencies, I am unable to include, completely, in this summary the amount of revenue that accrued from them up to the close of the period they were under my charge; it is only for the last 30 years that they have been exclusively so.

Period I have been in charge of them,

For six previous years there was a collector of Crown timber dues, who was my colleague in the settlement of contestations and head of the Crown Timber Officer. My duties were then limited to the awarding of timber berths to the applicants entitled to them, under regulations, and defining their limits, with the duty of inspecting the collector's accounts and transactions if I saw any cause for doing so.

In October 1852 his duties were added to mine.

and the amount of my time.

Of the above amount of $10,571,746 50/100, $8,846,814 15/100 accrued under my charge and direction, and to complete both of these sums the amount of dues accrued, in 1882 about $684,787 54/100 has to be added, which will increase the total accrued in the Upper Ottawa agency for Quebec and Ontario to $11,256,534 4/100 and the portion of it that accrued under my charge, as Crown timber agent, to $9,531,601 69/100 to which should be added as a chief branch of my official duty the collection since 1864 of $1,527,200 37/100 of slide and boom dues for the Dominion Government, increasing the dues accrued to the three Governments I served to $11,058,802 6/100. I mention the collections of slide dues in the foregoing as giving the opportunity of explaining the advantage of the collection of timber and slide dues being combined. It greatly facilitates and tends much to secure the accurate collection of both. The same timber and the same men are dealt with at the same time. The returns of the timber rangers of their inspections, supported by sworn statements of cullers, afford the means of effectively checking the accuracy of the certificates the lumberers give the deputy slide masters, which through careless error or fraud might be quite erroneous, as to the numbers of saw logs especially, and as to where they came from. On the other hand, the assistance the Dominion officers of Inland Revenue and Customs and their collections of canal dues, are authorised to render, at the request of the Crown timber agent, in preventing the departure of vessels or the passage of barges loaded with lumber through canals is often of the greatest importance in securing the payment of timber dues. On the River Ottawa no boats or barges loaded with lumber are allowed to pass through the canals without permits from the Crown timber agent. Such permits are occasionally withheld for the enforcement of the payment of timber dues, and the detention of the boats (till released by direction of the Crown timber agent) is always promptly effected by the officers of the Dominion.

Upper Ottawa territory. Amount of revenue to the provinces and the Dominion, in timber and slide dues while under my charge. Advantage and economy of combining the collection of timber and slide dues.

The business and accounts connected with the collection of the timber and slide dues for the three Governments form about two thirds of the duties and labour of the Crown Timber Office, Ottawa; and the preparation and issue, annually, with necessary alterations of the 529 timber licenses in the province of Quebec and the 245 in Ontario which together cover an area of 26,448 superficial miles of the Upper Ottawa territories, with the intricate investigation of obscure conflicting rights in the cases of contestations as to bounds and the issue of instructions for the surveys of them form the remainder, of which the last mentioned form the most difficult of the duties of the office.

Other important duties of the Crown Timber Office, Ottawa; Timber licenses and surveys.

Practical and scientific men alike who attended the meetings of the American Forestry Congress, held at Montreal in August last, could not fail to be deeply

impressed with the very great, we may say, unexpected, amount of highly interesting instructive, and important information embodied in the articles read, the addresses given and the discussions that took place on the various subjects brought forward. The Forestry Congress.

Even different views, when elicited, gave with advantage the results of greater variety and scope of observation. The valuable timber of our forests is being rapidly destroyed by the commercial demand for it and by desolating fires, and we must now distinctly bear in mind that we have no new fields to fall back on for the white pine that gives our trade its special value. Elsewhere the increasing scarcity of wood for fencing and building, and especially fuel, which has already long been felt, and in some of our oldest settlements is increasing the difficulty of living, and consequently diminishing the value of farms even in situations otherwise favourable.

When we take all this into consideration, together with the consequent ultimate decay of the chief export trade of the port of Quebec, and—what is not to be overlooked—the revenue derived from it, we can hardly over estimate the importance of the objects of the Association, and the obligation we are under to the eminently experienced and talented American and Canadian gentlemen of the Association who have so earnestly devoted their time and attention to the subjects of forest preservation and cultivation, so specially important to the future prosperity of our province of Quebec, obviously adapted by its favourable geographical position, and the unfitness of much of it for other cultivation, to be a timber yielding and timber trading country for ever. Its interesting and highly important objects and proceedings.

For the object of this memorandum it is proper that any remarks I may have to submit should be confined to such parts of what was read or said at the meetings of the Congress as may be more or less applicable to the management of our provincial public forests, and to the profitable re-enforesting by private enterprize of worn out or unarable fields, and the planting of trees of most valuable kinds everywhere where they might be useful or ornamental.

On tree planting.—The able paper by Dr. Hough, the talented Chief of the Forestry Branch of the Department of Agriculture of the United States, advocating the planting of trees along railway lines, and the information it contains on the great and rapidly increasing consumption of small trees for railway ties in the United States, merit the greatest consideration, in view of the like increasing demand for railway ties that must continue increasing for our Canadian railroads. He says 2,200 to 3,000 are used in every mile, sometimes 3,500, and that there are 100,000 miles of railroads in the United States; average duration of a tie is five to eight years, and that 30,000,000 to 50,000,000 of ties will be required for the 100,000 miles each year, which he computes at the rate of 500 ties to an acre, will require 60,000 to 100,000 acres of woods each year to be cut over, to provide which—he says justly, that allowing the trees 30 years on an average to attain the necessary size—there should be 18 to 30, say, 25 acres of woodland to every mile of track either along the road, which in many cases would be desirable to prevent drifts, or where the land could be had at less cost, as near it as economy might dictate, counting in the cost of transport of the wood when cut, if remote. Dr. Hough on tree planting along railways. Railway ties, number required annually in the United States.

As far as 60 years' experience, chiefly in wooded countries, road engineering, or in charge of public forests, may enable me to judge I can endorse Dr. Hough's views and calculations on this subject (and those of the other members of the Association respecting it) which are applicable to tree planting generally, as regards the selection of kinds most suitable to the soil and the object intended, and the treatment of them.

Among the trees recommended for such planting, the black walnut for many obvious reasons was most strongly advocated by several eminent American and Canadian members. Among the latter, the most prominent and practical, was the Hon. Mr. Joly, well known for the energetic interest he takes in everything for the general good, like the present movement, which is the object of the American Forestry Association; he has set the example on a large scale, in commencing the cultivation of the black walnut in the province of Quebec (it is stated that he planted 10,000 walnut trees in one season recently). The diminishing supply of walnut in the United States and its rapid disappearance have greatly increased the price of it in the wood market, and consequent profit in producing it, which is much sooner obtainable from its well known rapidity of growth, which is stated by Mr. Joly is nearly three times as rapid as that of pine, and still more so than that of spruce, and he estimates that an acre planted with black walnut would in 40 years yield $10,000. Recommends black walnut, as does also the Hon. Mr. Joly, who has planted it largely. Its valuable qualities and estimated profit.

When we add that black walnut stands next to mahogany for furniture and oak for structural purposes, that fence posts of it lasts over 25 years, and that from its strength and hardness and great durability it makes superior railway ties, even its fruit is valuable, Its durability, strength, and fruit.

and finally that it makes excellent firewood, belonging to the same family as hickory that burns well green. "Thus," to use the words of George B. Emerson, "it has almost "all the qualities desirable in a tree."

We may add here that the butternut, which is of the same genus as the walnut, though inferior in hardness and colour, resembles it in durability under heat and moisture, and its extensive usefulness for furniture is well known, so also is its rapidity of growth.

The Catalpa Speciosa.

The "Catalpa speciosa" is of much repute in the Northern and Western States. It is found, Dr. Hough says, to be hardy and very durable. Its wood is light (so much the better for engineering) yet strong enough for most purposes of construction. It has been used to advantage in bridge timbers where exposed to the weather. It is a favourite material for fences, is easily worked, and durable as shingles, and is found serviceable as railroad ties. Dr. Warder, in a paper read at the Congress in August last, speaks of their lasting 12 years or twice as long as cedar. Durability is of great importance, it doubles the value of wood for structures exposed to weather, for all practical men know that in rough wood work, in rough calculation, the workmanship costs as much as the timber. Dr. Warder doubted if the Catalpa would grow in Canada. Mr. Robert Burnet, of Picton, latitude $45\frac{3}{4}^{\circ}$ north, said 100 plants from Illinois were set in 1880 in the spring to test if they would succeed, but it will take years to ascertain the result. Mr. D. C. Burson, of Topeka, sent a paper, which was read, on the Russian mulberry, an exotic introduced into the western prairies by the Mennonites, where it is now coming into great use as a tree to bring returns to the present generation. It grows rapidly, stands transplanting well, and is ornamental. The fruit is very good and plentiful, and the wood is as durable as red cedar and is useful for furniture; the leaves are the best food for silkworms. It grows to a great size and rapidly. Trees sown seven years ago are now 25 feet high and 6 to 8 inches thick. Its fruit is used as a dessert and makes a pleasant light wine. Its very valuable qualities seem to render the ascertaining if it will thrive in this country worthy of special encouragement. A paper on the European larch was read by Mr. David Nichol, of Cataraqui, stating that the American larch, called tamarac, when young can hardly be distinguished from it. The European is quick growing. It brings the quickest and most certain returns to the grower, succeeds well on poor land, and almost in any climate. In Europe it is the best wood for masts and spars. It is very strong and does not warp or shrink, and is much used in shipbuilding. It improves the soil as its leaves add more than the tree takes from it. Its resinous nature makes it better for shingles than pine or cedar. It is large enough in 35 or 40 years for every useful purpose, and in 50 years it is found on an average to attain a diameter of from 30 to 40 inches at 3 feet from the butt. In Europe its larch is very durable. The frigate built from the Duke of Athol's larch plantations was ranked a second time as A 1 from its continued soundness.

Dr. Warder on its durability, &c.

Mr. Burson on the Russian mulberry.

Many good qualities.

Mulberry fruit and wine.

Mr. Nichol on European larch.

Canadian larch.

Our timber, unless where grown near the sea, is less durable than timber of the same kind grown in the maritime parts of Europe. Our larch of Canada generally is less durable than the European, but in other respects has the good qualities of the European, such as freedom from knots, strength and solidity, and, even under certain circumstances, durability. (The contractor for the rebuilding of an old military stockade on the Richelieu found the old posts, where of cedar, decayed to a spindle at the surface of the ground as old cedar fence pickets become, but where of larch (l'epinette rouge) they were decayed only one-eighth of an inch in, but all inside of that was as sound as ever). Mr. Nichol says larch should not be planted with other trees, they seem to injure it. In a little hedge row of larches I put one little grey spruce half their height. They were neglected, and grew up to 25 feet in height, but the nearest larch to the spruce turned abruptly 10 feet back from the line, and there resumed its perpendicular growth. The tamarac was originally taller and older than the spruce. Our tamarac (larch) in the Lower St. Lawrence is good and comparatively durable. West of Lake Temiscouata I saw an exceptional one it is true, over 10 feet in girth and 100 in height. The average contents of the square tamarac from the Ottawa is 40 cubic feet to each piece; red pine only 33 feet. As the larch is the best quality of timber we have for many purposes, and is found in the most northerly parts of the province of Quebec at the sources of the Moisie and the Saguenay to attain a large size, and with care can be transplanted young, with great success, it is evident that the otherwise useless underwood of our tamarac swamps could very profitably be employed in converting many of our worn fields, overgrown with thistles, and even whole abandoned lots of land into valuable forests, though inferior in profit to the cultivation of black walnut. The "Pinus sylvestres" or Scotch fir, which is the principal prevalent pine of the north of Asia and Europe, and is much valued by European shipbuilders is stated by Emerson in his

Superior value of Lower St. Lawrence larch.

The "Pinus sylvestres," Scotch fir.

"Trees of Massachusett" as being the most valuable of European pines that could be introduced into America. It is not liable to blight or fungus. It bears extreme exposure to cold and storms. It would thrive in Canada where pine cannot possibly grow, and is excellent as a sheltering screen for other trees, and would form a more valuable substitute for our pine, rapidly departing, than our spruce is, owing to its known superior qualities. In Scotland it sells for one half more in price than spruce timber does, though (probably in part from its greater abundance) for little more than half the price of larch. It is more durable and less knotty than spruce, but having spruce we are less immediately in need of it. Very hardy and durable.

The ash tree—*on which Mr. Arthur Bryant, of Prinstown, Illinois, read a paper.* White ash is the most generally useful tree for all purposes for which strength, elasticity and lightness are requisite, such as for agricultural implements, carriage making, handles of tools, &c., &c. black ash is useful and ornamental for pillars and inside finishing, and it makes durable fence rails. For most of these purposes it is important for home use, though insignificant in our export trade. It is easily transplanted and grows rapidly. It is a tall, straight, and handsome tree. I had one in a field, which, when cut down, measured 112 feet in length; it was 10 feet in girth. General usefulness of white, and even black, ash.

Our white pine, however, though the planting of it and cultivation would not be so soon repaid as that of some other trees, is on account of its great value and the great demand for it for home use and exportation, that we should be most anxious to preserve the growth of even by cultivation. For the purposes of general carpentry and house finishing and cabinet work of various kinds it has no equal, and the extent of the climatic zone in which it thrives, seems to be slowly but steadily contracting, and its power of reproducing its kind diminishing from some natural cyclical law or climatic clause, for it is remarkable, speaking of the valley of the Ottawa, near the northern limit of its growth, even in fertile hardwood lands, where pine of the best quality and largest growth are commonly found, there are often no young pines growing up to replace them, though it be even in what is called the white pine country of old Canada. White pine is long of coming to maturity on account of the great size it attains, but it is quick of growth nevertheless, for where cultivated on good soil and uncrowded by other trees, it increases from half an inch to three quarters of an inch in diameter annually. Some eminent American writers err, in thinking that as a universal rule pine does not thrive on land of limestone formation, for when I first looked on the site of the city of Ottawa and its environs, exclusively of stratified Trenton limestone formation, it was (excepting a partially cleared portion) covered with thick woods in which white pine was predominant after three large rafts of it had been cut within the site of the city and its suburbs. Two or three lofty specimens still remain within a mile of Parliament buildings, about 15 feet in girth and 180 feet in height. White pine; great importance of maintaining the growth of it by preserving, and even planting it.

The reasons are nearly similar for preserving and cultivating our red, originally designated Norway, pine (being nearly the same), but it took 40 years' experience to enable British purchasers to discover that it was inferior in durability to the Norway red pine, and that it was inferior in value to our white pine, which, from the similarity of name, they took to be the same as the white wood of the Baltic, a much inferior wood. The red pine, however, being harder than the white pine is more valuable for flooring, especially when there is much wear, being more durable if not exposed to the weather. It makes better fuel than white pine, as it can be burned while still green. Yet it is much less liable to be killed or injured by being scorched than white pine. Our red or Norway pine.

At an evening meeting at the Queen's Hall, the Hon. Mr. Joly, with great clearness defined what the advancing progress towards the destruction of our forests urgently requires of us in saying that "both the preservation of our existing "forests, and the creation of new forests in regions where they do not exist, are absolutely "necessary" adding that in view of the inevitable emergency, which all must admit to be steadily approaching, it was gratifying to see that the Government and Legislature of the province of Quebec, by the enactments of the last session of the provincial Parliament, alluding to chapters 10, 11, and 13 of 45 Vict., and especially to the last, for the encouragement of timber planting, had taken the lead in initiating the true course of action for successfully meeting that emergency. In so expressing it he most happily, and with truthful force and clearness, put the highly creditable action of the Government and Legislature before the audience; but to do full justice to the amendment of the system of the sale of public lands would from its importance have required too great a departure from the more immediate subjects before the meeting but which may render further explanation necessary. Hon. Mr. Joly on the imperative necessity for action in preservation of our forests.

And his appropriate enconium on the action of the provincial Government and Legislature in the matter.

After briefly recurring to further proceedings of the Congress, the Hon. Mr. Loring, the President of the Forestry Association, concluded a highly interesting address which he gave on the general subject of forestry, with an estimate of the time it will take to exhaust the timber grounds in the several States of the Union; summing up with the conclusion that, in the course of one generation, the present Hon. Mr. Loring's powerful statement of the im-

pending early exhaustion of United States forests and consequent great demand on ours.

forests of the United States will be almost entirely exhausted; which may be considered as usefully instructive to us, as certainly assuring us of the exhausting demand that long before the close of that term will be made on our forests to meet the requirements of the American market. The warning manifest in the facts given by Mr. Loring is timely; and the wisdom of entering without delay on a course of action to meet the emergency as it advances, is obvious, whether it comes sooner or later than estimated.

Arbor day holiday proposed by the Hon. Mr. Joly.

Before closing my remarks on Mr. Joly's address I should have noted his judicious proposal of establishing an arbor day as an annual public holiday as calculated to give permanency to the recollection of the object of it, by linking it to the regular recurrence of a day of enjoyment of healthful recreation. The history of all holidays unquestionably demonstrates the soundness of this conclusion.

Mr. P. White.

Value of timber destroyed by fire.

Mr. P. White, M.P. for Renfrew, Ontario, in a vigorous, clear, and succinct verbal address on the loss to the province from forest fires, estimates the value lost annually by them in the Ottawa District at twenty millions of dollars, meaning, doubtless, the value that the destroyed forest would otherwise have yielded compared with average annual value of timber exported. This estimate may be thought excessive; but when we bear in mind that in addition to the value of the marketable timber, the fire destroys not only the smaller timber that would in future years yield successive cuts of equal value to all that was then marketable, but also in severe cases all the seedlings and seed cones, the germs of any future growth of pine till they are casually carried there after successive generations of the berry, the cherry, the poplar, birch, and spruce. Whereas the thinning out of the larger trees by the lumbermen, if not followed by widespread fires, hastens the growth of the younger trees that are to replace them, and might do so for ever. In speaking of the endeavours of the lumberers to prevent the setting of fires Mr. White justly remarks that the authority of Government is necessary, and, in his stating, in his position as a representative of the lumber trade, that the trade would not object to a special tax to meet the expenses of Governmental supervision, he has judiciously taken an important preliminary step tending to strengthen the hands of the Government in taking action. His suggestion that the period during which the burning of brush by settlers is interdicted should be extended to the months of June, September, and October, deserves serious consideration. Mr. Wright of Massachusetts, in relating his experience of forest fires in the west, said the fires started through the carelessness of settlers did infinitely more damage than the Indian fires. This is generally true, as every man who has lived a backwood's life for years knows well. But of all settlers the pretended settler, whose sole aim is to use the pretence of settlement to enable him to strip a lot or two of a fine growth of timber; he makes a great "slash" by simply cutting down the trees on several acres, say from four to twenty acres, and when it has dried enough to render the tops and foliage of the trees highly combustible he chooses "a fine day for a burn" when there is wind enough to cause the fire to spread well, and then sets fire to it in many places, and this scorched "chopping" with a few round logs laid up in a square form is, when required, sworn to in formal affidavit as so many "acres under improvement" or probably as "cleared and cultivated" "with a dwelling house thereon." This abuse is too well known in its various forms and degrees in the Ottawa country. In one case on the Ontario side of my agency the doing of the settlement duties on 14 lots to secure the timber free of dues had, I was informed on good authority, destroyed the pine on nearly the extent of a township.

Lumbering less destructive.

Destruction of timber by fire.

Hon. Geo. Bryson.

Patrolling fire inspectors recommended.

The Hon. George Bryson of Pontiac, whose position in the Legislature of the province and his almost life long residence in a lumbering country and intimate experience in its trade, and in the commencement of its settlements, (gives) weight to his opinions, concurs with Mr. White in recommending that patrolling fire inspectors be appointed by Government, and in the extension of the period of interdiction of the burning of brush, with the addition that it should include the month of May, as it is then the fires have their beginnings and gradually spreading become more conspicuously destructive as the dry, hot weather of summer advances. These suggestions will be remarked on further, on the conclusion of this memorandum.

Mr. J. K. Ward.

Reservation of part of the lot for timber.

Mr. J. K. Ward, whose long experience in the lumber trade qualifies him well to judge of it, spoke of the great destruction of timber by forest fires, and suggested the importance of establishing a reservation of 10 acres of standing wood in every hundred acre lot by its being sold; subject to that condition the 10 acres to be free of price. His suggestion was made with a view of preserving necessary wood for fuel, fencing, &c. for the inhabitants, in consideration of their welfare. Dr. J. B. Hurlburt in one of the articles read by him suggested a reservation of 25 acres, for such purposes, which would be still better than 10, for the interest of the settlers in future. Such a reservation would be very easily

made, but would be practically difficult to maintain. It might be retained unsold by the Crown, but to cover the loss in the price of the lot, the price per acre should be increased one third, for the value of the lot would be soon enhanced by the reservation of the wood in the 25 acres, by limiting the cutting on it annually to its annual average growth under penalty of confiscation of the reserved quarter. It should be reserved in detached clumps unconnected with the boundaries. In the old settlements in the province, where remaining woods were naturally in the rear ends of the lots, a fire getting into one swept over all that were on the line, from their being adjoining each other. Mr. Saunders, of London, Ontario, read a paper on the growing of poplar for the making of paper and charcoal, for which the demand and price of certain kinds of poplar had of late been greatly enhanced, such as the aspen and the white poplar and others. He says the balsam poplar or balm of Gilead will prove almost if not equal in value. It is the most rapid in growth and the easiest to transplant. The very branches or tops if cut or broken off will thrive if planted. I fell from the top of one 50 feet in height, taking the top piece, which broke off with me. I planted it, it is now a thriving tree, over five feet in girth.

Mr. Saunders on poplar.

Mr. B. F. Fernow read an able and exhaustive article on the conditions of forest growth, for which his European experience and education in forestry qualified him. Referring to the threatened difficulty of meeting the enormous demand for railway ties, when the use of iron for that purpose was spoken of and objected to, he said that in his country, where the government owned alike the forests and iron mines, it used iron superstructures to carry the rails instead of wood sleepers extensively, though having ample command of both, from which it is apparent that iron is sufficiently suitable—a fact that is, though remotely, of considerable importance to our country, that has an inexhaustible supply of iron ore, the same means of obviating the difficulty as Prussia. The most important part of the proceedings of the meetings of the Congress, as far as practically concerned the management of the public forests of Canada, was the appointment of a Committee, consisting of Mr. P. White, M.P., Mr. J. K. Ward, Dr. Mohr, the Hon. George Bryson, Professor Hough, and Mr. P. E. Fernow, to memorialize the Governments of the United States and Canada on the necessity of protecting their public forests.

Mr. B. E. Fernow.

Iron extensively used instead of ties in Prussia.

Special committee.

On memorial to the Governments to protect timber forests.

The report of this Committee, presented by the Hon. George Bryson, and adopted by the Congress, recommends:—

Adopted by Forestry Congress.

1st. The reservation of all pine and spruce lands unfit for settlement, for lumbering purposes exclusively.

2nd. The prohibition of the burning of brush by setttlers in the vicinity of fir trees during the months of May, June, September, and October (July and August burning already interdicted in the province of Quebec).

3rd. The division of the timber country into districts, and the appointment of police under a superintendent with magisterial powers, whose duty it shall be to detect and punish offenders, and provide for the extinguishment of fires.

4th. The cost of the maintenance of this protection might partially be met by the imposition of a moderate tax on the parties owning or leasing timber lands.

On this subject I would remark that it has become a practice of the chief lumberers on the Ottawa to enforce every precaution in their power on their people for preventing such fires not only on their own premises, but also by having their rafts or saw logs accompanied by one or two reliable persons, whose duty it is to see that all necessary or other fires are duly extinguished. It is also a common practice when any of their men are discharged from their works to send a reliable person with them to see that all fires that there may be occasion to make are duly extingaished, and that no unnecessary fires be made.

Precautions against fires now used by lumber men.

It would seem most desirable that the reliable men so employed, by and on the responsibility of the lumberers, should be clothed with most ample powers as constables, and that the inspectors should have the necessary powers as magistrates.

I would particularly remark here, with regard to the interdiction of the burning of brush, that a point of importance has been overlooked in suggesting the period when it is interdicted, that is the unsuitableness of fixing one and the same period for the whole province, notwithstanding the great difference there is in the length of the seasons in different parts of it; May and October should be excepted from the interdiction on the eastern extremity of the province of Quebec, otherwise the clearing of land for cultivation in settlements there would in some seasons be rendered impossible or nearly so.

Period of burning should differ where length of season differs.

Should be subject to modification to suit great districts, by Order in Council.

The law enacted on this subject should clothe the Lieutenant-Governor with power to fix the periods in different localities or rather great fire districts by Order in Council.

It seems probable that before very long that a reservation of all commercial timber (or of the ordinary dues thereon) in the same manner as on pine will be necessary to preserve the public forests and revenue, though it is not of immediate importance.

Dr. Hough's encomium on the system now in force in the province of Quebec for the management of the public forests is so well grounded on facts, now that it has been so far completed by the wise legislation of last spring, that there is now little or no grounds left for suggesting any alteration or suggestion of addition beyond such as may appear advantageous in minor practical details, as the working of the system in future may indicate.

Respectfully submitted,
(Signed) A. J. Russell.

Ottawa, 16th January 1883.

Sir,

Ottawa, January 20, 1883.

In addition to what I said of the highly important and beneficial character and tendency of the action of the Government and Legislature last spring in the matter, woods and forests, I might, in my report on the subject of the meeting of the Forestry Congress, have with great justice adduced the very high prices now obtained by private individuals in selling timber berths, and the rates they exact from each other as compensation for damages in cases of trespass, as unquestionably justifying the increased rate of dues on timber from Crown lands now in force. *See* sale of 145 square miles of limits on Black River for $208,000\frac{20}{100}$, equal to $2\frac{24}{100}$ an acre, in the above-mentioned report.

It is worthy of remark that though the increase of price of the timber caused by the increase of the rates of dues would not be wholly at the expense of the foreign consumer, it would be so in proportion to the quantity of the article he was necessarily obliged to take from Canada, owing to his not being able to get it on better terms, or rather on the same terms elsewhere, and the portion of the public revenue arising from the increase of duties paid by foreign consumers would be so much gain obtained, which was not a tax on the people of Canada.

This, to a certain extent, adds to the advantage of selling lands, subject for ever to the ordinary duties in force at the time being levied on timber of all kinds cut on them, going to market and reducing the price of all lands sold to settlers.

As the rates of ordinary dues were increased in future, the reserved revenue from such timber as came from sold lots would increase, and would, being dealt with along with other and greater quantities of timber, at the same time be incomparably easier to collect, and that at much less cost than in the form of the small instalments annually on purchased lots, which, when not exceeding $4·00, do not cover the cost of office labour they occasion.

The reservation of duty on all timber from sold lands would be a source of revenue—of increasing revenue for ever to the province—especially to be valued as obviating the necessity of so much direct taxation, which otherwise would have to be imposed on our population to whom it would be objectionable. The revenue from other timber than pine may not exceed $100,000 annually at present, and the time, though distant, will come when it will exceed that from pine greatly.

The system adopted by Governments in the late regulations with respect to pine, in authorising it to be cut by the purchaser of a lot by giving him a license, is good in maintaining the power of control and exacting returns under penalty for evasion, as in case of trespass; and the levying of the duty will prove an important source of revenue, besides terminating the temptation to purchase the best timbered lots with the view of obtaining a right to the timber for from a quarter to a tenth part of the dues on it that would otherwise be payable.

As we had a system formerly, when it was necessary, of confiscating limits falsely stated to be duly occupied, I once proposed to the then Commissioner applying the same system to lots of land, of transferring the title and lot to the informer proving the non-performance of conditions of actual settlement, &c., as we did in the case of non-occupied licenses; but in the case of the non-occupied lot, what he had paid to be returned to him after deducting expenses of proving the case.

As there is an unprincipled clamour made against the Department cancelling sales in such cases, perhaps it might be well to adopt the system of giving the lot to any one that needed it; the proof to be made good before a court of law if disputed, so as to relieve the Department from the responsibility. Pardon my imperfect writing.

Yours, &c.

E. E. Taché, Esq.,
Assistant Commissioner of Crown Lands,
Quebec.

(Signed) A. J. Russell.

Précis by Dr. Lyons, M.P., of certain Reports, Acts of Parliament of the Dominion, and other Papers which accompanied the Canadian Forest Reports, in so far as they relate to Questions affecting Forests and Cognate Matters.

Law assented to 5th April 1869.

1. There shall continue to be, and be, a department for the management and sale of the public lands and forests, to be called "the Department of Crown Lands;" and the same shall be presided over by "the Commissioner of Crown Lands" for the time being.

The Lieutenant-Governor in Council may from time to time withdraw or withhold from sale and set apart the same to be held as "timber land" such portion or portions of the public lands as after the exploration and inspecting thereof by officers or agents specially charged with the performance of such service may be found to be valuable for its timber, but generally unfit for the purposes of colonisation, whether the same shall comprise whole townships, parts of townships, or tracts of unsurveyed land.

By clause 12 claims to Crown lands are barred, unless same has actually located or admitted a proof sufficient, in the opinion of the Commissioner of Crown Lands, furnished in support thereof before the passing on the 14th June 1853 of the Act 16th of Victoria, c. 159. The Lieutenant-Governor in Council may appropriate any public lands as free grants to actual settlers upon any public roads opened through the said lands in any new settlements, under such regulations as shall be made from time to time by Order in Council; but no such free grant shall exceed 100 acres. The term "public lands" shall be held to apply to lands heretofore designated or known as Crown lands and clergy lands, which designations for the purposes of administration shall still continue.

Department of Crown Lands, Quebec,
August 25, 1869.

1. The duties of agents shall comprise the sale and locating of all public lands offered for sale, the granting of licenses to cut timber thereon, or upon such lands as have been set apart for that purpose, the collection of arrears due, the settlement of conflicting claims, the inspecting of lands, the protection of the public lands within their respective agencies from trespassers and depredators; and such other duties not inconsistent with this Act, as the Commissioner of Crown Lands may from time to time think proper to assign them; and such duties shall be performed under the direction and in conformity with the instructions of the Commissioner. *See* 9th section, Act 32 Vict. c. 11. of Legislature of the Province of Quebec. Agents are directed to inspect and classify lands under the following heads:—

1st. Lots suitable for agricultural purposes, dividing them into three classes, good, average, inferior.

2nd. Lots valuable for the timber, but generally unfit for cultivation.

3rd. Lots not suitable for agriculture, and the timber only fit for minor purposes, as fuel for sugaries.

4th. Lots entirely unfit for agricultural purposes, and the timber of little or no value.

Woods and Forests.—The Act of Parliament under which the woods and forests of the Crown are organised is cap. 23, Consolidated Statutes of Canada.

The general timber regulations of 13th June 1866 are based on said Act and have the force of law. These regulations, since their promulgation, have been modified by

Orders in Council of 17th July 1868, 2nd October 1868, 18th June 1869, and 9th April 1869.

Licenses to cut timber are granted in the form sanctioned by Order in Council of 9th August 1869.

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46 Vict. Chap. 9. (Assembly Bill, No. 150.)—An Act to further amend chapter 23 of Consolidated Statutes of Canada, respecting the sale and management of timber on public lands, and the Acts amending the same.

Her Majesty, by and with the advice and consent of the Legislature of Quebec, enacts as follows :

1. The Act of this Province 39 Vict. c. 11, is amended, by adding at the end thereof the following sections, which shall be taken and construed as forming part of the said Act.

" 5. The Lieutenant-Governor in Council may, as soon as the necessary information " can be obtained, after the coming into force of this Act, set apart as ' forest land ' all " the ungranted lands of the Crown now held under licenses to cut timber," except such parts of such licensed lands on which no merchantable pine or spruce timber grows and which are fit for settlement ; and also such other portions of the ungranted lands of the Crown as the Lieutenant-Governor in Council, on the recommendation of the Commissioner of Crown Lands, may think fit so to set apart ; and as soon as the Order or Orders in Council setting apart such forest land shall be published in the " Quebec Official Gazette," and from and after the date of such publication, no land included in the territory so set apart shall be sold or appropriated for settlement purposes, until after the expiration of at least 10 years, and not then until after it is established to the satisfaction of the Lieutenant-Governor in Council that the whole or any portion of such territory may with advantage be opened for settlement. The Order or Orders in Council withdrawing such territory shall likewise be published in the " Quebec Official Gazette." The land so set apart shall be known and designated as a " forest reserve."

" 6. In the renewals of licenses effected after the publication of an Order in Council creating a forest reserve, it shall be the duty of the Commissioner of Crown Lands to exclude any land theretofore under license in the locality and which is not included in the reserve."

2. Whenever any such lands cease to form part of a " forest reserve," and for the purpose of securing to settlers, who may thereafter occupy the same, the timber they may require to facilitate the performance of their settlement duties, section 2 of the said chapter 23 of the Consolidated Statutes of Canada, is amended, by adding after the words " in all," in the sixth line thereof, the following words : red and white pine, spruce, " tamarac, birch, oak, walnut, cedar, butternut, and basswood."

3. After the coming into force of this Act any license issued for the cutting of any timber under the authority of the said chapter 23 of the Consolidated Statutes of Canada and its amendments shall contain a special description of the trees, timber, and lumber which it is permitted to cut thereunder, and they shall be of the kind mentioned in the preceding section and none others.

4. This Act shall come into force on the day of its sanction.

Copy of a Report of a Committee of the Honourable the Executive Council, dated the 23rd August 1883, approved by the Lieutenant-Governor on the 10th September 1883.

(No. 30.)

On land matters.

On the opportunity of setting aside, as forest reserves, certain portions of the territory comprised in the upper and lower Ottawa agencies, conformable to the enactments of the Act 46 Vict. chap. 9.

The Honourable the Commissioner of Crown Lands, in a report dated the 23rd of August instant (1883), sets forth : That from the documents of record in his department, respecting the inspections which have been recently made in the upper and lower Ottawa agencies, by competent bush rangers and others, it is advisable that the enactments of the Act 46 Vict. chap. 9, be now applied to the territory comprised in the

upper and lower Ottawa agencies, to be recognised in future as a forest reserve, and to be described as hereunder:

Such forest reserve to comprise the surveyed and unsurveyed vacant land, *i.e.*, bounded to the north by the height of land dividing the waters of Ottawa river and its tributaries, from those flowing into Hudson's Bay, to the west by the boundary line dividing the province of Quebec from that of Ontario, and by the easterly shore line of Lake Temiscamingue and of the Ottawa River including the islands therein situated belonging to this province, to a point opposite the River Mattawin; to the south and south-west by the Ottowa River, as far as the intersection of the line dividing the townships of Esher and Sheen; thence by the northerly line of the 7th range of the townships of Sheen and Chichester; by the northerly line of the townships of Waltham, Mansfield, Litchfield, Thorne, Onslow, Masham, Wakefield, Gore of Templeton, Buckingham, Lochaber, Repon, and that of the seigniory of Petite Nation; to the east by the line dividing the counties of Ottawa and Argenteuil, as far as the northernmost angle of the township of De Salaberry, by the southerly line of Grandison, by the westerly and northerly lines of the township of Wolfe, and by the prolongation of the last named line, to the western-most angle of the township of Doncaster, by the north-westerly limits of the townships of Doncaster, Chertsey, Cathcart, Joliette and Brandon; north-easterly by the line dividing the counties of Maskinongé and Berthier, to the height of land dividing the waters of the l'Assomption and Maskinongé Rivers, from those of the Saint Maurice; and lastly, by the height of land dividing the waters of the Saint Maurice from those of the Ottawa, prolonged to a point where it will intersect the northerly boundary of this province; save and except all lots situate in the following townships, which hereafter may be found (from inspections made by competent and authorised persons), fit for settlement and destitute of merchantable timber, *i.e.*, in the townships of Guigues, &c. [Here follow about 60 defined localities.]

Certified,
(Signed) Jos. A. Defoy,
Clerk Executive Council.

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45 Vict. Chap. 13.—An Act to encourage the planting of forest trees. [Assented to 27th May 1882.]

Whereas it is expedient to encourage the planting of forest trees; therefore, Her Majesty, by and with the advice and consent of the Legislature of Quebec, enacts as follows:

Proprietors, &c. planting their land to certain extent with trees entitled to land order.

1. Whosoever, being the proprietor of, or in possession as proprietor or as usufructuary of any land, shall plant any part of such land, not less than one acre in extent, with forest trees, shall be entitled to receive, in respect of every acre of land so planted, a land order, in the form of the schedule hereunto annexed, which shall authorise him to purchase, to such an amount not exceeding twelve dollars, any of the public lands which may be open for sale within the Crown land agency in which the trees shall have been planted, or should there be no such agency then in the nearest agency, subject to the laws and regulations for the time being in force regulating the sale and disposal of public lands.

Form of such order and privileges thereunder.

Conditions of issue of order.

No order shall be issued until it be satisfactorily shown that the land has been devoted to purposes of planting for at least three years, that the trees are in a vigorous and healthy state, and that the land is securely fenced against both sheep and cattle.

Cultivation of root crops among trees not to prevent land orders being issued.

Provided always, that if root crops are cultivated among the forest trees planted on any land, such land shall not by reason only of such crops being cultivated be deemed to be not devoted only to purposes of planting according to this Act.

Land order is transferable.

2. Every such land order is transferable, and shall be exercised within two years from the date thereof, and if not exercised within such period shall be absolutely null and void, and no renewal thereof shall be granted.

Void after certain lapse of time.

3. No land once planted shall entitle the planter to more than one order in respect of the same.

Only one order to be given for one piece of land planted.

4. The Lieutenant-Governor in Council may from time to time make regulations respecting:

Lieutenant-Governor in Council may make certain regulations.

1. The number and description of trees to be planted in each acre;
2. The number of years during which the trees so planted shall be preserved, and not cut down;
3. The other terms and conditions to be fulfilled by persons claiming a land order.

May appoint arbor day.

And the Lieutenant-Governor in Council may appoint by proclamation a day to be observed as "arbor day" for the planting of forest trees.

Regulations may be changed, &c.

5. Such regulations may be altered or repealed without, however, affecting any right acquired under such regulations.

Land order may be used to purchase lands and how.

6. The Commissioner shall, whenever such land order has been offered him in payment of the purchase money of public lands, mention the same upon the back of such land order, and shall give to the holder of such land order a receipt or certificate, which shall have the same effect as if the purchase money of such land had been paid in cash according to law and the regulations respecting the sale of public lands.

Return of land order when fully exercised.

7. When the land order has been fully exercised it shall be given up to the Commissioner of Crown Lands.

Extent of land to be acquired under Act.

8. No land can be acquired under this Act unless it is of fifty acres in extent, and does not exceed two hundred acres; but if any person is entitled to a land order for less than fifty acres he may pay the balance in money, under the same terms and conditions as other public lands are acquired.

Certain planting be a compliance with Act.

9. The planting of seeds, nuts, or cuttings shall be considered a compliance with the provisions of this Act.

Act in force by proclamation.

10. The present Act shall come into force by proclamation of the Lieutenant-Governor in Council in such parts of the province as shall be fixed in such proclamation or by any other proclamation to be thereafter issued.

SCHEDULE.

In the exercise of the powers in me vested by the Act 45 Vict. chap. 13. I hereby authorise , of , in the district of , to purchase to the amount of dollars any of the public lands in the Crown Lands Agency of , open for sale or selection, without payment in cash therefor, subject, however, to the provisions in the said Act contained.

Dated the day of , 18

(Signature),

Commissioner of Crown Lands.

The increasing care and attention bestowed by the public authorities of the Dominion on the protection of the still existing "timber lands" is fully shown by the enactments just cited, which have been given in full, as they will probably furnish useful examples for enactments in the mother country, when we come to deal practically with the question of home-grown timber. Special attention is invited to the provisions for instituting an "arbor day," on the model of that now existing for some years in the United States, and which has been productive of so much success in practical arboriculture, so many as 26 millions of trees having been planted in the State of Nebraska alone.

The following sections extracted from recent Acts further point in the same direction.

An Act to amend the Acts respecting the sale and management of public lands, received assent on the 27th May 1882, contains the following sections:—

17A. The pine timber upon public lands shall in future be reserved in all sales, grants, location tickets, leases or permits of occupation, and letters patent.

Notwithstanding such reserve, the locatees, being holders or not of letters patent, or their assigns, may, however, cut and use such pine trees as may be necessary for the purpose of building on the said lands; and, by paying the same price as the holders of licenses to cut timber, they may dispose at pleasure of those which they may cut down in the clearing of the land necessary to obtain letters patent.

17B. After the issue of the letters patent it shall be lawful for the Commissioner of Crown Lands to issue to the grantees of such lands or their assigns a license to cut and use for purposes of commerce pine trees measuring not less than 12 inches in diameter at the stump, and forming part of the said reserve, upon condition that they pay to the said Commissioner the usual dues imposed by the regulations upon holders of licenses to cut timber, and that they comply with such other conditions that the Lieutenant-Governor in Council may be pleased to impose upon them.

Further power is granted to the Lieutenant-Governor in Council for making regulations, not inconsistent with the preceding sections 17A and 17B, for all that concerns the preservation or working of the pine so reserved, for determining the cases in which such reserve such not exist, the conditions upon which licenses to cut reserved

pine may be issued, and generally for better assuring the execution of the present Act.

Perhaps, however, the most important step yet taken by the Government of the Dominion is that for the delimitation of forest parks in the Act of last year, assented to on 19th April 1884. The Homestead Entry Acts have been found, both in Canada and the United States, to interfere materially with forest operations on a large scale. By clause 4 of the Act of 19th April 1884, the 39th clause of the said Act is repealed, and the following clause substituted for it:—

39. The privilege of pre-emption in connexion with a homestead entry shall be discontinued from and after the first day of January A.D. 1887.

Clause 5 enacts:—

The Governor in Council may from time to time, for the preservation of forest trees on the crests and slopes of the Rocky Mountains, and for the proper maintenance throughout the year of the volume of water in the rivers and streams which have their sources in such mountains and traverse the north-western territories, reserve from sale, lease, or license such portions of land in the north-west territories on, adjacent to, or in the vicinity of the Rocky Mountains as to him appears expedient so to reserve, and may define the limits or boundaries of such reserves; and may set aside and appropriate such lands for a forest park or forest parks as he deems expedient, and may appoint officers for the preservation of such reserves and forest parks.

2. Statements showing such reserves and appropriations with the necessary maps, shall be laid before Parliament within 15 days after the commencement of the session held after such reserves or appropriations have been made.

3. Whoever wilfully cuts down, breaks, barks, roots up, removes or destroys, or causes to be cut down, broken, barked, rooted up, removed or destroyed, any tree, sapling, shrub, underwood, or timber growing in and upon any such reserve or forest park, shall for every such offence incur a penalty not exceeding 100 dollars, and not less than 10 dollars, to be recovered with costs of prosecution in a summary manner before a stipendiary magistrate, commissioner of police, or any two Justices of the Peace, under the provisions of the Act passed in the 32nd and 33rd years of the reign of Her present Majesty, chapter 31, and intituled "An Act respecting the duties of Justices of the "Peace out of Sessions in relation to Summary Convictions and Orders," and in default of immediate payment of the said penalties, and of the costs of prosecution, the offender may be imprisoned for any period of time not exceeding three months. This Act to be read as one with "The Dominion Lands Act, 1883."

Forest Fires.

Wherever forests exist danger from fire, the result of accident, neglect, malice, or natural causes, constitutes a problem of the greatest magnitude. Many square miles of forest in India, Europe, and the Continent of America have been lost owing to this cause. Stringent regulations have been put in operation in all countries, but perhaps it is not too much to say that we are still without perfectly assured means of wholly preventing such calamitous occurrences, in which the sacrifice of human life is not infrequently an additional element to be deplored.

I therefore do not apologise for submitting in full the text of what appears to be a well considered measure for some years in operation in the province of Quebec.

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46 Vict. Chap. 10.—An Act to provide means for the more effectual prevention of forest fires.

Her Majesty, by and with the advice and consent of the Legislature of Quebec, enacts, as follows:

1. The Lieutenant-Governor in Council may, by proclamation, declare any portion or part of the province of Quebec which is included in any forest region to be a "fire district." Such proclamation shall be published in the Quebec Official Gazette, and, from and after the date of such publication, the territory therein mentioned shall become and be known as a "fire district," within the meaning and for the purpose of this Act. Such territory shall cease to be a "fire district," upon the publication of a proclamation of the Lieutenant-Governor in Council revoking the one creating it.

2. It shall not be lawful for any person to set or cause to be set or started any fire in or near the woods, within any such fire district, between the first day of April and the

first day of November in any year, except for the purpose of clearing land, in which case no fire shall be set except between the first of July and the first of September only.

3. Any person who shall set or cause to be set afire contrary to the provisions of the foregoing section, shall, in addition to his liability for all damage, become liable upon conviction to the payment of the penalty mentioned in the Act of this province, 34 Vict. cap. 19. which shall be recoverable in the manner therein laid down of a penalty not exceeding 50 dollars, and in default of the payment of the said fine, with or without delay, to an imprisonment in the common gaol of the district in which the conviction takes place, for a period of not more than three months, unless the said fine and cost, together with the costs of imprisonment and conveyance of the delinquent be not sooner paid.

4. It shall be lawful for the Commissioner of Crown Lands to employ, between the first day of April and the first day of November, for the purpose of enforcing the provisions of this Act such a number of men as he may deem necessary for that end; and in each fire district so established he shall name an officer who shall be known and designated as "Fire Superintendent."

5. The Commissioner of Crown Lands may permit any person holding a license in any territory included in any such fire district, to place at the disposal of the Fire Superintendent, any number he may see fit of his employés for the purpose of aiding in the enforcement of this Act, which employés shall be under the sole and exclusive control and direction of the said Fire Superintendent, and bound to execute his orders. The salaries and expenses of such employés shall be borne by the licensee.

6. All locomotive engines used on any railway which passes through any lands comprised in any such fire district or any part of it, shall, by the company using the same, be provided with and have in use all the most improved and efficient means used to prevent the escape of fire from the furnace or ash-pan of such engines, and the smoke stack of each locomotive so used shall be provided with a bonnet or screen of iron or steel wire netting, the size of the wire used in making the netting to be not less than number nineteen of the Birmingham wire gauge, or three sixty-fourth parts of an inch in diameter, and shall contain in each square inch at least eleven wires each way at right angles to each other, that is in all twenty-two wires to the square inch.

7. It shall be the duty of every engine driver in charge of a locomotive engine passing over any such railway to see that all such appliances as are above mentioned are properly used and applied, so as to prevent the unnecessary escape of fire from any such engine, as far as it is reasonably possible to do so.

8. Any railway company running, or permitting any locomotive engine to be run in violation of the provisions of the preceding sections of this Act, shall be liable to a penalty of one hundred dollars for each offence, to be recovered with costs in any court of competent jurisdiction.

9. All railway companies whose lines pass through any lands comprised in any such fire district or any part thereof, shall be bound under a penalty of one hundred dollars, recoverable in the manner provided in the preceding section, and subject in addition to the liability for all damages caused by fires originating from sparks issuing from their locomotives, to clear off from the sides of their respective roadways all combustible materials, by carefully burning the same or otherwise. And it shall not be necessary in any such action for penalty or damages to prove the name or number of the locomotive, or the name of the engineer or fireman in charge of the same.

10. For the purposes of this Act, all Fire Superintendents, agents for the sale of Crown Lands, employés of the department of Crown Lands, sworn land surveyors, and wood rangers employed by the department of Crown Lands, shall be *ex officio* justices of the peace; and any justice of the peace, before whom has been proved any contravention of the provisions of this Act, may impose the penalty above set forth.

11. This Act shall come into force on the day of its sanction.

ROBT. D. LYONS.

House of Commons, London, April 6, 1885.

While these pages are passing through the press Dr. Lyons has been favoured with the very interesting and important report on "The Geographical Distribution of the Forest "Trees of Canada, by Robert Bell, M.D., F.G.S.C.E., Assistant Director of the Geological "Survey of Canada, 1882." On the accompanying map the general Northern limits of the principal forest trees of Canada east of the Rocky Mountains are represented. The

lines have been laid down chiefly from observations made by the writer during the last 25 years, extending from Newfoundland to the Rocky Mountains, and from the Northern United States to the eastern and western shores of Hudson's Bay. Nearly all the reports of the Geological Survey from 1859 to 1879 are stated to contain more or less information on the distribution of timber trees.

The forest trees east of the Rocky Mountains may be divided into four groups, as regards their geographical distribution within the Dominion :—(1.) A northern group, including the white and black spruces, larch, Banksian pine, balsam fir, aspen, balsam poplar, Canoe birch, willows and alder. These cover the vast territory down to the line of the white pine. (2.) A central group of about 40 species, occupying the belt of country from the white pine line to that of the button-wood. (3.) A southern group, embracing the button-wood, black walnut, the hickories, chestnut, tulip tree, prickly ash, sour gum, sassafras and flowering dog-wood, which are found only in a small area in the southern part of Ontario. (4.) A western group, consisting of the ash-leaved maple, bur-oak, cotton wood, and green ash, which are scattered sparingly over the prairie and wooded regions west of Red River and Lake Winnipeg.

LONDON: Printed by EYRE and SPOTTISWOODE,
Printers to the Queen's most Excellent Majesty.
For Her Majesty's Stationery Office.

CONTAGIOUS DISEASES (ANIMALS) ACT, 1881. (CANADA.)

RETURN to an Address of the Honourable The House of Commons, dated 7 November 1884;—*for*,

"COPY of CORRESPONDENCE with the CANADIAN GOVERNMENT relative to the Operation of CLAUSE 3 of 'THE CONTAGIOUS DISEASES (ANIMALS) ACT, 1884.'"

Agricultural Department,
Privy Council Office,
11 November 1884.

C. L. PEEL.

(*Mr. Arthur Arnold.*)

Ordered, by The House of Commons, *to be Printed*,
13 *November* 1884.

LONDON:
PRINTED BY HENRY HANSARD AND SON,
PRINTERS TO THE HOUSE OF COMMONS.

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COPY of CORRESPONDENCE with the CANADIAN GOVERNMENT relative to the Operation of CLAUSE 3 of The CONTAGIOUS DISEASES (ANIMALS) ACT, 1884.

— No. 1. —

LETTER from the Clerk of the Council to the Colonial Office.

Agricultural Department, Privy Council Office,
44, Parliament-street, Westminster, S.W.,
5 August 1884.

Sir,

I AM desired by the Lords of the Council to request that you will have the goodness to move the Earl of Derby to call the attention of the Canadian Government to a proposition submitted to their Lordships by Mr. Moreton Frewen on behalf of a deputation on the 25th ultimo.

This proposition was to the effect that, whereas according to the statements made, contagious pleuro-pneumonia has never been introduced into the Western States of America and the sanitary condition of animals therein is generally satisfactory, cattle from Wyoming Territory, Montana, and Dacota might, under certain conditions, safely be imported into Great Britain by the Lake Route through Canada, and landed in this country without being subject to slaughter.

It appears to their Lordships that if this scheme after full consideration should appear to be practicable it could be most conveniently carried into effect by a modification of the arrangements at present in force between Her Majesty's Government and the Government of the Dominion.

Lord Derby is aware that, in order to enable the Privy Council to continue to except Canadian animals from slaughter, when that exception was withdrawn in the case of animals from the United States, the Canadian Government were required to prohibit the importation into Canada of animals from the United States, and an Order of the Canadian Privy Council to that effect is still in force, the only exception being that animals are allowed under certain conditions to pass through Canada in bond from one part of the United States territory to another.

If Mr. Moreton Frewen's proposal should be entertained, the animals admitted under it would practically become Canadian animals so far as this country is concerned, and the consent and co-operation of the Canadian Government would evidently be necessary to the success of the undertaking.

I am, therefore, to request that you will move Lord Derby to ascertain whether the Dominion Government would be disposed to give their favourable consideration to such a proposition, if the Privy Council were so far satisfied with the securities offered as to be of opinion that the admission into Canada of cattle from certain specified districts in the Western States of America was consistent with the maintenance of the existing arrangements under which Canadian animals are admitted into this country without being subject to slaughter at the port of landing.

I am, &c.
(signed) *C. L. Peel.*

The Under Secretary of State,
&c. &c. &c.,
Colonial Office.

— No. 2. —

LETTER from the Colonial Office to the Clerk of the Council.

Sir, Downing-street, 12 August 1884.

I AM directed by the Earl of Derby to acknowledge the receipt of your letter of the 5th instant, on the subject of the importation of cattle into this country through the Dominion of Canada, and to inform you that a copy has been transmitted to the Governor General for the consideration of his Government.

I am, &c.

The Clerk of the Council, (signed) *R. H. Meade.*
Agricultural Department.

— No. 3. —

LETTER from the Colonial Office to the Clerk of the Council.

Sir, Downing-street, 15 October 1884.

WITH reference to your letter of the 5th, and to the reply from this Department of the 12th August, respecting the conveyance of cattle from the Western States of America, through Canadian territory, for shipment to this country, I am directed by the Earl of Derby to transmit to you, to be laid before the Lord President of the Council, copies of two Despatches, with their Enclosures, from the Governor General of Canada on the subject.

I am, &c.

The Clerk of the Council. (signed) *John Bramston.*

Enclosure 1, in No. 3.

The Marquis of *Lansdowne* to the Earl of *Derby.*

(No. 242.)

Government House, Ottawa, Canada,

My Lord, 27 September 1884.

IN reply to your Lordship's Despatch, No. 123 of 11th August last, enclosing a letter from the Privy Council Office, dated 5th of the same month, on the subject of the importation of cattle into England through the Dominion of Canada, I have the honour to transmit herewith a copy of an approved Report of a Committee of the Privy Council embodying a Report on this subject by the Minister of Agriculture, to whom your Lordship's Despatch under reply was referred.

Page 6.

2. The subject is one which has commanded much public attention and which has been anxiously considered by my Ministers. The feeling which prevails with them, and which faithfully reflects that of the agriculturists of this country, is that no effort should be spared in order to retain for Canada the advantageous conditions under which her cattle are now admitted to British ports. It is felt that if on her side Canada were to show any remissness in protecting her territory against the admission of cattle from districts actually tainted with disease, or themselves insufficiently protected against the admission of animals from districts in which disease is known to exist, the susceptibilities of English agriculturists would be aroused and pressure brought upon the Government to withdraw from the Dominion the immunity which has been conceded to it.

3. The result of the investigations which have recently been instituted by the desire of the Minister of Agriculture has been to satisfy him that although there is no evidence to show that infectious disease at present exists in Wyoming, Montana, and Colorado, pleuro-pneumonia has undoubtedly manifested itself in Illinois, in the neighbourhood of Chicago, the head-quarters of the Western Cattle Trade.

4. I have received a letter from Mr. Pierrepoint Edwards, Her Majesty's Consul at New York, enclosing one from Professor James Law, of Cornell University, in which the latter gentleman says:—"The lung plague has been already smouldering in Illinois "for the past six months, and it is as yet uncertain by what channel it reached that "State, or whether it is still confined to the Jersey herds, to which additions have been "made by purchase in the course of the past year." Professor Law, in the same letter, goes on to say:—"I cannot overlook the fact that the lung plague is now in existence "near the greatest cattle entrepôt of the West (the Chicago stock yards), and has no "longer to oppose the current of the cattle traffic in making a further extension."

5. The

5. The same facts are disclosed in the Paper annexed to the Privy Council Order enclosed with this Despatch. (*See* the Memorandum by Mr. Loring, and Dr. Salmon's Report.) Pages 7 and 8.

6. In view of this state of things the Dominion Government has come to the conclusion that the moment would be a very inopportune one for a relaxation of the precautions against the admission of disease, and that on the contrary the time has come when more strictly framed regulations should be enforced along the frontier of the Western States. A Memorandum of these Regulations is enclosed herewith. Page 8.

7. I observe that an attempt has been made to represent these precautions as altogether illusory, upon the ground that it is impossible to protect an air-line frontier of the length of that which separates Canada and the Western States, a frontier which it is stated is crossed without restriction both by cattle from ranches adjoining it on either side and by bands of buffalo.

8. It is also stated that Wyoming and the adjoining States are virtually isolated from the Eastern States of the Union, the movement of cattle being from west to east and not east to west, and that, even assuming disease to exist in the neighbourhood of Chicago, it would not follow that risk would arise from the admission of Wyoming and Montana cattle into Canada.

9. As to the first of these contentions, I am assured by the Minister of Agriculture that it is not the case that the territory immediately to the north and south of the frontier line is occupied by cattle ranches, or that there is an unrestricted passage of cattle across it, and that it is untrue that large herds of buffalo frequent these districts, and are in the habit of crossing the frontier. Although the line to be defended is one of great length, I understand that any cattle crossing it for trade purposes do so virtually at two points only, viz., Fort McLeod and Fort Walsh, at each of which a quarantine officer is stationed.

10. The ninety days' quarantine enforced against United States cattle in the eastern provinces of Canada is no doubt not enforced at these points where inspection only is required. In the event, however, of the circumstances appearing to require so stringent a measure, the ninety days' quarantine might and would be at once enforced here, as in the case of cattle entering Old Canada from the United States.

11. It would at first sight appear that there would be nothing to prevent the movement of large bodies of cattle from Wyoming and adjacent States into the Western Canadian ranches, and their immediate transfer into Ontario or elsewhere. I believe, however:—

1. That no movement of cattle takes place from the north-west territories to Old Canada, the whole of the live cattle exported *viâ* the St. Lawrence being bred in the old provinces. It would therefore seem that even if it be conceded that the western cattle ranches are to some extent exposed, an outbreak of disease in them would not involve a serious risk either to Old Canada or to the British Islands.

2. That if any such movement as that above suggested were to take place it would attract the attention of the local cattle owners, who are already prompt to notify to the authorities any infraction, however slight, of the departmental regulations. In this event the suspected cattle would at once be placed in quarantine before being allowed to proceed to their destination.

12. With regard to the alleged isolation of Wyoming and adjacent States from the States further to the east, it is no doubt the case that the movement of the cattle trade of this region is from west to east, and that few animals pass into these States from those to the east of them. There appear, however, to be good reasons for supposing that some animals for breeding purposes are sent westwards, and in these circumstances the statements contained in Mr. Salmon's Report of 27th August 1884 will no doubt receive your attention.

13. If any State or group of States on whose behalf a desire has been expressed for facilities for traffic through Canada with the British Islands would adopt and enforce effectual quarantine regulations for its own protection the case would be entirely altered. I understand, however, that the Federal Government has no power to enforce such regulations on individual States, and that these have in the particular case under consideration taken no steps for their own protection.

14. So long as this is the case, and while their exists good reason for apprehending that these States have for some time past been exposed to the possibility of contagion, the Government of the Dominion declines to pass through its own territory, and to export from the same ports as those used for the exportation of Canadian cattle, animals coming from these districts.

I have, &c.

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

(signed) *Lansdowne.*

CERTIFIED COPY of a REPORT of a Committee of the Honourable the Privy Council for *Canada*, approved by His Excellency the Governor General in Council, on the 8th September 1884.

THE Committee of the Privy Council have had under consideration a Despatch, dated 11th August 1884, from the Earl of Derby, covering a letter of Mr. Peel of the Agricultural Department of the Imperial Privy Council, on the subject of the importation of cattle from the Western United States through the Dominion of Canada to the United Kingdom.

The Minister of Agriculture to whom the Despatch and Enclosure were referred reports as follows:

1. The proposal submitted to the Lords of the Council by Mr. Moreton Frewen, on behalf of a deputation, on the 25th July last, as stated by Mr. Peel, was to the effect that contagious pleuro-pneumonia had never been introduced into the Western States of America, and that the sanitary condition of animals therein was generally satisfactory. It was therefore urged that cattle from Wyoming Territory, Montana, and Dakota might, under certain conditions, be safely imported into Great Britain by the Lake route through Canada, and landed in the United Kingdom without being subject to slaughter.

2. Mr Peel further remarks that if Mr. Moreton Frewen's proposal should be entertained, the animals admitted under it would practically become Canadian animals, in so far as concerns the United Kingdom, and therefore that the consent and co-operation of the Canadian Government would be necessary for the success of the undertaking.

3. That a careful consideration of these several statements and proposal leads the Minister of Agriculture to the conclusion that it would not be, in the present circumstances, compatible with the safety of Canadian cattle, which are free from contagious disease, to permit the transit through Canada, for exportation from a Canadian port, of cattle from the Western United States, as desired by the deputation above referred to, the safeguarding of Canadian cattle, and the preservation of the advantage now enjoyed to freely ship them to the United Kingdom, being the paramount Canadian interest.

4. The Minister thinks it proper to observe that, to the present time, he has had reason to believe the Western United States were free from contagious disease. There were accounts published in the newspapers, in the spring of this year, to the effect that foot-and-mouth disease was found in Kansas. He did, in consequence, take steps to ascertain the facts, and found from a report of Mr. Sweetapple, veterinary surgeon, made at the request of Professor Andrew Smith, of Toronto, Dominion Veterinary Inspector for the Province of Ontario, upon a personal examination, that the disease in that State among cattle had a different and non-contagious character.

5. The Minister of Agriculture in view, however, of more recent reports respecting the existence of pleuro-pneumonia in the Western United States did, on 23rd August last, cause a Departmental request to be conveyed to Professor Smith to proceed to the reported infected localities for the purpose of inspection, and report for information. And under date of the 30th August last, from Chicago, Professor Smith wrote that he found "contagious pleuro-pneumonia prevails at several points in Illinois. Mr. John Boyd, "of Chestnut Farm, near Elmhurst, has lost or destroyed 15 head in all. In June he "brought two animals to his farm. About 1st July both of them showed signs of "sickness. One died, and the other was destroyed. The post-mortem lesion showed "unmistakeable evidence of the disease (pleuro-pneumonia). The two animals he brought "can be traced to have been in contact, directly or indirectly, with a herd of Jersey's "belonging to Mr. Dye, of Ohio. I have good grounds for believing that Mr. Dye's "herd were affected several months ago."

6. The Minister of Agriculture, in addition to the fact of the existence of pleuro-pneumonia being thus directly reported by a veterinary officer of his own Department, thinks it well to call attention to a Circular Order by Mr. George B. Loring, United States Commissioner of Agriculture at Washington, D.C., which has been very widely published in newspapers of the United States, and a copy of which is hereunto annexed.
Page 7.
Mr. Loring distinctly states that the disease was "introduced (in Illinois) by animals sold "at Virginia, in Cass County, Illinois, in February last, and that these animals have "been widely distributed through the Western States."

7. It further appears, from publications in the United States western newspapers that Dr. Salmon, Chief of the Bureau of (U. S.) Animal Industry, has submitted a Report to the Commissioner of Agriculture in Washington relative to his investigation of pleuro-pneumonia among cattle in Illinois. This Report has also been largely published in the western newspapers, and a copy, taken from the Chicago "Tribune," is hereunto annexed.
Page 8.
He states specifically, under date of 27th August last, that he has found "eight cases in the vicinity of Chicago, two near Sterling, four near Peoria, one near Springfield, two "near Virginia, and one near Jacksonville." Dr. Salmon further states, "I shall soon "direct my attention to other States; Iowa, Missouri, and Kentucky have received "animals

"animals from infected herds." Referring to the probable origin of the disease in Illinois, Dr. Salmon states, "We have not been able to decide which of the animals brought it to "the Virginia sale; but one that came from Mr. Dye, of Ohio, was sick with inflammation "of the lungs, supposed at the time to have been the result of exposure. This is most "likely the origin of the disease; and, if the suspicion proves correct, it makes the matter "still more serious. Mr. Dye is the most extensive speculator in Jersey cows in the "country, and has sent cattle into nearly every herd in the West. If his herd is infected "the disease must have spread to nearly every State in the Union. I shall investigate "this matter as soon as possible."

The Minister observes, on this very serious statement of Dr Salmon, that it is with respect to the herd of Mr. Dye that Professor Smith, Inspector for the Canadian Department of Agriculture, states he has "good reasons for believing that Mr. Dye's herd were "affected (with pleuro-pneumonia) several months ago." This fact establishes that the progress of the disease has been from the east to the west.

8. Again, as to the fact of the diagnosis of the disease, Dr. Salmon further states, "I will "say positively that this disease is neither the result of scrofula nor exposure to inclement "weather, or like causes. It is contagious pleuro-pneumonia; and I am just as certain of "it as I am that such a disease exists."

9. The Minister of Agriculture has reason to believe, from the information which he has so far obtained, that there has been no actual outbreak of the disease in Montana, Colorado, or Wyoming. But in view of the fact of there being no means employed to prevent cattle from the infected States of the East, or from the infected State of Illinois in the West, from going into the Territories and State above named, he is of opinion that it would not be prudent to relax any present restriction as respects the importation of cattle into Canada from such Territories and State, or from any part of the United States. On the contrary, he is of opinion that it has become necessary to make still further restrictions with regard to admitting cattle which may be necessary for stock purposes, into the North-West Territory of the Dominion from contiguous parts of the United States and Territories which are as yet free from, while they are threatened with, the danger of contagious disease.

The Committee concur in the Report of the Minister of Agriculture, and they 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, in answer to his Despatch of the 11th August last, and that a copy be also transmitted to the High Commissioner in London.

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

(signed) *John J. McGee*, Clerk,
Privy Council, Canada.

Pleuro-Pneumonia.

Circular published in the "Chicago Breeders' Gazette," 20th August 1884.

Owing to the existence of diseases supposed to be contagious pleuro-pneumonia, in several herds of Jersey cattle in the State of Illinois, I hereby request the owners of all herds of Jersey cattle, in the United States, into which new animals have been introduced since 1st January, to stop the shipment of cattle until after 1st October. The disease seems to have been introduced by animals sold at Virginia, Cass County, Illinois, in February 1884, and these animals were widely distributed through the Western States. It is hoped, therefore, that persons owning cattle tracing to this sale, and all others having cattle affected with a disease of the lungs, will at once communicate with Dr. E. Salmon, chief of the Bureau of Animal Industry, care of the "Breeders' Gazette," Chicago, and clearly state the condition of their herds and the symptoms of the disease. The attention of owners of cattle and railroad companies is called to Section 7 of the Act to establish a Bureau of Animal Industry, which makes it a misdemeanour, punishable by a fine of not less than 100 $\frac{00}{100}$ dollars, nor more than 5,000 dollars, or by imprisonment not more than one year, or both, for shipping cattle affected with any contagious infection or communicable disease known as pleuro-pneumonia, from one State or territory into another. The cordial co-operation of the State authorities of all positions interested in the welfare of our cattle industries is earnestly desired in order to avert this danger, which now menaces the herds of the country.

(signed) *Geo. B. Loring*,
Commissioner of Agriculture.

Dr. *Salmon's* Report: Genuine Pleuro-Pneumonia. From "Chicago Tribune," 28 August 1884.

Washington, D. C., 27 August.

Dr. Salmon, Chief of the Bureau of Animal Industry, has submitted a Report to the Commissioner of Agriculture relative to his investigation of pleuro-pneumonia among cattle in Illinois. He has found eight cases in the vicinity of Chicago, two near Sterling, four near Peoria, one near Springfield, two near Virginia, and one near Jacksonville. A number of reported cases have not yet been traced; Dr. Salmon further says: "It is impossible for me to get experienced men to assist me without moving them away from my work in New York and Brooklyn, and this I do not want to do until absolutely necessary. Men who have had no experience with pleuro-pneumonia would be useless.

Illinois has good laws, and the State Veterinarian and the Governor will issue a Proclamation on the subject, and direct the isolation of infected herds and the slaughter of diseased animals. I shall soon direct my attention to other States; Iowa, Missouri, and Kentucky have received animals from infected herds. I telegraphed the Governor of Kentucky a few days ago in regard to the animals that went there. We have not been able to decide which of the animals brought it to the Virginia sale, but one that came from Mr. Dye, of Ohio, was sick with inflammation of the lungs, supposed at the time to have been the result of exposure. This is most likely the origin of the disease, and if the suspicion proves correct, it makes the matter still more serious. Mr. Dye is the most extensive speculator in Jersey cows in the country, and has sent cattle into nearly every herd in the West. If his herd is infected, the disease must have been spread to nearly every State in the Union. I shall investigate this matter as soon as possible, and if the infection is traced to Ohio, I shall move all my men that will come. I should consider this a last resort. In the meantime I shall indulge the hope that this will not prove true. I will say positively that this disease is neither the result of scrofula nor exposure to inclement weather, or like causes. It is contagious pleuro-pneumonia, and I am just as certain of it as I am that such a disease exists."

Acting Commissioner Carman has refused the request of an Alabama cattle firm to import a number of Jersey cattle for exhibition at the New Orleans Exposition.

Copy of Note by the Honourable the Minister of Agriculture.

Page 9. The object of the Privy Council Order of 8th September, enclosed herewith, was twofold.

1. To prevent any animals from entering into the province of Manitoba from the east, either for stock or breeding purposes, in view of the danger of contact with diseased animals in Illinois, or others of the States to the east of that point.

The measures thought sufficient, and embodied in the Order referred to, at the point of Emerson were: (1), Inspection; (2), A quarantine of such length of time as would enable any contagious disease to be detected. To carry out these provisions a regularly qualified veterinary surgeon, Mr. D. H. McFadden, at the point of Emerson, was appointed Veterinary Inspector of this department, and the quarantine station, as defined
Page 10. in the Order of your Excellency in Council on the 14th instant, was placed in his charge.

2. The second object of the Order in Council of the 8th instant was to regulate the entry of cattle at extreme western points in the districts of Alberta and Assiniboia, near to the Rocky Mountains, for transit through those districts and the province of Manitoba for the Chicago markets; and also to provide for the inspection of any stock cattle which might be taken to the ranches in Canadian territory at that extreme western point. As respects these latter, an inspection at the point of crossing the frontier was considered to be sufficient.

As respects the cattle which pass through the districts and province referred to, going out at the point of Emerson, none of these could by any possibility enter subsequently the provinces of Ontario and Quebec for shipment by the St. Lawrence; for the reason that, having in transit entered United States territory, their admission would be prohibited. And, as respects any attempt to bring such cattle over the Canadian Pacific Railway, and *viâ* the Lakes, the system of inspection and entries would render that impossible without detection; that is, directly from United States territory. And if such cattle had first been driven to the Canadian ranches before being exported, nothing of that kind could be done during the same season; so practically there would be the protection of the quarantine of a year.

It may be stated that, if for any reason, any cattle were to enter Canadian territory across the long frontier between the points of Emerson and the Rocky Mountains, not intended for the ranches, and such entries could scarcely by any possibility be made, except by the regularly established trails, but for stock purposes in Manitoba or the Territories, there would still be no chance of any such cattle getting to the provinces of Ontario

Ontario and Quebec by way of the Lakes through Canadian territory. There is absolutely no importation from the West to the East, for the reason that stock cattle are much higher in Manitoba and the Territories than in the Eastern Provinces.

The only chance of any movement of that kind would be, when the ranches under the Rocky Mountains begin to send their surplus forward. But as respects such cattle, there is the protection above indicated.

I think the several proceedings to which I have referred are quite sufficient to safeguard Canadian interests at every point, as well with respect to such cattle as may be required for breeding purposes or for stock raising, as with respect to those which it is desired to send to the markets of Chicago from points in the United States and the extreme West.

Respectfully submitted,
(signed) *J. H. Pope.*

Department of Agriculture,
Ottawa, 29th September 1884.

ORDER IN COUNCIL.

Government House, Ottawa, Monday, the 8th day of September 1884.

Present:—His Excellency the Governor General in Council.

WHEREAS the disease of pleuro-pneumonia prevails among neat cattle in the Western State of Illinois as well as in other more Eastern of the United States, and there is reason to believe that neat cattle for breeding purposes have been sent from the State of Illinois to more Western States and Territories;

On the recommendation of the Minister of Agriculture, and under the provisions of the Act of the Parliament of Canada, 42 Victoria, chapter 23, intituled, "An Act to provide against infectious or contagious diseases affecting animals" made applicable to the North West Territories by Proclamation in 1883;

His Excellency, by and with the advice of the Queen's Privy Council for Canada, has been pleased to order, and it is hereby ordered, that the importation of neat cattle now permitted from the United States and Territories into the Province of Manitoba and the North West Territory of Canada be, and the same is hereby prohibited, except on the following conditions, namely:

1. At Emerson, in Manitoba, or the points of Fort Walsh and Fort McLeod, in the Provisional Districts of Alberta and Assiniboia, or such other point or points as may be hereafter indicated by the Minister of Agriculture.

2. *For stock or breeding purposes,* neat cattle which have been brought to the Canadian frontier for importation may be allowed to cross, subject to the regulations hereinafter recited.

3. *For transit,* from west to east, through the Provisional Districts of Alberta and Assiniboia, and the Province of Manitoba, *viâ* Emerson or Gretna, to the State of Minnesota, neat cattle may be allowed to cross the Canadian frontier at the points of Fort Walsh and Fort McLeod aforesaid, subject to the regulations hereinafter recited.

4. At Emerson, such cattle coming from the east shall not be allowed to cross the Canadian frontier unless after inspection by a duly-authorised veterinary surgeon, appointed by the Minister of Agriculture, they shall be declared free from contagious disease, and also from well-founded suspicion thereof; and further, such cattle shall be subject to a quarantine of sixty days, or such other period as may appear to the Minister of Agriculture advisable.

5. Any cattle desired to be entered at the points of Fort Walsh and Fort McLeod aforesaid, whether for stock or breeding purposes or for transit, shall be inspected by a duly-authorised veterinary surgeon appointed by the Minister of Agriculture, and shall not be allowed to cross the Canadian frontier unless they are declared by such surgeon to be free from contagious disease, and also from well-founded suspicion thereof.

6. The owner or owners of any such cattle desired to be entered at any of the points aforesaid, shall, on making application for entry, produce a duly-attested certificate, indicating the State or Territory and particular locality from which they may have been brought.

7. The importer of such cattle shall pay a fee, graded on a scale hereto annexed, to the Customs officer or other person duly authorised to act as such, for defraying the

 expense

expense of such inspection, the cattle not being allowed to cross the Canadian frontier until such fee is paid, that is to say, for—

1 animal - - - - - - - - - - -	1 dollar.
5 animals and under - - - - - - - - - but total fee for over 5 animals not less than $2.50.	50 cents each;
10 animals and under - - - - - - - - - but total fee for over 10 animals not less than $3.00.	30 cents each;
20 animals and under - - - - - - - - - but total fee for over 20 animals not less than $4.00.	20 cents each;
50 animals and under - - - - - - - - - but total fee for over 50 animals not less than $. 6.00.	12 cents each;
Over 50 animals - - - - - - - - - -	10 cents each.

8. No car which has been loaded with cattle in the United States and crossing the Canadian frontier shall be allowed afterwards to carry Canadian cattle.

9. No car nor trains carrying such United States cattle in transit from west to east between the points above named, shall be allowed to be or remain shunted in close proximity to any Canadian cattle.

10. Every car containing such cattle in transit between the points above mentioned shall be kept, as far as possible, apart from cars or trains containing Canadian cattle or Canadian goods.

11. No car containing such United States cattle in transit between the points above named, shall form any part of a train carrying Canadian cattle.

12. Every car or train carrying cattle in transit from west to east between the points hereinbefore named, shall stop at such fixed place or places as shall be named by the Minister of Agriculture for the purpose of rest, feeding, and watering, and such place or places shall be declared "infected" within the terms of "The Animal Contagious Diseases Act, 1879," being strictly isolated and all communication with them prohibited, except by the officers and men in charge of the trains or in charge of such infected place or places.

13. Every car which has been used for carrying animals from the United States or Territories, in transit through the Districts of Alberta, Assiniboia, or the Province of Manitoba *viâ* Emerson or Gretna, shall be thoroughly cleansed and disinfected before re-entering the Province of Manitoba, in such manner as shall be ordered by the Minister of Agriculture.

(signed) *John J. McGee,*
Clerk, Privy Council.

ORDER IN COUNCIL.

Government House, Ottawa, Sunday, 14th day of September 1884.

Present:—His Excellency the Governor General in Council.

WHEREAS the Minister of Agriculture has reported that pursuant to the Regulations contained in the Order in Council, dated 8th September 1884, and published in an Extra of the "Canada Gazette" on the 10th September, it is advisable, in virtue of the provisions of the Act 42 Vict. chapter 23, intituled, "An Act to provide against infectious or contagious diseases affecting animals," to set apart a place to be used for a quarantine station for such neat cattle as may be imported into Manitoba *viâ* the Port of Emerson,—

His Excellency, on the recommendation of the Minister of Agriculture, has been pleased to order, and it is hereby ordered, that the buildings and property formerly occupied by the British North American Boundary Commission, and lately as a Government Immigrant Station, situated on the Red River, and comprising lots Nos. 31 and 33 in the parish of Ste. Agathe, and being the property of the Government, be and the same are hereby set aside for a Cattle Quarantine Station, and are declared an "infected" place within the meaning of "The Animal Contagious Diseases Act, 1879," and all communication with them prohibited, except such as shall be ordered by the Minister of Agriculture for carrying into effect the Regulations above referred to.

(signed) *John J. McGee,*
Clerk, Privy Council.

Enclosure 2, in No. 3.

The Marquis of *Lansdowne* to the Earl of *Derby*.

(No. 246.)

Government House, Ottawa, Canada,
2 October 1884.

My Lord,

In continuation of my Despatch, No. 242, of the 27th ultimo, on the subject of the importation of cattle from the Western Territories of the United States into England through the Dominion of Canada, I have the honour to forward herewith a copy of a Report made by Dr. Andrew Smith, Principal Ontario Veterinary College, to the Minister of Agriculture, on the origin and extent of contagious pleuro-pneumonia among Jersey cattle in the State of Illinois.

I have, &c.
(signed) *Lansdowne.*

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

Dr. *Andrew Smith* to the Minister of Agriculture.

40 and 42, Temperance-street, Toronto,
6 September 1884.

Sir,

According to instructions I proceeded to Chicago on Friday the 29th ultimo to make inquiries as the origin and extent of contagious pleuro-pneumonia, as reported among Jersey cattle in the State of Illinois.

In Chicago I met with Mr. John Boyd, of 199, Lake-street, and of Chestinut Farm, Elmhurst, Illinois, who has a herd of about 40 Jerseys. Mr. Boyd's herd have been always healthy until lately. Mr. Coggeshall and he each bought a cow from G. and W. C. Clark, of Geneva, Illinois, which were received into Mr. Boyd's herd on 4th of June.

About 1st July both cows showed signs of sickness, one of them died on the 20th of July, and the other was destroyed on the 14th of August, and showed unmistakeable signs of contagious pleuro-pneumonia.

Since that time 13 head have been lost, two from death, and 11 destroyed by order of Dr. Paaren, State Veterinarian; and in all cases post-mortem examinations revealed the well-marked and characteristic lesions of the disease.

I met with Dr. Paaren, State Veterinarian for Kansas, who had just returned from Clark's farm, near Sterling, Illinois.

Dr. Paaren informed me he had personal and direct knowledge of the disease in various points, all, however, so far confined to Jerseys, and all cases supposed to originate from one centre.

On Monday, 1st of September, I proceeded to Peoria, Illinois, in company with Dr. Paaren, and on Tuesday we made examinations of the Messrs. Tripp's herd of Jerseys. We found one cow, "Miss Innes," suffering from the disease in an acute form, and had her immediately destroyed, and the autopsy showed extremely well-marked and prominent lesions.

We then examined "Helena Rex," a young cow bought at Epler's sale in February last. "Epler's farm is supposed to be the centre of infection, so far as Illinois is concerned," and this cow, along with two others, were brought immediately thereafter to Messrs. Tripp's farm.

About 1st April a cow that had been in contact with the recent additions to the herd showed signs of lung trouble, and died on 17th April.

The cow "Helena Rex" aborted during the spring, but did not appear to suffer from any pulmonary trouble, and was apparently quite healthy to a casual observer.

Although the ordinary external manifestations of the disease were not very decided, yet careful auscultation and percussion showed some results of lung complaint.

Messrs. Tripp were averse to having this animal destroyed. Finally it was thought desirable to have her destroyed, and the *post mortem* showed well-marked adhesions of the right lung, a most prominent result of contagious pleuro. This condition clearly and satisfactorily demonstrated to Messrs. Tripp the manner in which this disease primarily originated among their herd. "Helena Rex" was brought from Dyes' farm in Ohio, in December of last year, to Epler's, and I believe was one of the animals that produced contagious pleuro among the Epler herd.

So far the disease in Illinois appears to be confined to Jersey herds; although there was a rumour of a herd of short horns being affected in Peoria County, but Dr. Paaren had no authentic information as to the correctness of the report.

The disease is evidently due to the direct traffic in Jersey cattle from east to west. I am informed by Mr. Butler, veterinary surgeon, of Piqua, Ohio, that he believes the animals that affected Dyes' herd, and some of them were sent on to Epler's (before disease was noticed in Dyes' herd), were purchased at a Jersey sale in New York or Philadelphia.

From inquiries made at the Chicago Stock Yards, I find the traffic from the Eastern States, where contagious pleuro has existed so long, is very limited, but there is a very large traffic in calves from Ohio, Michigan, Western New York, and Pennsylvania.

Breeders of stock fully recognise the danger of the spread of this insidious disease, and some of them are urging active measures for stamping it out.

Dr. Paaren, by order of the Governor of Illinois, has quarantined all herds where disease has appeared, and is slaughtering all affected animals. It is necessary to appraise all animals before being destroyed.

The amount of money in the fund for contagious diseases in Illinois is very small, and not sufficient to compensate owners, and in consequence thereof, I fear the stamping out process, viz., slaughtering all diseased animals, and all animals that have been in contact with the diseased ones, the proper course to pursue will not be carried out with the expedition demanded.

The fault is with the State government, and not with their efficient veterinarian.

National and State interests appear to conflict with each other.

In view of the disease at present being confined to Jersey cattle their transport through the States will be restricted.

As to importation of Jersey cattle from the United States into Canada, I think it would be advisable not to bring any into quarantine for a short time at least. It may not be necessary to pass an Order in Council, as the importers of Jerseys are so few in this country that they could be easily notified of the desirability of not trafficking in Jerseys until the disease is got rid of among these cattle in the States.

If, unfortunately, an animal affected with contagious pleuro got into quarantine, such an assurance might compel the slaughtering of quite a number of other animals.

There are not many owners of Jerseys in Canada that, in the meantime, would like to risk what only might be an imaginary injury to their stock by attempting to import animals from any infected district.

I am, &c.
(signed) *Andrew Smith.*

The Honourable J. H. Pope,
Minister of Agriculture, Ottawa.

CONTAGIOUS DISEASES (ANIMALS) ACT, 1884.
(CANADA.)

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(*Mr. Arthur Arnold.*)

Ordered, by The House of Commons, *to be Printed,*
13 *November* 1884.

[*Price* 2 *d.*]

19—Sess. 2. *Under* 2 *oz.*
H.—22. 11. 84.

1150

COMMERCIAL. No. 39 (1884)

CONVENTION

BETWEEN

HER MAJESTY

AND THE

PRESIDENT OF THE FRENCH REPUBLIC

FOR THE

EXCHANGE OF POSTAL MONEY ORDERS

BETWEEN THE

DOMINION OF CANADA AND FRANCE.

Signed at London, June 20, 1884.

Presented to both Houses of Parliament by Command of Her Majesty.
1884.

LONDON:
PRINTED BY HARRISON AND SONS.

To be purchased, either directly or through any Bookseller, from any of the following Agents, viz.,
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CONVENTION between Her Majesty and the President of the French Republic for the Exchange of Postal Money Orders between the Dominion of Canada and France.

Signed at London, June 20, 1884.

[*Ratifications exchanged at London, September* 27, 1884.]

HER Majesty the Queen of the United Kingdom of Great Britain and Ireland, Empress of India, and the President of the French Republic, being desirous that facilities should exist for the transmission of sums of money between the Dominion of Canada and France by means of postal money orders, have determined upon securing this result by a Convention, and have named as their Plenipotentiaries for this purpose, namely:

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, the Right Honourable Granville George, Earl Granville, Lord Leveson, a Peer of the United Kingdom, Knight of the Most Noble Order of the Garter, a Member of Her Majesty's Privy Council, Lord Warden of the Cinque Ports, and Constable of Dover Castle, Chancellor of the University of London, Her Majesty's Principal Secretary of State for Foreign Affairs, &c., &c.;

And the President of the French Republic, M. William Henri Waddington, Ambassador of France to Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, Empress of India, Senator, Member of the Institute, &c., &c.;

Who, after having communicated to each other their respective full powers, found in good and due form, have agreed upon the following Articles:—

ARTICLE I.

Remittances of money may be sent by way of the Post Office, from France and Algiers to Canada, as well as from Canada to France and Algiers.

These remittances shall be made by means of orders drawn by offices of "l'Administration des Postes de France"

SA Majesté la Reine du Royaume Uni de la Grande-Bretagne et d'Irlande, Impératrice des Indes, et le Président de la République Française, animés du désir de faciliter les envois d'argent entre le Canada et la France à l'aide de mandats postaux, ont résolu de signer dans ce but une Convention, et à cet effet ils ont nommé pour leurs Plénipotentiaires, savoir:

Sa Majesté la Reine du Royaume Uni de la Grande-Bretagne et d'Irlande, le Très Honorable Granville George, Comte Granville, Lord Leveson, Pair du Royaume Uni, Chevalier du Très Noble Ordre de la Jarretière, Conseiller de Sa Majesté dans son Conseil Privé, Lord Gardien des Cinque Ports, et Connétable du Château de Douvres, Chancelier de l'Université de Londres, Principal Secrétaire d'État de Sa Majesté pour les Affaires Étrangères, &c., &c.;

Et le Président de la République Française, le Sieur Waddington (William Henri), Ambassadeur de France près Sa Majesté la Reine du Royaume Uni de la Grande-Bretagne et d'Irlande, Impératrice des Indes, Sénateur, Membre de l'Institut, &c., &c.;

Lesquels, après s'être communiqué leurs pleins pouvoirs, trouvés en bonne et due forme, sont convenus de ce qui suit:—

ARTICLE I.

Des envois de fonds pourront être faits, par la voie de la poste, tant de la France et de l'Algérie pour le Canada, que du Canada pour la France et l'Algérie.

Ces envois s'effectueront au moyen de mandats tirés par des bureaux de l'Administration des Postes de France sur des

upon offices of the Canadian Post Office Department, and *vice-versâ*.

The maximum of each order is fixed at 250 fr., or 50 dollars.

At any time the Post Office authorities of the two countries may, by mutual agreement, raise this maximum to 500 fr., or 100 dollars.

The right is reserved to each of the two Contracting Parties to declare transferable, by way of endorsement, on its territory, the property of money orders coming from the other country.

ARTICLE II.

There shall be collected for each remittance of money effected under the authority of the preceding Article a charge which shall be determined by the authorities of the country from which such remittance is sent, and which shall be paid by the sender of the remittance.

This charge shall not at any time exceed 1 per cent. of the even sums which shall form the degrees of the scale of charges.

Post Office orders sent from either country, and acquittances given on these orders, shall not, upon any pretext whatever, nor by any right that may be, be submitted to any charge or duty at the expense of the receiver of the money.

ARTICLE III.

The Administration that shall issue the orders shall credit to the Administration that shall pay them a duty of $\frac{1}{2}$ per cent. of the total amount of the orders paid.

ARTICLE IV.

The amount of orders shall be deposited by the sender and paid to the receiver in gold coin, or in any other legal money of the same current value.

At all times, in the case that in one or the two countries should circulate a paper money having legal value, but of a value inferior to that of gold, the Administration of this country shall have the right itself to receive and to employ such currency in its dealings with the public, with the condition that account be kept of the difference in value.

ARTICLE V.

The amount of each order shall be expressed in the currency of the country in which the payment is to be made, and no account shall be taken of fractions of a demi-décime (5 centimes) or of a cent.

The bases for the conversion of the currency of the country of origin into the

bureaux de l'Administration des Postes Canadiennes, et *vice-versâ*.

Le maximum de chaque mandat est fixé à 250 fr., ou 50 dollars.

Toutefois, les Administrations des Postes des deux pays pourront, d'un commun accord, élever ce maximum à 500 fr., ou 100 dollars.

Est réservée à chacun des deux Pays Contractants la faculté de déclarer transmissible par voie d'endossement, sur son territoire, la propriété des mandats provenant de l'autre pays.

ARTICLE II.

Il sera perçue, pour chaque envoi de fonds effectué en vertu de l'Article précédent, une taxe qui sera déterminée par l'Administration du pays d'origine, et qui sera à la charge de l'expéditeur des fonds.

Cette taxe ne devra pas, toutefois, dépasser 1 pour cent des sommes rondes qui formeront les degrés de l'échelle de perception.

Les mandats émis de part et d'autre, et les acquits donnés sur ces mandats ne pourront, sous aucun prétexte et à quelque titre que ce soit, être soumis à une taxe ou à un droit quelconque, à la charge des destinataires des fonds.

ARTICLE III.

L'Administration qui délivrera les mandats tiendra compte à l'Administration qui les paiera d'un droit de $\frac{1}{2}$ pour cent du montant total des mandats payés.

ARTICLE IV.

Le montant des mandats sera versé par les déposants et payé aux bénéficiaires en monnaie d'or ou en toute autre monnaie légale de même valeur courante.

Toutefois, au cas où dans l'un des deux pays circulerait un papier-monnaie ayant cours légal, mais d'une valeur inférieure à celle de l'or, l'Administration de ce pays aurait la faculté de le recevoir et de l'employer elle-même, dans ses rapports avec le public, sous réserve de tenir compte de la différence de cours.

ARTICLE V.

Le montant de chaque mandat sera exprimé en monnaie du pays où le paiement devra avoir lieu, et ne devra pas comporter de fraction de demi-décime (5 centimes) ou de cent.

Les bases de la conversion de la monnaie du pays d'origine en monnaie du pays de

currency of the country of destination shall be fixed by the authorities of the country of origin.

ARTICLE VI.

The postal authorities of France and of Canada shall draw up, at periods upon which they shall fix by mutual agreement, accounts, on which shall be recapitulated the sums paid by their respective bureaux; and these accounts, after having been taxed and checked by both parties, shall be paid in gold currency of the crediting country, by the authorities of the country which shall be found indebted, at a time upon which the two Administrations shall agree.

In this way the smallest credit will be converted into the same currency as the greatest, according to a scale of exchange which shall be fixed upon by mutual agreement of the two Administrations.

In the event of the non-payment of the balance of an account within the time agreed upon, the amount of this balance shall be charged with interest from the day of the expiration of the said time until the day of the remittance of the sum due. This interest shall be calculated at the rate of 5 per cent. per annum, and shall be charged to the debit of the Administration in arrears in the following account.

ARTICLE VII.

The sums for which orders are issued shall be guaranteed to the senders until the time that they are regularly paid to the receivers or to their orders.

Sums of money taken by the Post Office authorities of either country in exchange for orders of which the amounts shall not have been claimed by the proper parties within the time fixed by the Laws and Regulations of the country of origin shall definitely accrue to the Administration which has issued such orders.

ARTICLE VIII.

The two Administrations shall determine, each so far as concerns itself, the offices authorized to issue and to pay orders. They shall regulate, by mutual agreement, the form and the mode of transmission of orders, the form and the times for settling accounts, and all other matters of detail and of order necessary to assure the carrying out of the present Convention.

It is understood that the dispositions made under the authority of the present Article may be modified by mutual agreement of both Administrations whenever it may be considered necessary.

destination seront fixées par l'Administration du pays d'origine.

ARTICLE VI.

L'Administration des Postes de France et l'Administration des Postes du Canada dresseront, aux époques qui seront fixées par elles, d'un commun accord, des comptes sur lesquels seront récapitulées les sommes payées par leurs bureaux respectifs, et ces comptes, après avoir été débattus et arrêtés contradictoirement, seront soldés en monnaie d'or du pays créancier par l'Administration qui sera reconnue redevable envers l'autre, dans le délai dont les deux Administrations conviendront.

A cet effet, la créance la plus faible sera convertie en même monnaie que la créance la plus forte, d'après le taux d'un change qui sera fixé, d'un commun accord, entre les deux Administrations.

En cas de non-paiement du solde d'un compte dans le délai convenu, le montant de ce solde sera productif d'intérêts à dater du jour de l'expiration du dit délai jusqu'au jour de l'envoi de la somme due. Ces intérêts seront calculés à raison de 5 pour cent l'an, et seront portés au débit de l'Administration retardataire sur le compte suivant.

ARTICLE VII.

Les sommes converties en mandats de poste seront garanties aux déposants jusqu'au moment où elles auront été régulièrement payées aux destinataires ou aux mandataires de ceux-ci.

Les sommes encaissées par chacune des Administrations en échange des mandats dont le montant n'aura pas été réclamé par les ayants droit dans les délais fixés par les Lois et Règlements du pays d'origine, seront définitivement acquises à l'Administration qui aura délivré ces mandats.

ARTICLE VIII.

Les deux Administrations désigneront, chacune pour ce qui la concerne, les bureaux autorisés à délivrer et à payer les mandats. Elles régleront, d'un commun accord, la forme et le mode de transmission des mandats, la forme et les époques de règlement des comptes, et toutes autres mesures de détail et d'ordre nécessaires pour assurer l'exécution de la présente Convention.

Il est entendu que les dispositions prises en vertu du présent Article pourront être modifiées, d'un commun accord, par les deux Administrations lorsqu'elles le jugeront nécessaire.

ARTICLE IX.

The authorities of either country shall have the right, under extraordinary circumstances which may be of a nature to justify the measure, to suspend temporarily the international money order service, upon condition of giving immediate notice thereof, by telegraph if necessary, to the authorities of the other country.

ARTICLE X.

The present Convention shall go into force upon a day to be agreed upon by the Post Office authorities of the two countries, after proclamation thereof shall have been made according to the laws peculiar to both countries.

It shall remain in force from year to year, until one of the Contracting Parties shall have announced to the other, at least a year in advance, its intention to terminate the Convention.

During such last year the Convention shall continue to have its full and entire working powers, without prejudice to the liquidation and settling of accounts after the expiration of the said term.

ARTICLE XI.

The present Convention shall be ratified, and the ratifications thereof shall be exchanged at London as soon as possible.

In witness whereof the respective Plenipotentiaries have signed the present Convention, and have affixed thereto their seals.

Done in duplicate at London, the twentieth day of June, 1884.

(L.S.) GRANVILLE.

(L.S.) WADDINGTON.

ARTICLE IX.

Chacune des deux Administrations pourra, dans des circonstances extraordinaires qui seraient de nature à justifier la mesure suspendre temporairement le service dues mandats internationaux à condition d'en donner immédiatement avis, au besoin par le télégraphe, à l'autre Administration.

ARTICLE X.

La présente Convention sera mise à exécution à partir du jour dont conviendront les Administrations des Postes des deux pays, après que la promulgation en aura été faite d'après les lois particulières à chacun des deux États.

Elle demeurera obligatoire d'année en année jusqu'à ce que l'une des Parties Contractantes ait annoncé à l'autre, mais un an à l'avance, son intention d'en faire cesser les effets.

Pendant cette dernière année, la Convention continuera d'avoir sa pleine et entière exécution, sans préjudice de la liquidation et du solde des comptes, après l'expiration du dit terme.

ARTICLE XI.

La présente Convention sera ratifiée et les ratifications en seront échangées à Londres aussitôt que faire se pourra.

En foi de quoi les Plénipotentiaires respectifs ont signé la présente Convention, et y ont apposé leurs sceaux.

Fait en double à Londres, le vingt Juin, 1884.

(L.S.) GRANVILLE.

(L.S.) WADDINGTON.

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