

16
CANADIAN NON-INTERCOURSE.

A REPLY

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BY THE

SECRETARY OF THE TREASURY

TO AN INQUIRY BY THE

FOREIGN AFFAIRS COMMITTEE

OF THE

HOUSE OF REPRESENTATIVES.

FEBRUARY, 1887.

WASHINGTON:
GOVERNMENT PRINTING OFFICE.
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CORRESPONDENCE.

HOUSE OF REPRESENTATIVES U. S.,

Washington, D. C., January 31, 1887.

DEAR SIR: I am directed by a majority of the sub-committee of the Committee on Foreign Affairs, to which has been referred the fisheries dispute, to send you Senate bill No. 3173, together with House bill No. 10786, and ask you to favor the Committee with your views thereon in their bearing on the interests which the law has placed under your supervision as Head of the Treasury Department, and also to invite you to express your preference in regard to either of those measures, and to suggest any modifications of either that to your Department may seem desirable.

The end of the present session is so near at hand that the Committee will be gratified by as early a reply as the many incessant demands on your time will permit.

Very respectfully, yours,

PERRY BELMONT.

Hon. DANIEL MANNING,
Secretary of the Treasury.

TREASURY DEPARTMENT, February 5, 1887.

SIR: I have your letter of the 31st ultimo, with its enclosures, and, moved by your suggestion therein, hasten to make reply.

The subject to which your letter and its enclosures refer is naturally divisible into two parts. For the sake of clearness I will take up, first, our fishing rights; and, then, the commercial privileges of our vessels in Canadian ports.

FISHING RIGHTS.

I assume American fishing rights to be defined by the treaties of 1783 and 1818; that those conventions are now, when taken together, and if unmodified to our advantage by the treaty of 1854, of binding force and effect; that by previous conquest in war, and those treaties, our fishermen have a right to fish on a portion of the coasts of the British colonies in North America as absolute and perfect as is their right to fish on the high seas; and that on certain other portions of those coasts we have renounced the liberty which we enjoyed till 1818 to

catch, dry, or cure fish. I also assume that the United States are content with their existing rights of fishing on Canadian coasts if those treaties be faithfully kept; that we do not now seek to enlarge those rights, and that we are also content to be excluded from the liberties of fishing on certain other coasts which we did once enjoy but have since renounced. I likewise assume that this Government will not protect American fishermen found intentionally and knowingly fishing on the forbidden Canadian coasts, but will, if it be necessary, punish, and refuse to renew the license of, a vessel found thus fishing. We do not ask either of Great Britain, or Canada, any other rights, or liberties, of taking, drying, or curing fish than those stipulated in the treaties of 1783 and 1818. Assertion to the contrary, by Englishmen or Canadians, is, so far as I am informed, unwarranted and untrue.

COMMERCIAL PRIVILEGES.

In respect to commercial privileges for our fishing-vessels in Canadian ports, the situation is quite otherwise!

The treaty of 1818 secured to our fishermen what, up to that time, they did not have as a treaty right, which was admission to Canadian bays or harbors "for the purpose of shelter, and of repairing damages therein, of purchasing wood, and of obtaining water, and for no other purpose whatever." As colonists we had those rights, but as colonists we lost them by just rebellion. They should not be called commercial rights, for they were simply rights of humanity, decency, good neighborhood, and international kindness to one another. To refuse a fishing-vessel such hospitality would be an act of barbarism fit only for savages. It would be as contemptible and odious as for a government, conducting a naval war, to fire, in these days, on a hospital-ship, attested by her color and flag, and filled exclusively with the sick, wounded, or dying, their surgeons and nurses. Such hospital-vessels are now, by the common consent of civilized nations, as I am told, even more perfectly and completely neutralized than are hospitals and tents on land, over which floats the yellow flag. It is impossible not to recognize how justly my colleague, Mr. Bayard, has portrayed the inhumanity and brutality with which certain Canadian officials treated defenceless American fishermen during the last summer, even those who had gone out of their way to rescue Canadian sailors, and, having entered a Canadian bay to safely land those they had saved, attempted to procure food to sustain their own lives.

It is true that we complain of, and denounce, as in violation of the treaty of 1818, the "restrictions" enforced by Canadian statutes and

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officials under the pretence of preventing our fishermen from "taking, drying, or curing fish" in the prohibited Canadian bays or harbors, but those "restrictions" are not complained of, or denounced, because restricting commercial *privileges*. The complaint and denunciation are because the "restrictions" violate the *fishing rights* secured to our fishermen by the treaties.

I am advised, and concede, that up to President Jackson's proclamation of October 5, 1830, set forth on page 817 of the fourth volume of the U. S. Statutes at Large, this Government had not even commercial privileges for its vessels in Canadian ports. We had such privileges as colonists; we lost them as colonists; we regained them in 1830 by an arrangement of legislation finally concerted with Great Britain, which was the result of an international understanding, that was in effect a treaty, although not technically a treaty negotiated by the President, ratified by the Senate, signed by the parties, and the ratifications formally exchanged by them. That must be so, for British colonial policy, after the Treaty of Peace in 1783, which secured the independence of the thirteen American States, notoriously excluded all foreign vessels from trading with British colonies on this continent. The treaty of 1794 was careful to declare that it should not, as to commercial privileges, "extend to the admission of vessels of the United States into the sea-ports, harbors, bays, or creeks of His Majesty's said territories" on the continent of America. The events which preceded the war of 1812 and that war, confirmed and enforced the exclusion. After the Treaty of Ghent we endeavored, by retaliatory laws, to counteract and change that policy. The fishery treaty of 1818 was concluded in October of that year, and, in April of the same year, Congress enacted a law which was described in the official documents of the day as enforcing a policy of non-intercourse by *British* vessels between ourselves and ports closed by British laws against our vessels. On May 15, 1820, Congress invigorated that law of 1818 by a new enactment, against every vessel, owned in whole or in part by British subjects, if coming or arriving *by sea* from any place in Lower Canada, or New Brunswick, or Nova Scotia, or the Islands of Newfoundland, St. John's, or Cape Breton, or from any British possession on this continent. We forbade, under pain of forfeiture, the entry, or attempted entry, of any such vessel into our ports. We interdicted the importation into the United States from any of the foregoing British dependencies, of any articles not produced therein. We excluded the importation by anybody of all articles excepting the produce of each colony respectively imported by itself.

In 1823, Congress suspended the provisions of the laws of 1818 and 1820 in respect to certain British Colonial ports, and authorized importation of colonial produce in certain British vessels coming *directly* therefrom, but only on the one condition that similar produce might be imported in our vessels to our country on equal terms, and that the British vessels thus admitted into our ports be navigated by a master and at least three-fourths of the mariners, British subjects. The law of 1818 said not a word about American vessels, or any other vessels excepting British vessels, but, as I have noted, the law of 1820 prohibited the importation of any merchandise from a British colony on this continent unless it was the growth of the colony where laden, and was brought directly to us. Nothing is said therein of *exportation* from us of merchandise in vessels not British.

The reason of the change in 1823 in our policy was that, in 1822, England changed her policy, and permitted American-built vessels lawfully navigated, to import certain goods directly to the West Indies. Hence we declared that the law of 1823 should remain in force so long only as the enumerated British colonial ports were open to our vessels by the British law of June 24, 1822, but if closed the President was empowered to revive our laws of 1818 and 1820. The British ports were closed to us by an act of Parliament on July 5, 1825, and the President thereupon, on March 17, 1827, proclaimed ours closed as before.

My distinguished predecessor in this Department, Mr. Gallatin, was, in that year, the American Minister at London, and the following extract from his note to our Department of State, dated on September 11, 1827, exhibits the situation as seen by him :

“Mr. Huskisson said it was the intention of the British Government to consider the intercourse of the British colonies as being exclusively under its control, and any relaxation from the colonial system as an indulgence, to be granted on such terms as might suit the policy of Great Britain at the time it was granted. I said every question of RIGHT had, on this occasion, been waived on the part of the United States, the only object of the present inquiry being to ascertain whether, as a matter of mutual convenience, the intercourse might not be opened in a manner satisfactory to both countries. He (Mr. H.) said that it had appeared as if America had entertained the opinion that the British West Indies could not exist without her supplies, and that she might, therefore, compel Great Britain to open the intercourse on any terms she pleased. I disclaimed any such belief or intention on the part of the United States. But it appeared to me, and I intimated it, indeed, to Mr. Huskisson, that he was acting rather under the influence of irritated feelings, on account of past events, than with a view to the mutual interests of both parties.”

The irritation in England appears to have resulted from the insertion in our law of 1823 of the word “*elsewhere*” in the second section, and

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the incident is so suggestive of watchfulness at present, that I add herewith a statement of the history of that legislation, made in the Senate by Senator Smith, of Maryland, a few years afterwards:

"During the session of 1822, Congress was informed that an act was pending in Parliament for the opening of the colonial ports to the commerce of the United States. In consequence, an act was passed authorizing the President, (then Mr. Monroe,) in case the act of Parliament was satisfactory to him, to open the ports of the United States to British vessels by his proclamation. The act of Parliament was deemed satisfactory, and a proclamation was accordingly issued, and the trade commenced. Unfortunately for our commerce, and I think contrary to justice, a Treasury circular issued, directing the collectors to charge British vessels entering our ports with the alien tonnage and discriminating duties. This order was remonstrated against by the British Minister, (I think Mr. Vaughan.) The trade, however, went on uninterrupted. Congress met, and a bill was drafted in 1823 by Mr. Adams, then Secretary of State, and passed both Houses, with little, if any, debate. I voted for it, believing that it met, in the spirit of reciprocity, the British act of Parliament. This bill, however, contained one little word, 'elsewhere,' which completely defeated all our expectations. It was noticed by no one. The effect of that word 'elsewhere' was to assume the pretensions alluded to in the instructions to Mr. McLane. The result was, that the British Government shut their colonial ports immediately, and thenceforward. This act of 1822 gave us a monopoly (virtually) of the West India trade. It admitted, free of duty, a variety of articles, such as Indian corn, meal, oats, pease, and beans. The British Government, thought we entertained a belief that they could not do without our produce, and by their acts of the 27th of June and 5th of July, 1825, they opened their ports to all the world, on terms far less advantageous to the United States, than those of the act of 1822."

President Adams alluded to the subject, in his annual message for 1827-'8, in these terms:

"At the commencement of the last session of Congress, they were informed of the sudden and unexpected exclusion by the British Government, of access, in vessels of the United States, to all their colonial ports, except those immediately bordering upon our own territory. In the amicable discussions which have succeeded the adoption of this measure, which, as it affected harshly the interests of the United States, became a subject of expostulation on our part, the principles upon which its jurisdiction has been placed have been of a diversified character. It has at once been ascribed to a mere recurrence to the old long-established principle of colonial monopoly, and at the same time to a feeling of resentment, because the offers of an act of Parliament, opening the colonial ports upon certain conditions, had not been grasped at with sufficient eagerness by an instantaneous conformity to them. At a subsequent period it has been intimated that the new exclusion was in resentment, because a prior act of Parliament, of 1822, opening certain colonial ports, under heavy and burdensome restrictions, to vessels of the United States, had not been reciprocated by an admission of British vessels from the colonies, and their cargoes, without any restriction or discrimination whatever. But, be the motive of the interdiction what

it may, the British Government have manifested no disposition, by negotiation or by corresponding legislative enactments, to be relieved from it; and we have been given distinctly to understand that none of the bills which were under the consideration of Congress at the last session would have been deemed sufficient in their concessions to have been rewarded by any relaxation from the British interdiction. The British Government have not only declined negotiation upon the subject, but, by the principle they have assumed with reference to it, have precluded even the means of negotiation. It becomes not the prospect of the United States, either to solicit gratuitous favors, or to accept, as the grant of a favor, that for which an ample equivalent has been acted."

The affair aroused so much emotion in the country that it entered an element into the Presidential election which came on soon afterward and resulted in the choice of General Jackson. The opposition of the administration of President Adams insisted that the congressional legislation, and the subsequent negotiations attempted at London during that administration, miscarried because an entrance of our vessels into British colonial ports was demanded as a *right* and not as a *privilege*. It is that distinction which has led me to emphasize the fact of a half century ago.

When President Jackson came to power, Mr. Van Buren instructed Mr. McLane, our Minister at London, to endeavor to reopen negotiations on the basis of our willingness to accept as a "*privilege*" the entrance of our vessels into British colonial ports, and it was successful. Congress on May 29, 1830, empowered the President, whenever satisfied that England would open to us her West Indian ports, to proclaim our ports opened to British vessels, and the repeal or suspension of the laws of 1818, 1820, and 1823. On October 5, 1830, President Jackson issued his proclamation admitting British vessels and their cargoes to entry into our ports from *all* British colonial ports on or near the American continent. From that beginning came the "*privilege*" of our vessels in Canadian ports, and it will be observed that the British laws and the American laws, and President Jackson's proclamation, all use the word "*vessels*" without any qualifying adjective excluding fishing-vessels.

Few of the incidents of our peaceful commercial diplomacy and negotiation are more striking, as it has always seemed to me, than the incidents of this successful effort by President Jackson to promote our carrying trade. Near the end of the first term of that great statesman and ruler of men, the mission to London was filled, during the recess of the Senate, by the appointment thereto of Mr. Van Buren. At his nomination came before the Senate, its confirmation was resisted by the personal and party opponents of President Jackson, on the ground

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mercial diplomacy and legis- eemed to me, than the inci- nt Jackson to prontote our st term of that great soldier was filled, during the recess of Mr. Van Buren. When confirmation was resisted by lent Jackson, on the ground

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that the instructions to Mr. McLane, personally dictated by the President, (as has since been proven,) and which accomplished the recovery of our West India trade, had asked of England, as a favor, what was due to us as a right, had espoused the British side against the American side as theretofore represented by President Adams, and had imported the result of our Presidential struggle into a diplomatic negotiation with a foreign country. Avowedly on that ground, the nomination of Mr. Van Buren was rejected in February of 1832, which rejection aided to lead up to his election to be Vice-President in the autumn of that year, and to be President four years later.

But that is not all. Mr. Gallatin, on September 22, 1826, wrote from London to Mr. Clay, then Secretary of State, that one of the three points on which we were "vulnerable" was:

"3. Too long an adherence to the opposition of her (England's) right of laying *protective duties*. This might have been given up as soon as the act of 1825, was passed."

In the debate in the Senate on Mr. Van Buren's confirmation, those (including Mr. Webster and Mr. Clay) who condemned the nomination contended that President Adams was right in rejecting the British offer of 1825, because it only covered the carrying trade, as well as our *vessels*, but left our *products* subject to protective duties levied by England at her West India ports!

THE TREATY OF 1815.

A full appreciation of political, diplomatic, and party events from the beginning of our history down to President Jackson's beneficent achievement will make it plain why we have not a treaty with Great Britain to regulate commerce with her colonies on this continent as we have with British ports and territories "*in Europe*." There will be found in our statute-books some thirty treaties between ourselves and foreign governments, stipulating that the vessels of each, and their cargoes, shall have free access to all the ports of the other which are open to foreign commerce. Our Treaty of 1815 with Great Britain declares:

"There shall be between the territories of the United States of America, and *all* the territories of His Britannic Majesty *in Europe*, a reciprocal liberty of commerce. The inhabitants of the two countries, respectively, shall have liberty freely and securely to come with their ships and cargoes to all such places, ports, and rivers in the territories aforesaid, to which other foreigners are permitted to come, to enter into the same, and to remain and reside in any parts of the said territories, respectively; also to have and occupy houses and warehouses for the purposes of their commerce; and, generally, the merchants and traders of each nation, respectively, shall enjoy the most complete protection and security for their commerce, *but subject always to the laws and statutes of the two countries respectively.*"

Then, in the second section is this stipulation :

“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.”

I am not aware of any treaty, excepting the fishing clauses of the Treaty of 1818 to which I have referred, and the Treaty of 1871, (to which I will refer hereafter,) or of any rule of international law binding on the United States, which now constrains Great Britain to commercial intercourse with ourselves in her Canadian ports. My previous training, and the line of my studies and occupations in this Department, warn me to speak with caution, and subject to correction from my very able and better instructed colleague Mr. Bayard, on the subject to which your committee has invited my attention, and on which you have requested my opinion; but were the situation reversed, and were England to demand, as a *right*, commercial access to our ports for Canadian vessels which, for reasons satisfactory to ourselves, we saw fit to exclude, or if Congress were, by legislation conforming to the Treaty of 1815, to even exclude British vessels covered by that treaty, I think we should say, and be entitled to say, that such commercial advantages in all our bays, harbors, and ports, from Mount Desert to Cape Cod, and from Cape Cod to Cape Hatteras, belong to us to interpret as strictly, and either to hold exclusively for our own vessels if we see fit so to do, or to exchange them for equivalents. That question, touching the commercial relation of all our vessels to open Canadian ports, I deem quite apart from the relation of our fishing-vessels to taking, drying, or curing fish on Canadian coasts under the Treaties of 1783 and 1818, and the relation of those vessels to shelter, repairs, wood and water, under the Treaty of 1818 while on those coasts.

THE REAL ISSUE.

This long introduction to clear away irrelevant matter, which the necessity of rapid dictation suggested by your letter prevents me from shortening as I could wish, brings me to say that, from the point of view of this Department, Great Britain can, if she deems it for her interest, or necessary for her safety, retreat from the understandings and agreements of 1830. Whether such retreat therefrom is to be deemed by us an unfriendly act, will depend on its motives and environment. To be sure the arrangement of 1830 was not in a technical sense a treaty from the engagements of which neither party can withdraw without the consent of the other amicably obtained, but it was to be a rule for two

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powerful States. It was a pact representing the will and opinions of each. It was a deliberate international act. It was a bargain, in which one Government bought a privilege at the price of an equivalent given to the other. It was a contract, solemnized, and attested, by the law-making, instead of the treaty-making, power of the two nations.

What we are now confronted by is the Royal assent, given by the Queen in council on November 26, 1886, to the Canadian act, entitled "An act further to amend the act respecting fisheries by foreign vessels?" It begins by reciting that it is "expedient for the more effectual protection of the inshore fisheries of Canada against intrusion by foreigners." The offensive significance of that law is in the fact that, by (what I assume is law) the statute establishing the Canadian union, the Governor-General must, according to his discretion, but subject to the Queen's instructions, either declare that he assents in the Queen's name to a bill passed by the houses of the Canadian Parliament, or that he withholds the Queen's assent, "or that he reserves the bill for the signification of the Queen's pleasure." The last-named alternative phrase was adopted in dealing with the Canadian law of 1886, which peremptorily closes Canadian ports to our fishing-vessels seeking to trade. It empowers any of the therein designated officials to bring to, and *search*, any American vessel being within any Canadian harbor, or "hovering" in British waters. This is a revival in Canada of the theory of the ancient British "Hovering Act," long ago repealed in the mother country. If the search prescribed, and authorized, be of a fishing vessel loitering in a prohibited place, and fairly suspected of preparing there to fish in violation of law, such search, if fairly and reasonably made, may be tolerated. Our own customs law prescribes and authorizes a similar search of foreign vessels even four leagues from our coast. The third chapter of the thirty-fourth Title of the Revised Statutes empowers a revenue-cutter, having displayed her pennant and ensign, after a signal-gun, to fire into, and bring to, any vessel liable to examination, that refuses to stop and be visited and searched. But the Canadian act, thus having the royal approval, was intended, as has been openly avowed, to forfeit any American fishing vessel which is found having entered Canadian waters, or the port of Halifax, to buy ice, bait, or other articles, or for any purpose other than shelter, repairs, wood, or water. The plea is that the Treaty of 1818 permits, and stipulates, for such legislation. That we deny, and reply that such legislation is a repeal, and annulment by England of the arrangement made in 1830, and to that repeal we are entitled to *respond* by a similar repeal of our own law, and by a refusal hereafter, and while debate or negotiation goes on,

to confer hospitality, or any privileges whatever in our ports, on Canadian vessels or boats of any sort. A violation of comity may be looked upon as an unfriendly act, but not a cause for a just war. England may judge for herself of the nature and extent of the comity and courtesy she will show to us. In the present case we do not propose retaliation; we simply respond. We too suspend comity and hospitality.

FISHING VESSELS ARE AMERICAN VESSELS.

I learn that Canada attempts to excuse or palliate her act by saying that she has only withdrawn commercial comity and hospitality from our fishing vessels and their catch; but the plea is superficial and invalid. President Jackson's arrangement of 1830 made no classification of American vessels, but included all that were made vessels of the United States by this Department.

Vessels of the United States have always been defined by Congress, and notably in 1793, as those of five tons burden and upwards having licenses; those of twenty tons and upwards having enrolments; and those possessed of certificates of registry, provided those documents were legally issued and are in force. Certificates of registry are, as a rule, *required* for vessels engaged in foreign trade, and ~~are~~ *permitted* to vessels engaged in domestic trade. Vessels of twenty tons burden and upward, enrolled in pursuance of law, and having a license in force, are made vessels of the United States, entitled to the privileges of vessels employed in the coasting trade and fisheries. The same qualifications and requirements are for registry as for enrolment. If vessels are to be coasters or fishers, they must be *licensed*, and only for one year, and cannot carry on any other business unless another document has been obtained from the Treasury, which is a permit to "touch and trade." A registered vessel cannot be licensed to carry on the North Atlantic fisheries, but she may carry on such fisheries without a license. Enrolled vessels, having a license, may generally go from one of our ports to another without entry or clearance, but registered vessels must enter and clear. A registered vessel, carrying on whale fishery, may enter foreign ports for trade, but a whaler only enrolled and licensed cannot thus enter. No vessel from a foreign port can enter, and unload, excepting at ports designated by Congress; nor can merchandise come in vessels of less burden than thirty tons, and the cargo must be accompanied by a manifest, which must be exhibited to the first boarding officer, and again on entry. If an American vessel, licensed for fishing, shall be found within three leagues of our coast with *foreign* goods on board of greater value than \$500, she is liable to forfeiture with all her cargo,

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unless possessed of a permit "to touch and trade" at foreign ports, and then she must regularly enter, surrender her permit, pay duties, and be subject to all regulations for vessels arriving from foreign ports.

One incident will be sufficient to explain that the *law* defines which vessels, "and none others," shall be American vessels. In 1838, Mr. Justice Story had decided that, under the statute, no *registered* vessel was then entitled to carry on the whale fisheries as an American vessel, or to the privileges of an American vessel. By the law of April 4, 1840, Congress cured the defect.

We separate American vessels into subdivisions, as by registry, by enrolment and license, by license. Pleasure-yachts make another subdivision. But foreign governments cannot say that a vessel, regularly documented, is by reason of her class, not an American vessel. The classifications referred in the beginning, and refer now, chiefly to fees, tonnage taxes, entrance and clearance, production of manifests, passenger-lists, oaths, unloading, and similar things, when our vessels are in our own ports. Ferry-boats are American vessels, but they need not enter nor clear, nor pay entrance or clearance fees. A registered vessel from district to district is, as to clearance and entrance, subject to the same rules as vessels under frontier license and enrolment, and, on the other hand, a licensed and enrolled vessel touching at a foreign port, does not thereby become subject to our tonnage *duty*, nor to clearance and entrance *fees* as if from a foreign port. It is for our own convenience that vessels are classified as fishermen, inasmuch as our laws control by minute regulations the business of fishing in respect to contracts with those so employed. They punish fishermen who desert, and protect fishermen in the division of the proceeds of the catch, but none of the laws thus defining and controlling fishing-vessels, make the vessels any the less American vessels, which within the concerted legislation of 1830, and President Jackson's proclamation of that year, are entitled to commercial privileges in Canadian ports.

WHAT SHALL THE RESPONSE BE?

And now comes the question: What shall be the character and limitations of the response? Shall we only exclude Canadian fish, or such fish and all Canadian vessels, or both of them, and all merchandise coming from Canada by any sort of a vehicle, including the vehicle?

Under what conditions can negotiation go on with the least injury to ourselves,—our dignity, and self-respect. I cannot believe that the Government at London will persist in its present course unless inspired,

for some occult reason, by a purpose to break friendly relations with ourselves, or unless under the will, and at the mercy, of its colony.

I have not had the time or strength, since your letter came, to go through the British statutes in order to ascertain in what respect the British "North American Act" of 1867 has been modified, but under that enactment the Canadian Dominion is, in one sense, and in regard to specified subjects, self-governing. The Queen is to be sure empowered, by and with the advice and consent of the two Canadian Houses, to make laws for Canada, but the following matters are defined as thus within the control of the provincial legislatures:

- "1. The regulation of trade and commerce."
- "10. Navigation and shipping."
- "12. Sea-coast and inland fisheries."

But yet none of those are defined as subjects within the *exclusive* powers of the provincial legislatures, so as to disregard the Queen's assent.

ARTICLE XXIX OF ALABAMA TREATY.

Whether or not Article XXIX of the Alabama treaty was left standing by the act of Congress of June 28, 1883, and the President's proclamation thereunder, is an important preliminary question in the solution of the Canadian problem.

Articles XVIII and XIX, dealing with (compensated) reciprocal sea-fishing liberties, and Article XXI, dealing with reciprocal fish-oil and fish free-markets, and Article XXX, dealing with reciprocal conveyance of merchandise in board, specified the terms of years they should be in force. So did Article XXIX, dealing with the reciprocal privilege of transit, duty free, "of goods, wares, and merchandise" arriving at certain American ports and destined for Canada, or arriving at any North American British ports and destined for the United States. Its language is this: "It is agreed that for the term of years mentioned in Article XXXIII;" which article defines the specification thus:—"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 said period of ten years or at any time afterward;" which is to say,—10 years, plus x years, plus 2 years; x being a variable determinable by the wish of either party.

The term of years thus identically specified in all the Articles XVIII, XIX, XXI, (XXVIII, dealing with free British navigation of Lake Michigan,) XXIX, and XXX; thus defined in Article XXXIII, has been

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interpreted according to its obvious significance with respect to all but two of those Articles (XXVIII and XXIX) by the initiative and act of the United States, June 28, 1883. Is this Government to be precluded from any other term-of-years of the XXIXth Article than that thus specified, defined, and interpreted? Or does the "term of years" mentioned in Article XXIX, as prescribing and limiting its life, refer to and include the variable x in Article XXXIII, and contemplate its determination as to Article XXIX, specifically, in order to close its existence?

If the stipulations of Article XXIX are now binding on Great Britain, then it is indisputable that our vessels are entitled by the treaty to enter fish, as merchandise, at the proper custom-house of any Canadian port, for conveyance in bond to the United States. Of necessity, the vessel containing the fish is entitled to enter the port, in order to enter the merchandise at the proper custom-house.

I invite your attention to General Treasury Regulations for 1884, and to the Articles from 836 to 881.

THE THREE BILLS. (See Appendix A.)

The bill referred by the House of Representatives to its Committee on Foreign Affairs, of which you are chairman, alludes, in the opening sentence, to "rights" of American vessels denied to them in Canadian ports, or adjacent waters, to which "rights" such vessels "are entitled by treaty or by the law of nations." Apart from fishery "rights," confirmed by the Treaties of 1783 and 1818, and natural "rights" of humanity, as to shelter, repairs, wood, and water, confirmed by the Treaty of 1818, and "rights" stipulated in Article XXIX of the Treaty of 1871, to what commercial "rights" are our vessels entitled in Canadian ports by treaty? And to what commercial "rights" are they entitled by the law of nations? These are questions which, of course, you will have considered.

I ought to be, and am, for many reasons, extremely reluctant to discuss any bill which, after debate, has been adopted in the Senate by a vote almost unanimous. I feel that any comments of mine, even if well-founded, may expose me to just criticism even though invited by your Committee. My venture will only be from the point of view of the Head of this Department, to whom may be committed the execution of a Proclamation issued by the President under the proposed measure, if it shall become a law.

As to *fishing* rights, or liberties, under the Treaty of 1818, it stipulates that our fishermen shall be "under such restrictions as may be *necessary*," &c. By usage, and, so far as I know, without diplomatic resistance by us, one party to the treaty has been permitted to prescribe the

“restrictions.” “Lately” those restrictions have certainly been “unreasonable,” but shall the President issue his Proclamation forthwith, and without diplomatic effort to modify the restrictions applied since 1818 excepting when, or near the times when, the Treaties of 1818 and 1871 were in full force?

I am not aware of the concessions which Great Britain or Canada may have made to the vessels of other nations when such vessels are in Canadian ports, nor am I aware of any treaty, or understanding, between us and Great Britain which stipulates that our vessels shall forever have, in those ports, the rights, or privileges, “of the most favored nation,” for which Great Britain may have exacted, and received, a compensation.

Is there not possible ambiguity in the phrase “vessels of the British dominions of North America?” Does it mean only vessels whose home port is in those dominions, or vessels wholly owned by those having domicile in those dominions? Will it exclude a British vessel whose home port is outside of those dominions, or not owned therein? Will it permit a vessel with her home port in England, Scotland, or Ireland or the British West Indies, to enter and clear at our ports, and do carrying trade between Canada and our ports? I infer that the bill was framed to exclude only Canadian or Newfoundland owned vessels, and that other British vessels, French or German vessels or vessels of any other nationality, may enter our ports, although coming from ports of Canada or Newfoundland, but that our ports may be closed to any and all merchandise coming from those British colonies even if on board a friendly vessel.

There are no statistics in this Department showing the number of railway engines, cars, or vehicles which annually cross our frontier to seaboard ports with Canadian produce for export. So far as the passage of these vehicles is concerned, the existing statutes give authority to the Executive to impede their transit, inasmuch as they can, if of foreign production, be held to be dutiable as manufactures of wood, &c., and unless duties are paid can be refused entry. The existing statutes, also, authorize the Department to insist upon unloading the merchandise from such cars at the frontier for the purpose of definitely ascertaining quantities, &c.

Either of these courses would have the effect of impeding, if not putting a stop to, the transit traffic which produces no revenue, as the customs fees exacted for certifying manifests, &c., go but a little way toward reimbursing this Government for the expense it is put to in supervising the business. The stoppage of such traffic will, it is assumed, result

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in a reduction of the force at some of the ports, such as Island Pond, where this traffic principally prevails.

If the Senate bill shall become a law, and the President shall issue his proclamation thereunder, besides putting an end to the transit traffic aforesaid, its effect will be to exclude from importation Canadian free goods, such as certain kinds of fish, lumber, animals, &c., to the amount of about \$2,500,000 annually, and also of reducing the revenue,—by preventing the importation of Canadian dutiable products, such as lumber, breadstuffs, fish, etc., in annual value, say, \$22,000,000,—to the extent of about \$4,000,000, which will be the probable duties collectible on such goods during the present fiscal year if the present system of intercourse shall continue.

The following tables show the importation of free and dutiable Canadian goods during the fiscal year ending June 30, 1886, as estimated upon the report of the Bureau of Statistics for the year 1886:

Free of Duty.

Fresh fish, including shell-fish.....	\$985, 573
Indian goods	3, 197
Plaster of paris.....	115, 696
Fire-wood and other manufactured timber, such as handle-bolts, hoop-poles, logs and round unmanufactured timber, railroad-ties, shingle-bolts, ship-planking, ship-timber, stave-bolts.....	1, 372, 164
	<u>2, 476, 630</u>

Dutiable.

	Value.	Duties, about—
Animals, about.....	\$3, 500, 000	\$700, 000
Breadstuffs, about.....	7, 000, 000	1, 000, 000
Fish, dried, salted, smoked, pickled, and otherwise prepared, about.....	1, 500, 000	290, 000
Cod-liver oil, about.....	67, 000	16, 900
Provisions, about.....	2, 000, 000	470, 000
Vegetables, beans, pease, potatoes, etc., about.....	1, 000, 000	300, 000
Wood, manufactures of wood, excluding lumber, and timber of all kinds, about.....	7, 000, 000	1, 300, 000
	<u>22, 067, 000</u>	<u>4, 076, 900</u>

To these may be added other dutiable commodities, in value about \$2,000,000, on which the duty would be about \$400,000.

One effect of the proposed proclamation would be to stop all customs business proper—that is, the collection of any revenue along the Canadian frontier and render the employment of customs officers unnecessary, except for the purpose of preventing and detecting smuggling, issuing papers to American vessels, etc. It would not have much effect,

however, upon the seaboard ports, except perhaps at Portland, Me., and Boston, Mass., during the winter months when the Canadian ports of Quebec and Montreal are closed by ice.

When the Senate bill was under discussion in the Senate, an amendment was proposed and rejected, as follows :

“And also, if he think proper, to prohibit the entrance into the United States from Canada of any engines, rolling-stock, or cars, with any goods that may be therein contained.”

The proposed legislation gives very large discretion to the Executive,—not much larger, however, than was given by the laws of 1818, 1820, 1823, and 1825. But it is quite important, so far as this Department will be concerned, that there be no unnecessary ambiguity in the law, and if locomotive, railway rolling-stock, and cars are to be excluded, under any circumstances, Congress should so say in explicit terms, and all vehicles containing or carrying merchandise should be distinctly excluded, if that be the will of Congress.

CONCLUSION.

It is much to be regretted that mediæval tariff laws, like that cruel legacy of war which still encumbers the statute-books of the United States, or a mediæval non-intercourse policy, like that of the Dominion of Canada, approved by the Queen in Council on the threshold of Her Majesty's jubilee year, should be the divided disgrace of our common civilization. Both are obstacles to that enlarging freer intercourse among the heirs, by a kindred blood, of one great heritage of social order, language, laws, and civil liberty, which is leading here and promoting everywhere, from century to century, the increasing progress of the human race. The venerated founders of this Republic contributed to that progress its most powerful and well-directed impetus by withholding from the Federal Government authority to fetter the foreign commerce of the people with any export tax, and by enacting an absolute free trade forever among the inhabitants of all its States. The new world which swept into their ken was a world of American freemen, whose laws should but establish and guard their individual liberty. Had the most northern colonies, anticipating then the inevitable hour, along with us, cut off and released to her thenceforth separate and insular fortunes the parent state; the whole continent of North America from sea to sea, and from its northern to its southern gulfs, would now be joined in one indissoluble Union of indestructible States; and the political line of the 49th parallel of latitude, with the geographical boundary of the five great lakes and their river, instead of being marked by sus-

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icious revenue officers and hostile custom-houses, would be invisible like the 100th meridian, and another bond of unity like the waters of the Mississippi.

In such a wider Dominion, in such a greater and enduring Union, finally, by peaceful growth, with cordial unconstrained assent, for common interests, soon or late these now separate peoples, discordant or divided by political lines, but kindred by every tie that ever has united men or founded states, will one day merge their majestic empires. It behooves the statesmanship of our own and coming generations on either side the dividing line, to perceive that this continental and imperial policy is not a visionary hope but rather in the order of nature, to which the laws, that we in our brief time enact, had best conform and give it furtherance.

Subject to this policy, therefore, even when repelling aggression; avowing this common duty and ultimate destiny, even when responding to an offensive non-intercourse policy, by offended non-intercourse acts which at any moment we are more anxious to withdraw from than now willing to enter upon; I submit to your Committee with the greatest deference, the following bill:

AN ACT to enable the President to protect and defend the rights and privileges of vessels of the United States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled: WHEREAS, the United States having, by treaty with His Majesty the King of the United Kingdom of Great Britain and Ireland, renounced certain specified incidents and parts of the therein recognized liberties of the United States in the fisheries of the North Atlantic, theretofore enjoyed in common with the inhabitants of the places bordering thereon,—namely, the liberty to take, dry, and cure fish within three marine miles of certain designated coasts, bays, creeks, and harbors of the British dominions in North America;

And whereas, the United States having retained unrenounced the rest and residue of their rights and liberties in the fisheries of the North Atlantic, the Gulf of St. Lawrence, the Newfoundland and Labrador coasts;

And whereas the United States having, by the said treaty, subjected even their right to traverse, and their liberty to enter such bays or harbors, for the purpose of shelter, and of repairing damages therein, and of purchasing wood, and of obtaining water, to whatsoever restrictions might be necessary to effectuate their said renunciation of taking, drying, and curing fish therein;

And whereas the aforesaid renunciation of what has now become valueless, and which the United States have no wish to resume or enjoy, has, by those having authority over the lands adjacent to the said bays and harbors, been made a pretext for laws so executed as to enlarge, distend, and pervert the said renunciation into nullification, or denial, of the said unrenounced, recognized, and common rights and liberties of the United States in the said British waters, coasts, and common sovereignty in the fisheries therein, to wit: denial at all Canadian ports open to the entry of foreign vessels, to regularly documented vessels of the United States, whether following inshore fishery thereabouts on coasts, bays, creeks, harbors, shores, and straits, designated and unrenounced in the said treaty, or pursuing off-shore fishery, or fishery upon the high seas thereabouts, of rights, to which such vessels and their crews are entitled; to wit, likewise, denial, at all Canadian ports open for entry by foreign vessels, to regularly documented vessels of the United States, of commercial and trading privileges now ordinary in the intercourse of civilized peoples, and such as in all ports of entry for foreign vessels established by law in the United States, are now, and for many years past have been, conceded to, and enjoyed by, Canadian and British vessels entering and trading at the same;

And whereas, for past aggressions and injuries in that regard, redress is delayed or withheld;

And whereas a recent and more stringent statute enacted by the Canadian Parliament, and approved by the Queen in Council on the 26th of November last, seems to prove those aggressions and injuries deliberate and politic, to forbode their continuance, and to project Canadian non-intercourse with American fishing vessels for general purposes of trade; therefore:

SECTION 1. That whenever the President shall be satisfied that vessels of the United States are, by British or Canadian authority, denied, or abridged in, the reasonable enjoyment of any rights, privileges, or liberties on Canadian waters, or coasts, or in Canadian ports, to which rights, privileges, or liberties, such vessels, their masters, or crews, are entitled, it shall in his discretion be lawful, and it shall in his discretion be the duty of the President to close, by a proclamation to that effect, all the ports of the United States against any and every vessel owned wholly or in part by a subject of Her Britannic Majesty, and coming or arriving from any port, or place in the Dominion of Canada, or in the Island of Newfoundland, whether directly, or having touched at any other port, excepting such vessels shall be in distress of navigation and of needed repairs or supplies therefor, and every vessel thus excluded from the ports of the United States that shall enter, or attempt to enter, the same, in violation of this act, shall with her tackle, apparel, furniture, and all the cargo on board, be seized and forfeited to the United States, or the value thereof to be recovered of the person or persons making or attempting to make entry.

SECTION 2. That it shall, in his discretion, be lawful for the President, and it shall, in his discretion, be his duty, whenever he shall be satisfied as is in the first section hereof declared, to prohibit, by proclamation, the entry, or importation, or bringing, into any collection district, or place, in the United States, of any goods, wares, or merchandise from the aforesaid Dominion of Canada, or Newfoundland, or any locomotive, car, or other vehicle, from the Dominion of Canada; but the President may, in his discretion, apply such proclamations to any part or all of the things or articles herein named, and may qualify, limit, rescind, or renew the application thereof; and all goods, wares, or merchandise, locomotives, cars, or other vehicles imported or brought, or attempted to be imported or brought, into the United States, contrary to the provisions of this Act, shall be seized and forfeited to the United States, or the value thereof to be recovered of the person or persons so importing or bringing.

SECTION 3. Any person who shall violate any of the provisions of the first or second sections of this Act, or any proclamation of the President made in pursuance hereof, shall be deemed guilty of misdemeanor, and on conviction thereof, shall be punished by a fine not exceeding one thousand dollars, or by imprisonment for a term not exceeding two years, or by both said punishments, in the discretion of the court.

SECTION 4. That the President be, and is hereby, authorized to appoint a commissioner to proceed to such places in the United States or elsewhere as may be designated by the Secretary of State, to take testimony, under oath or affirmation, in relation to the losses and injuries inflicted since the thirty-first of December, eighteen hundred and eighty-five, by British authorities, imperial or colonial, upon citizens of the United States engaged in the fisheries on the northeast coasts of British North America. Said commissioner shall everywhere have, in respect to the administration of oaths or affirmations and the taking of testimony, the same powers as a commissioner of a circuit court, and shall be paid the same fees as are prescribed for similar services of a commissioner of a circuit court, together with travelling expenses.

The above is but a summary:—the bill, of acts which might be ordained; the preamble, of reasons and grounds. Of course preambles can never create powers, but may serve to explain them. They are rare in the acts of Congress. The disused form was convenient to enable me to satisfy your request.

Very respectfully yours,

DANIEL MANNING.

Secretary.

Hon. PERRY BELMONT,

Chairman of the Committee on Foreign Affairs,

House of Representatives.

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APPENDIX A.

MR. BELMONT'S BILL.

MR. GORMAN'S RESOLUTION.

49TH CONGRESS, 2D SESSION.—H. R.

49TH CONGRESS, 2D SESSION.—SENATE.—

10786

MIS. DOC. NO. 33.

dominions of North America, are or which lately have been denied any of the privileges therein accorded to the vessels, their masters or crews, of the most favored nation, or unjustly vexed or harassed in respect to the same, or unjustly vexed or harassed therein by the authorities thereof, then, and in either or all of such cases, it shall be lawful, and it shall be the duty of the President of the United States, in his discretion, by proclamation to that effect, to deny vessels, their masters and crews, of the British dominions of North America, any entrance into the waters, ports, or places of or within the United States (with such exceptions in regard to vessels in distress, stress of weather, or needing supplies as to the President shall seem proper), whether such vessels shall have come directly from said dominions on such destined voyage or by way of some port or place in such destined voyage elsewhere; and also to deny entry into any port or place of the United States of fresh fish or salt fish or any other product of said dominions, or other goods coming from said dominions to the United States. The President may, in his discretion, apply such proclamation to any part or to all of the foregoing-named subjects, and may revoke, qualify, limit, and renew such proclamation from time to time as he may deem necessary to the full and just execution of the purposes of this act. Every violation of any such proclamation, or any part thereof, is hereby declared illegal, and all vessels and goods so coming or being within the waters, ports, or places of the United States contrary to such proclamation shall be forfeited to the United States; and such forfeiture shall be enforced and proceeded upon in the same manner and with the same effect as in the case of vessels or goods whose importation or coming to or being in the waters or ports of the United States contrary to law may now be enforced and proceeded upon. Every person who shall violate any of the provisions of this act, or such proclamation of the President made in pursuance hereof, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by a fine not exceeding one thousand dollars, or by imprisonment for a term not exceeding two years, or by both said punishments, in the discretion of the court.

Passed the Senate January 24, 1887.

G.

Secretary.

APPENDIX A.

MR. BELMONT'S BILL.

49TH CONGRESS, 2D SESSION.—H. R. 10786.

IN THE HOUSE OF REPRESENTATIVES.

JANUARY 17, 1887.—Read twice, referred to the Committee on Foreign Affairs, and ordered to be printed.

Mr. BELMONT introduced the following bill:

A BILL to protect American vessels against unwarrantable and unlawful discriminations in the ports of British North America.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That hereafter whenever the President shall be satisfied that vessels of the United States are denied in ports of the British provinces in North America bordering on the Atlantic Ocean, or in the waters adjacent to said provinces, rights to which such vessels are entitled by treaty or by the law of nations, he may, by proclamation, prohibit vessels bearing the British flag and coming from such ports from entering the ports of the United States, or from exercising such privileges therein as he may in his proclamation define; and if, on and after the date at which such proclamation takes effect, the master or other person in charge of any of such vessels shall do, in the ports, harbors, or waters of the United States, for or on account of such vessel, any act forbidden by such proclamation aforesaid, such vessel, and its rigging, tackle, furniture, and boats, and all the goods on board, shall be liable to seizure and forfeiture to the United States; and any person or persons preventing or attempting to prevent, or aiding any other person in preventing or attempting to prevent, any officer of the United States from enforcing this act, shall forfeit and pay to the United States one thousand dollars, and shall be guilty of a misdemeanor, and, upon conviction thereof, shall be liable to imprisonment for a term not exceeding two years.

SEC. 2. That the President may also, by such proclamation, forbid the entrance into the United States of all merchandise coming by land from the provinces of British North America, and may also forbid the entrance into the United States of the cars, locomotives, or other rolling stock of any railway company chartered under the laws of said provinces; and upon proof that the privileges secured by article twenty-nine of the treaty concluded between the United States and Great Britain on the eighth day of May, eighteen hundred and seventy-one, are denied as to goods, wares, and merchandise arriving at the ports of British North America, the President may also, by proclamation, forbid the exercise of the like privileges as to goods, wares, and merchandise arriving in any of the ports of the United States; and any person violating or attempting to violate the provisions of any proclamation issued under this section shall forfeit and pay to the United States the sum of one thousand dollars, and shall be guilty of a misdemeanor, and, upon conviction

thereof, shall be liable to imprisonment for a term not exceeding two years.

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

THE SENATE BILL.

49TH CONGRESS, 2D SESSION.—S. 3173.

IN THE HOUSE OF REPRESENTATIVES.

JANUARY 26, 1887.—Read twice, referred to the Committee on Foreign Affairs, and ordered to be printed.

AN ACT to authorize the President of the United States to protect and defend the rights of American fishing vessels, American fishermen, American trading and other vessels, in certain cases, and for other purposes.

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

Passed the Senate January 24, 1887.

MR. GORMAN'S RESOLUTION.

49TH CONGRESS, 2D SESSION.—SENATE.—
MIS. DOC. NO. 33.

IN THE SENATE OF THE UNITED STATES.

JANUARY 18, 1887.—Ordered to be printed.

Mr. GORMAN submitted the following resolution:

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

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

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