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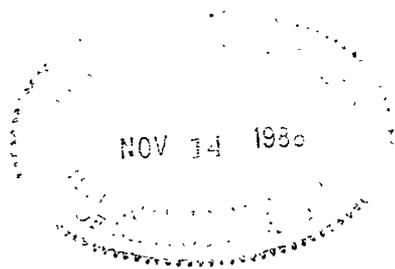
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CONFIDENTIAL.

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FURTHER. CORRESPONDENCE

RESPECTING THE

OCCURRENCES

AT

FORTUNE BAY, NEWFOUNDLAND,

IN

JANUARY 1878.

(In continuation of Confidential Paper No. 3851.)

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CONFIDENTIAL.

Further Correspondence respecting the Occurrences at Fortune Bay, Newfoundland, in January 1878.

[In continuation of Confidential Paper No. 3851.]

No. 1.

Lord Tenterden to Mr. Herbert.

Sir, *Foreign Office, February 20, 1879.*
WITH reference to your letter of the 7th instant, relative to the instructions to be given to the magistrate appointed to proceed to Fortune Bay, I am directed by the Marquis of Salisbury to state to you, for the information of Her Majesty's Secretary of State for the Colonies, that his Lordship would be glad, before expressing an opinion, as requested in your letter, to be informed whether the Fishery Laws which it is now proposed to enforce, and which appear to be contained in Consolidated Acts of the Colonial Legislature, are, as to all or any of them, merely re-enactments of laws in force at the date of the Treaty of Washington.

I am, &c.
(Signed) TENTERDEN.

No. 2.

Mr. Bramston to Lord Tenterden.—(Received February 25.)

My Lord, *Downing Street, February 24, 1879.*
I AM directed by the Secretary of State for the Colonies to acknowledge the receipt of your letter of the 20th instant, inquiring whether certain provisions of the law of Newfoundland relating to the Fisheries, the enforcement of which at Fortune Bay in that Colony has been contemplated, and which are quoted in a notice proposed to be issued by the Local Government (copy inclosed in my letter of the 20th December last), are, as to all or any of them, merely re-enactments of laws in force at the date of the Treaty of Washington.

Sir Michael Hicks Beach desires me to state in reply, for the information of the Marquis of Salisbury, that the provisions of the law quoted in the first three paragraphs of the notice are, with the following exception, substantially the same as those contained in an Act of the local Legislature passed in 1862, from which they appear to have been taken in the compilation of the Consolidated Statutes, and of which a copy is inclosed.

The exception is as follows:—

The words "twelfth day of April," which occur in section 1 of the Act of 1862, have been altered by a later Act to the words "twenty-fifth day of April." This alteration was made by an Act of a date subsequent to that of the Treaty of Washington, viz., Cap. VI of 1876.

The last paragraph of the notice quoting the prohibition relating to fishing on Sunday is taken from the same Act, Cap. VI of 1876, and this provision of the law is also, therefore, of a later date than the Treaty of Washington.

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

Inclosure in No. 2.

[Governor's Assent, March 27, 1862.]

[Passed the House of Assembly, March 21, 1862.]

[Passed the Legislative Council, March 22, 1862.]

(Signed) R. CARTER, *Acting Colonial Secretary.*

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:—

Herrings 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 twentieth day of October and the twelfth 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.

Nets of 2 3-8 inch scale to be used from the 20th December until the 1st April.

II. No person shall, at any time between the twentieth day of December and the first 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.

Regulation as to nets with double bottom, &c.

No person shall interfere with the nets of others.

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.

Herring not to be taken from the 20th April until the 20th October between Cape Chapeau Rouge and Point Rosey.
Penalty for violation of this Act.

IV. No person shall, at any time between the twentieth day of April and the twentieth 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.

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.

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 :

Prohibition for using salmon nets at certain times, and against erecting weirs, and penalty.

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 fifth section of this Act.

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 right 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.

No. 3.

Lord Tenterden to Mr. Herbert.

Sir,

Foreign Office, March 4, 1879.

WITH reference to your further letter of the 24th ultimo, I am directed by the Marquis of Salisbury to state to you that, as it appears that of the enactments which it is proposed that the magistrate at Fortune Bay should enforce those only relating to "close time" and to Sunday fishing have been made subsequent to the date of the Treaty of Washington, and that, as the United States' Government have not hitherto objected to the former, and may be expected to continue to refrain from doing so, the enactment in question being for the common interest of the preservation of the fishery, whilst they have protested against the latter, I am to suggest, for the consideration of Sir Michael Hicks Beach, that the proposed instructions should proceed, with the exception of the enforcement of the law prohibiting Sunday fishing, which it would be desirable to suspend for the present.

I am, &c.

(Signed) TENTERDEN.

No. 4.

The Marquis of Salisbury to Sir E. Thornton.

(No. 2.)

Sir,

Foreign Office, March 8, 1879.

I TRANSMIT to you herewith, for your information, printed correspondence in regard to certain occurrences at Fortune Bay, Newfoundland, in January 1878.

I am, &c.
(Signed) SALISBURY.

No. 5.

Mr. Herbert to Lord Tenterden.—(Received March 20.)

My Lord,

Downing Street, March 19, 1879.

WITH reference to your letter of the 4th instant, and to previous correspondence respecting the proposed instructions to the magistrate appointed to proceed to Fortune Bay, in Newfoundland, 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 telegram addressed to the Governor of Newfoundland on the 7th instant, together with a copy of a telegram in reply, dated the 8th, and of a despatch on the same subject, received on the 11th of this month.

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

Inclosure 1 in No. 5.

*Paraphrase of Telegram from Sir M. E. Hicks Beach to the Governor of Newfoundland.**March 7, 1879.*

AS regards your despatch of the 9th December, marked Confidential, if Ministers think proposed instructions to magistrate at Fortune Bay necessary, they may proceed; but suspend for the present that relating to enforcement of law against Sunday fishing.

Omit last fifteen words of preface of notice, if published, and add words "fishing season" instead.

Inclosure 2 in No. 5.

*Paraphrase of a Telegram from the Governor of Newfoundland.**March 8, 1879.*

I HAVE received your telegram of the 7th instant. Fishery season over in Fortune Bay. No breach of fishery law; everything quiet. No notice published. Full Report sent by last mail, 26th February. Eight American vessels fished 2,964 barrels of herring.

Inclosure 3 in No. 5.

Sir J. Glover to Sir M. E. Hicks Beach.

Sir,

Government House, February 25, 1879.

I HAVE the honour to report that during the month of January about sixty vessels were assembled at Long Harbour, Fortune Bay, for the purpose of catching and of purchasing herrings, and of these sixty vessels ten were Americans, which have taken away with them 3,000 barrels of fish.

When the police left nearly all the other vessels had gone, and those remaining were preparing to start.

2. Up to the 28th January, the date of the Report, there had been no breach of the peace, infringement of the fishery laws, nor a single case of drunkenness among

the whole number of men, which could not have been much under 600. I think this satisfactory result may be in great part attributed to the presence of the police preventing the sale of spirits by itinerant rum-sellers.

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

No. 6.

The Marquis of Salisbury to Sir E. Thornton.

(No. 35.)

Sir,

Foreign Office, March 22, 1879.

I TRANSMIT to you herewith, for your information, copy of a despatch, together with its inclosures, from the Colonial Office, on the subject of the Fortune Bay affair.*

I am, &c.
(Signed) SALISBURY.

No. 7.

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 $\frac{2}{5}$ 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. 7.

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 Sullivan, 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 Sullivan's Report."

The three breaches of the law there reported by Captain Sullivan, 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 Sullivan 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 Sullivan'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 Sullivan'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 which 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 shoals 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 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.” 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, 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 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 of 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 shoals 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. 8.

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. 8.

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.. ..				
10. Charles E. Warren	2,180	00	4,000	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
	<u>5,680 50</u>
CR.	
By return cargo	200 00
Total	<u>5,480 50</u>

(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
	<u>3,133 65</u>
Profit compared with previous years	3,000 00
	<u>6,133 65</u>
Deduct merchandize and cash returned	569 25
Total	<u>5,564 40</u>

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
	<u>1,754 50</u>
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
	<u>2,900 00</u>
Leaving a profit of	2,900 00

This vessel was driven off without obtaining any herring, and her voyage resulted in a loss of—

1. The actual expenses	..	..	..	..	..	..	Dols. c.
2. Profit on voyage, provided the vessel did no better than the previous year							1,754 50
							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:—

Store bill	..	..	..	..	..	..	Dols. c.
Railway and carpenter	..	..	..	..	..	..	297 83
Sail-maker	..	..	..	..	..	..	34 86
Painting	..	..	..	..	..	..	465 50
Blacksmith	..	..	..	..	..	..	34 76
Captain's bill	..	..	..	..	..	..	4 45
Wages	..	..	..	..	..	..	159 98
Insurance	..	..	..	..	..	..	670 50
Sundry bills	..	..	..	..	..	..	412 00
							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:—

Store bill	..	..	..	..	..	..	Dols. c.
Crew's wages	..	..	..	..	..	..	575 19
Insurance	..	..	..	..	..	..	674 00
Outfit for vessel, &c.	..	..	..	..	..	..	350 00
Ballast	..	..	..	..	..	..	944 85
							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
	<u>1,645</u>	<u>50</u>
This vessel was hired for the trip, and 850 dols. was actually paid for the charter	850	00
	<u>2,495</u>	<u>50</u>
Profit of a fair average voyage, calculated on previous voyages	2,400	00
Total	<u>4,895</u>	<u>50</u>

(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
	<u>4,300</u>	<u>00</u>
Less part of outfit returned	500	00
	<u>3,800</u>	<u>00</u>
If this vessel had made a fairly prosperous voyage her profit would have been	2,000	00
	<u>5,800</u>	<u>00</u>
Less small amount of herring brought back	62	00
	<u>5,748</u>	<u>00</u>
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	
	<hr/>	2,607 30
Cash received for herring sold		1,021 25
		<hr/>
		1,586 05
Probable profit if arrive home with a full cargo		3,000 00
		<hr/>
		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
		<hr/>
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:—

	<i>Outfits.</i>	Dols. c.
160 hogsheds 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
		<hr/>
		4,050 00
400 barrels herring (cash paid)		560 00
		<hr/>
		4,610 00
Deduct return cargo—		
800 barrels herring		2,400 00
30 hogsheds salt		30 00
		<hr/>
		2,430 00
Expense, loss		2,180 00
500 barrels herring		2,500 00
		<hr/>
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
	<hr/>	
	2,153	18
Profit 1874 and 1875	1,981	01
	<hr/>	
	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
	<hr/>	
	3,320	54
	Cr.	
For sales of herring, &c.	5,301	55
	<hr/>	
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
	<hr/>	
	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
	<hr/>	
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
	<hr/>	
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 60
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
	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
	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
	2,677 00

Total

(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
	<u>2,986</u>	<u>09</u>
Sale of herring, 918 barrels, at 2 dollars	1,836	00
	<u>1,150</u>	<u>09</u>
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
	<u>2,491</u>	<u>09</u>

(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
	<u>1,141</u>	<u>23</u>
Leaving a profit of		

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
	<u>3,997</u>	<u>17</u>
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:—

Wages of crew	Dols. c.
Ballast	834 60
Light money	100 00
Store bill, provisions for crew, &c.	27 00
Lumber for stage and fitting vessel	350 00
	350 00
	<hr/>
I am not the owner of this vessel, but hired her for this trip, paying for the charter	1,661 60
	<hr/>
Actual expenses	1,000 00
Add probable profit, calculated average of previous years	2,661 60
	<hr/>
Loss on trip	3,000 00
Credit, 180 barrels, purchased of the inhabitants of Newfoundland	5,661 60
	<hr/>
Spoilt by the delay	305 00
	<hr/>
	5,356 60
	<hr/>
	(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:—

Customs	Dols. c.
Store account	4 10
Outfit for voyage	222 80
Lumber for platform	1,278 03
Crew's wages	6 00
Captain's wages	618 65
Insurance	360 00
Wood and coal	362 60
Railway	17 50
Main-mast and setting up rigging	18 50
Use of chronometer	168 00
	15 00
	<hr/>
Deduct proceeds of the few barrels of herring brought back	3,066 18
	<hr/>
Actual loss of voyage	1,120 00
	<hr/>
In the last voyage to Fortune Bay the same vessel netted	1,946 18
The actual expenses were	6,285 70
	<hr/>
Leaving a profit on the voyage of	2,355 53
	<hr/>
	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—

1. Actual expenses	Dols. c.
2. Profit on the voyage, provided the vessel did no better than in the previous year	1,946 18
	<hr/>
	3,930 17
	<hr/>
	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:—

							<i>Expense.</i>	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
							<hr/>	
Profit compared with previous years..	..	..	..	..	..	..	2,714 52
							<hr/>	
Proceeds from part cargo of herring brought home	..	..	..	..	..	..	5,114 52
							<hr/>	
Balance..	..	..	..	..	..	..	1,525 45
							<hr/>	
							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:—

Store bill	..	..	..	..	..	..	Dols. c.
Crew's wages	..	..	..	..	..	..	205 00
Ballast	..	..	..	..	..	..	821 72
Insurance	..	..	..	..	..	..	60 00
Salt	..	..	..	..	..	..	475 00
800 barrels	..	..	..	..	..	..	325 48
Duties on barrels, Newfoundland	..	..	..	..	..	..	600 00
Labour..	..	..	..	..	..	..	60 00
Harbour dues	..	..	..	..	..	..	45 76
							<hr/>	
							25 68	
							<hr/>	
							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.

Actual expenses	..	..	..	..	..	..	Dols. c.
Money paid for fish	..	..	..	..	..	..	2,618 64
Loss of profit on 400 barrels, at 2 dols.	..	..	..	..	..	..	1,179 20
							<hr/>	
							800 00	
							<hr/>	
Credit—By proceeds of herring sold	..	..	..	..	..	..	4,597 84
							<hr/>	
Making total loss of	..	..	..	..	..	..	2,067 50
							<hr/>	
							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. 8.

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. s.	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
						<u>3,484 54</u>
CR. :—						
Cash returned and proceeds of goods sold .. .. .	..	..	..	..	1,167	79
						<u>2,316 75</u>
Add damages .. .. .	..	..	..	..	2,500	00
Value of 2,000 lbs. herring in the seine when destroyed, 2,000 dollars .. .. .	..	..	..	..	1,000	00
(half value to schooner "Ontario") .. .. .	..	..	..	..		<u>1,000 00</u>
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	
	6,049 57	
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. 9.

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. Everts 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. 10.

The Marquis of Salisbury to Sir E. Thornton.

(No. 107.)

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. 11.

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.

No. 12.

Mr. Meade to Sir J. Pauncefote.—(Received August 30.)

Sir,

Downing Street, August , 1879.

I AM directed by the Secretary of State for the Colonies to acknowledge the receipt of your letter of the 22nd instant, transmitting printed copies of two despatches addressed by the United States' Minister at this Court to the Marquis of Salisbury, respecting the Fortune Bay disturbances in January 1878, together with a copy of his Lordship's reply.

Sir Michael Hicks Beach observes that the claim for damages now advanced by the United States' Government is obviously one which cannot be entertained.

I am to add that a despatch has been addressed to the Governor of Newfoundland, requesting him to communicate this paper confidentially to Mr. Whiteway, for any observations that may occur to him on the subject.

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

No. 13.

Sir E. Thornton to the Marquis of Salisbury.—(Received September 7.)

(No. 186.)

My Lord,

Newport, August 25, 1879.

I HAVE the honour to inform your Lordship that several of the American newspapers, in speaking of the regret expressed in England at the resignation of Mr. Welsh, the Minister of the United States, have stated that, before leaving on his return to the United States, that gentleman had transmitted to your Lordship a demand for the sum of 103,000 dollars, as damages for the injuries done to certain American fishermen last year at Fortune Bay. They also assert that some elaborate notes have been exchanged between Mr. Welsh and your Lordship upon this subject. They further infer, from an article published in the "Times" upon the subject, that Her Majesty's Government would be willing to enter upon a negotiation for a modification of the fishery clauses of the Treaty of 1871.

Mr. Everts has not recently made any allusion to this matter in conversation with me, although he informed me that Mr. Welsh had sent in his resignation, and had left England.

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

No. 14.

Sir J. Pauncefote to Mr. Meade.

Sir,

Foreign Office, September 11, 1879.

I AM directed by the Marquis of Salisbury to transmit to you, to be laid before Sir Michael Hicks Beach, 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. 15.

Mr. Herbert to Sir J. Pauncefote.—(Received November 3.)

Sir,

Downing Street, November 3, 1879.

WITH reference to your letter of the 22nd August, and to the reply from this Department of the 30th of the same month, I am directed by the Secretary of State

for the Colonies to transmit to you, to be laid before the Marquis of Salisbury, a copy of a despatch which has been received from the Governor of Newfoundland, inclosing a Report from Mr. Whiteway in connection with the claim for compensation advanced by the United States' Government on account of the Fortune Bay disturbances in January 1878.

2. His Lordship will observe that, in Mr. Whiteway's opinion, the claim is altogether untenable, on the ground that the United States' fishermen were, at the time of the disturbances, assuming and exercising a right to fish from the beach not conferred upon them by the Treaty of Washington, and that this view seems to be supported by the arguments of the United States' Agent and Counsel, from which he quotes, before the Halifax Commission in 1877.

3. In the reply on behalf of Her Majesty's Government to the answers of the United States, before the Commission which preceded the argument of Mr. Foster and Mr. Dana, the following words occur:—*

"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 Her 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 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."

"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."

4. The following passage is also to be noticed in the final argument on behalf of Her Majesty's Government by Mr. Doure:—†

"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. . . . 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."

5. These words were applied to a portion of the Dominion of Canada, but if the right were conferred by the Treaty of Washington upon American subjects to establish themselves in Canada on the shore (and presumably to fish from thence), it would extend, under Article XXXII, equally to Newfoundland.

6. His Lordship will, however, probably concur with Sir Michael Hicks Beach, having regard to the terms of the Treaty, in considering that the expressions used on behalf of Her Majesty's Government which have been quoted were probably only meant to cover the limited and specific fishing purposes mentioned in the Treaty, and were never intended to claim for the subjects of the United States a privilege disowned by their own Representatives before the Commission, and he has referred to them merely with the object of bringing them to the notice of Lord Salisbury in connection with Mr. Whiteway's argument.

7. I am to add that a copy of the Law Officers' opinion alluded to by Mr. Whiteway was communicated to the Foreign Office on the 17th January, 1863, and that his Report of the 25th November, 1878, formed an inclosure to the letter from this Department of the 10th December last.

8. Sir Michael Hicks Beach requests that he may be furnished with a copy of any communication which Lord Salisbury may address to the United States' Government on the subject of the present claim.

I am, &c.

(Signed) ROBERT G. W. HERBERT.

* Page 128 of the Record of Proceedings of the Halifax Fisheries Commission, 1877.

† Page 348.

Inclosure 1 in No. 15.

Governor Sir J. H. Glover to Sir M. Hicks Beach.

(Confidential.)

Sir, *Government House, September 30, 1879.*
 I HAVE the honour to acknowledge the receipt of your despatch, Secret, of the 29th August, with inclosures, relating to the claim preferred by the United States' Government with reference to the Fortune Bay disturbances in January 1878.

In compliance with your request, I submitted the papers to Mr. Whiteway, and have now the honour to forward his observations on the case.

I have, &c.

(Signed) JOHN H. GLOVER.

Inclosure 2 in No. 15.

Mr. Whiteway to Governor Sir J. H. Glover.

Sir, *St. John's, Newfoundland, September 24, 1879.*
 PURSUANT to the request contained in the despatch from the Right Honourable Sir Michael Hicks Beach to you, dated the 29th August, and communicated by you to me, I have the honour to submit the following observations upon the claim preferred by the United States' Government with reference to the Fortune Bay disturbances.

Putting aside for the present the consideration of the question whether the Americans are or are not bound by the local Statutes relating to the fisheries, the first inquiry should be whether the Americans were, at the time of this occurrence, exercising a right conferred upon them by Treaty.

By the Washington Treaty the Americans have liberty to take fish upon the sea-coasts of Newfoundland, without being restricted to any distance from the shore, with permission to land for the purpose of drying their nets or curing their fish, provided that in so doing they do not interfere with the right 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.

The Counsel for the United States before the Halifax Commission contended, and rightly so, that a very limited concession had been made to the United States by the Washington Treaty.

Mr. Foster, in his closing argument at p. 209* says:—

“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 a 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 3 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 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.”

Mr. Dana, at p. 285,† calls the concession to take fish a mere faculty; he says:—

“Now, with reference to these fisheries, what is the value of a 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?”

And at pp. 286 and 288,‡ “Now, what is this which has been conceded to us, rather, what is this claim of exclusion from which Great Britain has agreed to withdraw herself during the period of this Treaty? What is this 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

* Page 193 of Blue Book.

† Page 269 of Blue Book.

‡ Pages 270 and 272 of Blue Book.

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 the right to cross over a portion of the seas and attempt to catch the fish."

"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 value of his music, if a third person was to be 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."

It would be idle to labour the argument that Americans have no right by Treaty to land except to dry their nets and cure their fish. Such they admit to be the case.

In the case before us, American fishermen were on the beach in conjunction with Newfoundland fishermen, who, at all events, are bound by the local Statutes, fishing from the beach by means of seines inbarring the herring.

This inbarring of herring is deemed to be a practice most injurious, and if continued calculated in time to destroy the fishery; consequently, it has been prohibited by Statute. The inbarring is accomplished by leaving one end rope of the seine on shore; the seine is then shot out, and the other end rope is brought to the shore; both ends of the seine being thus brought in, the herring are inclosed in immense numbers. The result of this mode of fishing is that the herring, being confined in the seine in a mass, die before they can be taken out and cured, and, according to the report of witnesses, the shores are often covered with thousands of barrels of herring in a decomposed state.

The inbarring might also be accomplished by a series of seines joined together and extending across the entrance of a narrow cove or inlet, and fastened to the shore on either side.

The Americans were upon the beach at Long Harbour illegally fishing from the land. They were quietly requested to discontinue, and, refusing, force was used, force which can hardly be deemed unreasonable in view of the fact that the captain of one of the American schooners produced a pistol and threatened to shoot those who were simply insisting upon their rights. Apart, however, from the position that the Americans were illegally fishing from the shore, they did, in thus fishing, "interfere with the rights of private property" and "with British fishermen in the peaceful use of the coast in their occupancy for the same purpose," in direct violation of the Treaty.

Again, the seines interfered with were worked partially by Newfoundlanders, who are amenable to local laws, even if the Americans are not. Are the Americans to be privileged to hire British subjects to break the laws of their country with impunity?

But it may be contended that under the terms of the Washington Treaty, and the construction placed upon it by the Counsel for the United States above referred to, the concession made to the United States is more limited than either Mr. Foster or Mr. Dana has put it.

The Americans are conceded the right, "in common" with British subjects, to take fish on the "sea-coasts" and shores, bays, harbours, and creeks without being restricted to any distance from the shore, with permission to land and dry their nets and cure their fish, provided that in so doing—that is to say, provided that in taking fish, and landing to dry their nets and cure their fish they do not interfere with 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, then, a British fisherman be in the occupancy of any part of the "sea coasts" ("said coasts"), that is, on the water within the 3-mile limit, "fishing" either with his set nets, with his bultows, or with his seines, or in any other manner, the Americans have no right to interfere with him.

The term "occupancy" implies a temporary use, and is precisely such a term as would be used in describing the tenure of a fisherman in a fishing area temporarily used by him.

It is in his occupancy for the time being, and whilst in his occupancy no American has a right to come and fish so near as to interfere with him in his fishing; but this is aside from the present question.

The question, however, does arise, "What is contemplated to be the nature of the user by the Americans when it is provided that they shall have the right 'in common' with British subjects to take fish, &c." It must be assumed that this contract is to be construed so that each party shall exercise their rights so as not to injure or prejudice the other, or destroy that which is to be used in common.

By the affidavits it would appear that the American mode of fishing by inbarring and occupying the whole beach would completely preclude the Newfoundland fishermen from fishing in common with them, and would destroy the fishery itself which was to be used in common (see affidavit of John Rumsey).

I observe that Mr. Evarts quotes from the British Case before the Halifax Commission to show that we claimed damages at the Commission for the injurious effects which would be consequent upon over-fishing. But there is a marked distinction between over-fishing and the adoption of such a mode of fishing as is calculated to destroy the fishery.

With regard to the right of the Newfoundland Legislature to bind Americans fishing within British waters, the whole question appears to have been well considered by the Law Officers of the Crown in their opinion under date the 6th January, 1863, addressed to the Duke of Newcastle, to which it is only necessary that I should refer.

I have, in a former communication dated the 25th November, 1878, called attention to Mr. Marcy's despatch dated the 28th March, 1856.

The power of legislation within the 3-mile limit must reside somewhere. Heretofore it existed exclusively in the Imperial and Colonial Parliaments.

There is nothing in the Treaty which divests either of this right, and it must, therefore, be presumed to continue where it previously existed. Had it been intended that such power should thereafter be exercised conjointly with the United States, provision would have been made in the Treaty to that effect.

The concession to the Americans of the right to fish "in common" with British subjects in British waters would necessarily require the abrogation of all laws contravening such Treaty; that is, all laws operating differentially on foreigners. In other words, we say, "As we use this property so shall you; we will do nothing that you may not do; we will fish in common without either having any advantage, but you shall not destroy our freehold. Had you the power to legislate you might, by legislation or refusal to join us in legislating, so allow these fisheries to be used as to destroy them as you have done with your own fisheries, which were as good as ours, but are now, by your own showing, worthless. You have only a short term, and the consequence to you is immaterial."

Assuming, for the sake of argument, that the Newfoundland fishermen were in error, and that the Americans are entitled to compensation, the claims proposed are simply preposterous.

They say that 1,000 barrels of herring would load two vessels. The value of the herring on the spot is about 1 dol. 50 c. or 1 dol. 75 c. per barrel. One vessel's cargo would thus be worth about 750 dollars or 875 dollars. But only four seines were interfered with. It is scarcely a logical conclusion that every American vessel would be interfered with in the same way.

There is no evidence that there was any interference with Americans not fishing from the land, and the inference is, and it is asserted, and is the fact, that no American, water-borne in his own vessel, fishing within the 3-mile limit, landing to dry his nets or cure his fish, was or would be interfered with, provided that in taking fish and landing to dry his nets and cure his fish he did not interfere with private property or with British fishermen in the peaceable use of any part of the said coasts in their occupancy for the same purpose. What is the whole case? Four crews, composed of Americans and Newfoundlanders, are doing an illegal act—the Americans had no right there by Treaty, and both were breaking a local Statute. They are stopped, and it is assumed that eighteen American crews are to be prevented from doing a lawful act. Upon that utterly unwarranted assumption claim is made for about 100,000 dollars damages. According to the affidavits of the Americans, they have been the wrongdoers in being upon the beach fishing therefrom. According to the affidavits of British witnesses, uncontradicted, the conduct of the Americans respecting the nets of British fishermen discloses a claim on their part which it may be well they should prefer. The loss of nets and consequential damages in the loss of fish for the season would amount to a large sum, for even if the British had been wrong, one wrong does not justify another.

It seems a pity that the Americans did not discover the great value of this herring

fishery prior to the session of the Halifax Commission. Had such been the case, we might have been spared the hearing of much evidence which, if their present evidence be correct, could not have been in accordance with the fact.

I have not time at present, as you require my reply for the coming mail now expected, to analyze and compare these statements, but, if necessary, I shall be happy to give the subject my attention.

The fact is that the herring fishery, during the winter of 1877-78, was a singularly poor one, and the Americans have availed of the Fortune Bay occurrence to endeavour to turn it into a more productive one than was ever known.

I presume it is unnecessary for me to enter into the details of the demand, or to comment upon the rash statements made in some of the affidavits in support of it. Some of these are singularly unique; for instance, the statement that Newfoundland fishermen should place their nets to rot where they never took a herring, simply for the purpose of preventing the Americans from using their seines there; this leads me to ask what object would the Americans have in using a seine where no herring were ever caught, and it is scarcely probable that, possessing only nets (and not seines) for taking herring, the British fishermen should set them where they never got herring.

I have no doubt that the legal issue will dispose of the case in our favour, and that the question of damages will never arise.

I would, however, observe that the conclusions arrived at by Mr. Evarts, in pp. 4 and 5, are not sustained by the depositions (rash though they be).

That four seines could inclose, even by inbarring, enough herring to load twenty-two vessels, and that all these herring could have been secured and put on board, is such an extraordinary proposition that one can hardly imagine it to be seriously made.*

Mr. Evarts refers to the depositions of Poole, Dagle, and Murray as those which sustain the statement that the seines were used at a distance from any land or fishing privilege in the occupation of any British subject, but the purport of their testimony is that they never heard of any one having a special claim to the beach, but that all used it in common. As to the first, it is mere negative testimony, worthless as compared with the positive proof of individual ownership which has been offered. As to the second, the Americans admit that the beach was used in common. In common by whom? By British subjects. Of course Americans had no right there. As British subjects there collectively they had used the beach and had reduced it into possession and occupancy; consequently, the Americans had no right to it.

But the affidavit of Poole admits our whole case, when he says:—

“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.”

Again, Murray:—

“The American seines there operated more than 400 feet, and due south along the beach, from Bolt’s hut.”

I have always been of opinion, and see no reason now to change it, that the Washington Treaty, in relation to the fisheries, so far from settling or adjusting difficulties, has only laid the foundation for constant disputes with the Americans, and, like the Treaty with France upon the same subject, will be found ever fruitful in causes for contention between the people of the two countries and their Governments.

I have, &c.

(Signed) W. V. WHITEWAY, *Attorney-General*.

* Cluett’s affidavit: “If they had secured all they had barred they would have filled every vessel of theirs in the bay.”

No. 16.

Mr. Hoppin to the Marquis of Salisbury.—(Received November 21.)

(Immediate.)

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. 17.

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. 18.

Lord Tenterden to Mr. Herbert.

Sir,

Foreign Office, December 5, 1879.

WITH reference to your letter of the 3rd ultimo, I am directed by the Marquis of Salisbury to transmit to you the accompanying draft to the Law Officers, together with a printed memorandum* regarding the claim for compensation advanced by the United States' Government on account of the disturbances at Fortune Bay in January 1878, and I am to request that, in laying these papers before Sir Michael Hicks Beach, you will move him to cause Lord Salisbury to be informed whether he concurs in the terms of the proposed reference to the Law Officers, and whether he has any observations to offer thereon.

I am, &c.
(Signed) TENTERDEN.

No. 19.

Mr. Herbert to Lord Tenterden.—(Received December 24.)

Sir,

Downing Street, December 23, 1879.

I AM directed by the Secretary of State for the Colonies to return to you the accompanying copy of a printed memorandum, inclosed in your letter of the 5th instant, regarding the claim for compensation advanced by the United States' Government on account of the Fortune Bay disturbances in January 1878.

I am to acquaint you, for the information of the Marquis of Salisbury, that Sir Michael Hicks Beach concurs in the terms of the draft to the Law Officers, a copy of which was forwarded in your letter, but would suggest, for the consideration of his

* Memorandum by Mr. Bergue, November 1879.

Lordship, whether it might not be desirable to make a few additions to the memorandum in the sense of the words marked in the margin of the copy now inclosed.

I am, &c.

(Signed) ROBERT G. W. HERBERT.

No. 20. •

Sir J. Pauncefote to the Law Officers of the Crown and Dr. Deane.

Gentlemen,

Foreign Office, January 1, 1880.

I HAVE the honour to transmit to you, by direction of the Marquis of Salisbury, the correspondence noted in the margin* respecting a claim which the United States' Government have preferred against that of Her Majesty, amounting to the sum of 105,305 dollars, on account of damages alleged to have been sustained through the violent interference by British subjects with United States' fishermen while engaged in catching herring at Fortune Bay in the Colony of Newfoundland in the alleged exercise of their rights under the Treaty of Washington.

I am also to inclose a printed memorandum† containing a statement of the facts and a reference to the Treaties, Colonial Acts, and other documents bearing on the case, and I am to request that you will take all these papers into your consideration, and favour Lord Salisbury with your opinion on the claim, and with your advice as to the answer which should be returned to the letter addressed by the United States' Minister to his Lordship on the 13th August, 1879 (see Further Correspondence, p. 1), transmitting a copy of Mr. Evarts' despatch to him of the 1st August, 1879.

I am, &c.

(Signed) JULIAN PAUNCEFOTE.

Inclosure in No. 20.

Memorandum to accompany reference to the Law Officers of the Crown.

ARTICLE I of the Convention between Great Britain and the United States, of the 20th October, 1818 (North America Blue Book No. 1, p. 55), 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."

North America No. 1
(1878), pp. 57 and 59.

It is important to note that, whilst absolute freedom in the matter of fishing within territorial limits 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.

When the Treaty of Washington was signed it became necessary, before the Fishery Articles could come into effect, that Acts should be passed by the various Colonial Legislatures.

In the case of the Newfoundland Act, some correspondence between the British and United States' Governments arose as to a proviso introduced into the Act (36 Vict., cap. 3; Correspondence No. 3851, pp. 50 and 55, Appendix B) as to Fishery Laws and Regulations, which was objected to by the United States' Government.

The Act was ultimately repealed (Correspondence, Appendix D, p. 57), and a new Act substituted (Appendix C, p. 56), which omitted the proviso in question.

* Printed Correspondence, Confidential, No. 3851, 1878-79; ditto, No. 3920, 1878-79; Further ditto, August 13 to November 3, 1879; "Correspondence relative to the Halifax Fisheries Commission," North America (No. 1), 1878; "Correspondence relative to the North American Fisheries," Confidential, No. 2286, 1854-63.

† Memorandum by Mr. Bergne, November 1879.

The effect of the proviso was to except from the general suspension of Acts at variance with the Treaty all Laws, Rules, and Regulations relating to the time and manner of prosecuting the fisheries.

The substituted enactment gave full effect to the Treaty, "any law of the Colony to the contrary notwithstanding." (See section 1 of Act of the 28th March, 1874; Correspondence, Appendix C, p. 56.)

It should here be observed that in 1872 the Colonial Legislature had passed an Act consolidating the laws relating to the coast fisheries, but its provisions were mere re-enactments of laws existing before the date of the Treaty of Washington.

In 1876, notwithstanding the repeal of the Act containing the proviso objected to by the United States' Government, the Colonial Legislature passed the Act 39 Vict., cap. 6 (Correspondence, Appendix E, p. 57), which effected certain changes in the Fishery Laws.

Those changes are contained in sections 1 and 4, and are explained in the letter from the Colonial Office to the Foreign Office of the 24th February, 1879 (Further Correspondence (3920), p. 16).

No dispute, however, has arisen until now between the two countries as to the Treaty rights of fishery conferred on the subjects of the United States; and in 1877 a Commission sat at Halifax, Nova Scotia, under Article XXII of the Treaty of Washington, to decide what compensation should be awarded by the United States to Great Britain in return for the fishing privileges in Canada and Newfoundland granted to United States' fishermen under Article XVIII of the Treaty. The result was an award in favour of Great Britain of 5,500,000 dollars, a portion of which sum has been handed over to the Colonial Government of Newfoundland.

Such being the position of affairs, the following incident occurred on Sunday, the 6th January, 1878:—

It appears that on that day certain United States' fishermen, who were engaged in seining herrings from the beach in Fortune Bay, Newfoundland, and in barring the fish, were compelled to desist from their operations by the violent interference of the inhabitants, who removed their nets, destroying one. All the seines were barred full of herrings: this ruinous process is described by Mr. Bergne (p. 49 of Print, No. 3851).

Colonial Office, March 12, 1878 (p. 1 of Print, No. 3851).

The first intimation received by Her Majesty's Government of this affair was through a despatch from the Governor of Newfoundland, who reported the circumstances, and inclosed the deposition of Alfred Noel, a master mariner, who witnessed the occurrence, and a report thereon from the Colonial Attorney-General.

Sir E. Thornton, No. 53: March 4, 1878 (p. 3, *idem*).

The matter was subsequently brought to the attention of Her Majesty's Government by the United States' Secretary of State, through Her Majesty's Minister at Washington, who, in transmitting a copy of Mr. Evarts' note, inclosed also certain newspaper extracts purporting to give an account of what had taken place.

Mr. Welsh, March 19, 1878 (p. 16, *idem*).
Colonial Office, March 28, 1878 (p. 16, *idem*).

Mr. Welsh, the United States' Minister in London, also made a representation on the subject. Another deposition of an eye-witness, John Rumsey, was forwarded by the Governor of Newfoundland, which contains a detailed account of the occurrence, and a description of the process of "inbarring."

Admiralty, July 11, 1878 (p. 21, *idem*).

Under these circumstances, Captain Sullivan, of Her Majesty's ship "Sirius," was instructed to proceed to Fortune Bay, and to make a careful inquiry into the matter. His Report, inclosing the sworn statements of several persons, is to the effect that the disturbance was caused by the United States' fishermen having committed three distinct breaches of the Colonial Fishery Laws, viz.:—

§ 27, cap. 102, sec. 1, Consolidated Statutes. (See Appendix A to Memorandum, p. 54, Print, No. 3851).
Do. do.
§ 4, cap. 7, of Act of April 26, 1876. (See Appendix E to Memorandum; p. 57, *idem*.)

1. Taking herrings with a seine during the close season;
2. Barring fish;
3. Fishing on Sunday;

and that no violence was used by the Newfoundland fishermen except in the case of one vessel.

The Report also finds that, contrary to the terms of the Treaty of Washington, the American fishermen were interfering with the rights of private property, and with British fishermen in the peaceable use of that part of the coast then occupied by them under a grant from Government. The statement of John Rumsey above shows that four or five large seines fastened to the shore for barring herrings would cover all the best hauling ground in Long Harbour, to the obvious exclusion of British fishermen.

The Report further shows that the statement of the American fishermen, that

they were compelled to leave the harbour, is unfounded, and that they remained about a fortnight or more after the occurrence in question, "until the herrings slacked." And the deposition of John Saunders, inclosed in the Report, shows that one schooner remained till another lot of herrings came into the Bay, when it was filled and went away.

A copy of this Report was transmitted to the United States' Minister for the information of his Government, but unaccompanied by copies of the sworn testimony.

On the 12th October Mr. Welsh, by order of his Government, communicated a letter addressed to him by Mr. Evarts, disputing the position that United States' fishermen were bound at all by local laws passed by the Newfoundland Legislature, asserting that the Treaty stipulations under which the rights of fishing are enjoyed by United States' fishermen could not be limited by Provincial legislation, and stating that, if any regulations were necessary for the order and preservation of the fisheries, they ought to be framed with the joint approval of the United States' and British Governments.

Lord Salisbury's reply to this communication is dated the 7th November, and will be found at p. 59 of the Correspondence.

In that letter his Lordship transmitted copies of the depositions annexed to Captain Sullivan's Report.

A despatch received on the 17th of the same month from Her Majesty's Minister at Washington contains important information on the subject of the correspondence between Great Britain and the United States respecting the proviso of the Newfoundland Act of the 28th March, 1874, and as to the authority of local laws over United States' fishermen in colonial waters; and with regard to this latter point Her Majesty's Government were referred, by Sir Alexander Galt, the British Commissioner on the Halifax Commission, to the arguments of the United States' Counsel before that Commission, as tending to show that local regulations were binding on citizens of the United States fishing in Newfoundland waters.

The Memorandum by Mr. Bergne at p. 48 of the Correspondence, and the Circular of Mr. Marcy, inclosed by the Attorney-General of Newfoundland in his letter of the 25th November, also call for particular notice in connection with this point.

In December 1878 a question arose as to the instructions to be given to the newly-appointed magistrate at Fortune Bay respecting the enforcement of the Fishery Laws; and it was referred to the Law Officers, whose Report thereon will be found at p. 63 of the Correspondence.

On the 7th March, 1879, the Colonial Office instructed the Governor of Newfoundland to abstain from notifying the enforcement of the law prohibiting fishing on Sunday.

So the matter stood until the 13th August last, when a despatch from Mr. Evarts was communicated to Her Majesty's Government by the United States' Minister in London, preferring a claim of 105,305 dollars on account of losses alleged to have been sustained by the United States' fishermen on the occasion of the disturbance at Fortune Bay in 1878.

This despatch contains an elaborate review of the question, and is supported as to the details of loss and damage by the sworn statements of the owners of twenty-two vessels, for whom compensation is claimed.

Mr. Evarts' note and the inclosures were referred to the Governor of Newfoundland, and a Report on the whole case has now been received from Mr. Whiteway, Q.C., the present Attorney-General and Premier of the Colony.

The position taken by Mr. Whiteway in this Report is that the United States' fishermen were exclusively engaged in seining herrings from the beach, and that, according to the express statement of the United States' Counsel before the Halifax Commission, no right of using the strand for fishing has been acquired by the United States under the Treaty, and that they were, consequently, independently of any considerations of the effect of local Statutes, engaged in an unlawful act.

With regard to this point, however, attention is drawn in paragraph 3 of the Colonial Office letter of the 3rd November, 1879, to certain passages in the Reply of Her Majesty's Government to the Answer of the United States before the Halifax Commission.

Mr. Whiteway further lays stress on the fact that the fishery privileges were granted only to be enjoyed in common with British subjects, and with regard to the question of local legislation he refers to a Report of the Law Officers of the Crown of

To Mr. Welsh, August 23, 1878 (p. 32, Print, No. 3851). Mr. Evarts to Mr. Welsh; September 28, 1879.

Lord Salisbury to Mr. Welsh; November 7, 1878 (p. 59, idem).

Sir E. Thornton, No. 296; November 4, 1878 (p. 40, idem).

Sir A. T. Galt, November 4, 1878 (p. 47, idem).

For references, see pp. 165, 166, 187, North America, No. 1 (1878).

Memorandum, p. 48. Inclosure 3 in Colonial Office letter of August 10, 1878 (p. 59, idem).

Law Officers, January 16, 1879 (p. 63, idem).

Inclosure 1 in Colonial Office letter of the 19th March, 1879 (Print, 3920, p. 19).

Mr. Welsh, August 13, 1879 (Print in continuation of No. 3920, p. 1).

Mr. Welsh, August 13, 1879 (p. 9, idem).

Inclosure 2 in Colonial Office letter of November 3, 1879 (Print in continuation of No. 3920, p. 39).

North America No. 1 (1878), pp. 193, 249, 270, 272.

Colonial Office, November 3; § 3 (p. 37, idem).

Law Officers, January 6, 1843 (Confidential Print, No. 2288, 1854-68, p. 104).

the 6th January, 1863. He also gives his reasons for considering the amount of the claim in itself to be excessive.

The following appear to be the principal points involved in this controversy:—

1. Were the American fishermen bound by the Colonial Laws in force at the date of the Treaty of Washington?

If so, they committed two offences against section 1 of the Newfoundland Act of 1862, 25 Vict., cap. 2 (Print 3920, p. 17), re-enacted in the consolidated Statute of 1872 (section 1, Correspondence No. 3851, Appendix A, p. 54): (a) by using a seine for herrings in close time, (b) by using a seine at any time for inbarring herrings.

2. Were the American fishermen bound by the Colonial Laws passed subsequently to the Treaty of Washington?

If so, they committed an offence against section 4 of the Newfoundland Act of 1876, 39 Vict., cap. 6 (Correspondence No. 3851, Appendix E, p. 57), by fishing on Sunday.

3. Are the American fishermen entitled, under the Treaties, to fish from the beach?

If not, they were trespassers at the time of the disturbance. (See evidence of Mark Bolt, Correspondence No. 3851, p. 25, and affidavit of John Rumsey, Correspondence, p. 17.)

4. Were the American fishermen interfering with the rights of private property, and with British fishermen in the peaceable use of that part of the coast in their occupancy for fishing purposes?

If so, they violated the Treaty. (See Article XVIII, North America Blue Book, 57).

With reference to this last point, it will be observed that throughout the depositions of the English witnesses their complaint is not based on any such interference, but only on the violation of the law against fishing on Sunday. On the other hand, the point relied on by Mr. Whiteway was distinctly raised in Captain Sullivan's Report, and is referred to in Mr. Evarts' letter, but passed over in silence.

5. Finally, if the United States' Government are entitled to compensation, is their claim excessive?

On this point Mr. Whiteway's Report contains important details.

No. 21.

Mr. Evarts to Mr. Hoppin.—(Communicated to the Marquis of Salisbury by Mr. Hoppin, February 7.)

(Telegraphic.)

Washington, February 6, 1880.

ASK when I am to receive an answer on Fortune Bay claims. Express my great chagrin that this Government has not already received an answer.

No. 22.

The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.—(Received February 11.)

My Lord,

Temple, February 11, 1880.

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 1st ultimo, stating that he had the honour to transmit to us, by direction of your Lordship, the correspondence respecting a claim which the United States' Government have preferred against that of Her Majesty, amounting to the sum of 105,305 dollars, on account of damages alleged to have been sustained through the violent interference by British subjects with United States' fishermen while engaged in catching herring at Fortune Bay, in the Colony of Newfoundland, in the alleged exercise of their rights under the Treaty of Washington.

That Sir J. Pauncefote was also to inclose a printed memorandum containing a statement of the facts and a reference to the Treaties, Colonial Acts, and other documents bearing on the case; and that Sir J. Pauncefote was to request that we would take all those papers into our consideration, and favour your Lordship with our opinion on the claim, and with our advice as to the answer which should be returned to the letter addressed by the United States' Minister to your Lordship on the 13th

August, 1879 (see Further Correspondence, p. 1), transmitting a copy of Mr. Evart's despatch to him of the 1st August, 1879.

In obedience to your Lordship's commands we have the honour to report—

That, in our opinion, the American fishermen had not, under the Treaty of Washington, the right to use the beach for the purpose of working their seine and barring the fish.

Probably greater and more continued violence was used by the British fishermen than was necessary, but as the Americans were the first offenders, their claim for compensation should not be entertained.

Legislation subsequent to the time of the Treaty of Washington cannot, in our opinion, modify or restrict the rights and privileges which the citizens of the United States acquired, and their Government have paid for, under that Treaty.

But we think the Americans were bound by all local laws in existence at the time when the Treaty was made; that, by the words of the Treaty, they were on the territorial waters of Newfoundland entitled to equal rights, and to the fishery in common with British subjects.

As to the answer, we have the honour to report—

That the United States' Minister may, in our opinion, properly be answered to the following effect:—

That the right of the citizens of the United States to compensation for damage sustained by them in Fortune Bay, Newfoundland, in January 1878, depends upon the facts and occurrences which happened on the day and in the place named, and the construction of those Articles of the Treaty of Washington of 1871 which are applicable to the facts.

First, as to facts.

The ends of the seines of the United States' citizens were secured to the shore, This fact, which is material, is not noticed by Mr. Evarts in his Inclosure No. 1 to Mr. Welsh, though at p. 5 of the Further Correspondence, in continuation of No. 2920, he says, referring to the affidavits of Rode, Dagle, and Murray, that "the seining was conducted at a distance from any land, fishery, or privilege, or the occupation of any British subject."

From the affidavits of Maclurison, p. 14, and the deposition of Ramsey, p. 17, of Correspondence 3851, it appears that on the day in question a large number of the crews belonging to the United States' fishery vessels came on shore and from the beach barred the herrings.

If these facts are true—and that they are true appears clearly from the statement transmitted by Mr. Evarts to Sir E. Thornton (Correspondence No. 3851, p. 5), the United States' citizens, in landing and setting and working their seines from the shore, were guilty of a breach of the Convention of 1818 and the Treaty of Washington of 1871.

The rights secured by these to the citizens of the United States are to take fish on certain portions of the coast of Newfoundland, and to use the shore for the purposes of purchasing wood, obtaining water, drying their nets, and curing 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.

In endeavouring to use the shore for fishing purposes they committed a breach of the privileges given by the Treaty.

It may be admitted, with regret, that more force than was necessary may, on the occasion, have been used by the Newfoundland people; but as the citizens of the United States, by a direct infringement of the Treaties and of the rights of the Newfoundland people, were the first and real cause of the mischief, Her Majesty's Government sees no reason for compensating them for any damages which they may have sustained in consequence of their own illegal acts.

Her Majesty's Government has already 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 admits that United States' fishermen have the right, by Treaty, of participation in the Newfoundland inshore fisheries in common with British subjects.

But it does not follow that from this right of participation in common with the British fishermen, the United States' fishermen have any other, and still less greater, rights than the British; on the contrary, the proper meaning of the provision would be that the rights and the obligations were equal, and that in the territorial waters, as

distinct from the shore or land, each had the same and no greater right than the other.

If, then, at the time of the Treaty of Washington, 1871, certain restraints were, by the municipal law, imposed upon the British fisherman, the United States' fisherman was, by the very words of the Treaty, bound to observe, in common with the British, the then existing local laws and regulations.

The obligation implied by the words "in common" attached upon the United States' citizen as soon he claimed the benefit of the Treaty. The local regulations existing at the time of the Treaty, and established by the Colonial authorities for the protection of the fisheries, are as binding upon the citizens of the United States, who claim the privileges secured by the Treaty, as they are binding upon the British.

True it is that the Consolidated Statutes of Newfoundland, passed since the Washington Treaty, 1871, contain certain restrictions as to the time and manner of fishing on the shores, and, as already said, those restrictions, when in conflict with the Treaty rights of the United States, cannot be insisted upon by the British Government.

But the regulations, which were in force at the time of the Treaty were not abolished but confirmed by the Statutes subsequent to that time, should have been known to the United States, and are binding, under the Treaty, upon the citizens of the United States in common with British subjects.

This Act at p. 17, Correspondence 3920, should be annexed for convenience to the answer.

Her Majesty's Government, sharing the regret expressed by Mr. Evarts on the part of the United States' Government at any apparent conflict of interests or of opinions which may exist as to the privileges secured by the Treaty to the citizens of the United States, will willingly co-operate with the Government of the United States "in settling the mutual obligations of the Treaty of 1871, and in making regulations which shall be a matter of reciprocal convenience and right, a means of preserving the fisheries at their highest point of production, of conciliating a community of interests by a just proportion of advantages and profits," and removing any future ground or cause of complaint on the part of the Government and citizens of the United States or the British Government and British subjects.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

No. 23.

The Marquis of Salisbury to Mr. Hoppin.

Sir, *Foreign Office, February 12, 1880.*

WITH reference to the telegram addressed to you by Mr. Evarts relative to the Fortune Bay question, a copy of which you communicated to me, I have the honour to request that you will convey to Mr. Evarts the regret of Her Majesty's Government at the delay which has unavoidably occurred in answering the claim of the United States' Government.

On receipt of the Report upon the case which had been called for from the Government of Newfoundland, it was found necessary to refer certain points to the Law Officers of the Crown for their opinion, and owing to the great pressure of business after the Parliamentary recess, and on the reopening of the Law Courts, as well as from the voluminous character of the documents submitted to them, they have been unable up to the present time to complete their examination of the case.

They will be immediately requested to expedite their Report, and as early as possible after the receipt of it I shall not fail to make known to you, for communication to your Government, the views of Her Majesty's Government on the question.

I have, &c.
(Signed) SALISBURY.

No. 24.

*Mr. Hoppin to the Marquis of Salisbury.—(Received February 27.)*My Lord, *Legation of the United States, London, February 27, 1880.*

I HAVE the honour to acquaint you that I received from the Honourable the Secretary of State last evening a further telegram in relation to the delay of Her Majesty's Government in answering our claims for damages on account of the proceedings at Fortune Bay.

Your Lordship will be good enough to remember that on the 7th instant, in the absence of your Lordship, I had a conversation with Sir Julian Pauncefote at the Foreign Office on this subject, and gave him a copy of the cable despatch I had received from Mr. Evarts the day before.

Afterwards, on the 12th instant, I received from Sir Julian a note in relation to this matter, a copy of which I sent to Mr. Evarts on the 14th, having already telegraphed the substance of it to him on the 13th instant.

During our conversation on the 7th February, when I pressed Sir Julian Pauncefote for an approximate statement of the time within which we might expect your Lordship's reply to our claims, he intimated that it would certainly be given within a month from that date, and I so informed Mr. Evarts in a despatch of the 10th February.

In the cable message which I have now received, Mr. Evarts states that he learns "with increased chagrin" from my despatch to him last mentioned, "of even a possible further delay of one month," and he instructs me to "urge its avoidance if possible."

I lost no time, therefore, in bringing this subject again to your Lordship's attention, and in expressing the disquiet which Mr. Evarts feels that an answer to these claims, which were brought to the notice of Her Majesty's Government so long ago as the 13th August last, may possibly be still further delayed.

I have, &c.

(Signed) W. J. HOPPIN.

No. 25.

*Sir J. Pauncefote to Mr. Herbert.*Sir, *Foreign Office, February 28, 1880.*

WITH reference to your letter of the 23rd December last regarding the claim for compensation advanced by the United States' Government on account of the Fortune Bay disturbances in January 1878, I am directed by the Marquis of Salisbury to transmit to you the accompanying printed copies of the case which was laid before the Law Officers, of their report thereon, and of the draft of the letter which his Lordship proposes to address to Mr. Hoppin in reply to Mr. Welsh's two letters of the 13th August, 1879.

I am to request that you will lay the inclosed papers before Sir Michael Hicks Beach and move him to cause Lord Salisbury to be informed whether he concurs in the terms of the proposed letter to Mr. Hoppin, and whether he has any observations to offer thereon.

I am, &c.

(Signed) JULIAN PAUNCEFOTE.

No. 26.

*The Marquis of Salisbury to Mr. Hoppin.*Sir, *Foreign Office, March 2, 1880.*

I HAVE the honour to acknowledge the receipt of your communication of the 27th ultimo informing me that you had on the evening of the preceding day received

a further telegram from Mr. Evarts in relation to the delay of Her Majesty's Government in replying to the claims put forward by the United States' Government in connection with the occurrences at Fortune Bay in January 1878, and I have to state to you with reference thereto that the Report of the Law Officers of the Crown upon the case has now been received, and that therefore the reply of Her Majesty's Government will be sent with the least possible delay, having regard to the importance of the question under consideration.

I have, &c.
(Signed) SALISBURY.

No. 27.

Memorandum by Mr. Bergne on the "Strand Fishery" Question.

THE "Answer of the United States" to the "Case of Her Majesty's Government" laid before the Halifax Commission contends that no compensation could be granted on account of buying bait, procuring ice, supplies, &c., and transshipping cargoes of fish by United States' citizens in the Canadian territory, on the ground that these privileges were not granted by the Treaty of Washington.

This position is denied in the "Reply of Her Majesty's Government" in the following words:—

"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 Her 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 contends 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."

When the proceedings of the Commission had reached a certain point, the United States' Agent challenged a decision on this point—and the arguments on both sides will be found at great length in Appendix (J)—the United States' Counsel contending that nothing was granted by the Treaty which was not expressly mentioned in it; and the British Counsel that incidental privileges connected with fishing were conferred by implication.

The whole question, however, at the time turned upon the advantages of buying bait, &c., and of transshipment.

The actual question of the right to the Strand Fishery was not, I believe, ever once mentioned in the whole of this debate.

The decision of the Court was against the British view; and Sir Alexander Galt, in stating his reasons for agreeing in that judgment, said: "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 propose 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 continuance of these incidental privileges." "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." Supposing, therefore, that the words cited in the "Reply of Her Majesty's Government" are held, as undoubtedly they might be, as being applicable to the "Strand Fishery" point, the decision of the Halifax Commission was against the British view, and the point must be considered as decided, not by the arguments advanced on either side, but by the decision of the Court on those arguments.

But the actual question of the "Strand Fishery" did arise in the cross-examination of a witness—Professor Baird—after this decision was given. On this occasion Professor Baird seemed to be of opinion that there was nothing in the Treaty to prevent fishing from the shore; but Mr. Thomson, the British Counsel, took the

Page 125 of Blue Book.

Page 153 of Blue Book.

Page 190 of Blue Book.
Page 192 of Blue Book.

See Appendix (L), p. 472, "Record of Proceedings."

opposite view. The United States' Agent, however, in his final summing up of the case, having the decision above mentioned and all the evidence before him, thus alludes to this cross-examination of Professor Baird:—

“ 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.”

Page 199 of Blue Book.

There is besides this the passage in Mr. Foster's speech, already quoted in the draft to Mr. Hoppin. The position then assumed by the United States' Agent was not controverted in the final speeches on behalf of Her Majesty's Government.

Page 193 of Blue Book.

I must confess that I think the “ Strand Fishing ” point the strongest ground of our case against the United States in the Fortune Bay matter; and I have some doubts whether Her Majesty's Government will be able successfully to maintain that the local laws, even those antecedent to the Treaty of Washington, are binding at all on United States' fishermen, in view of the fact of Mr. Fish having refused to let the Newfoundland Articles come into operation unless the Colonial Act were repealed.

See memorandum at p. of Correspondence.

By fishing from the shore, the United States not only contravened local Statutes, but exercised a privilege not actually granted by Treaty, and if we can sustain this point, in which we are fortified both by the decision of the Halifax Commission and by the direct statement of the United States' Agent, we shall at all events reduce the claim of the United States to such vessels as are proved to have been actually interfered with in open water, whilst their nets were not attached to the beach; and I imagine that this will turn out to be the case, at the most, in only one or two instances. There is only one mention of it in the affidavits.

The simple truth of the whole matter I believe to be this: that though the arguments of the United States' Agent before the Halifax Commission on this point were those of an Advocate, they were yet undoubtedly correct as to the strict interpretation of the Treaty. This privilege is *not* expressly granted by the Treaty of Washington.

It might, perhaps, even in view of Mr. Foster's disclaimer, be an unneighbourly proceeding to insist on the strict letter of the Treaty in this respect, if the United States did not inflict damage by *strand fishing*.

But this case is one of the gravest hardship to the Newfoundlanders, and we cannot be wrong in insisting on our strict rights in resisting the claim for compensation now preferred.

(Signed) J. H. G. BERGNE.

Foreign Office, March 5, 1880.

No. 28.

Sir J. Pauncefote to the Law Officers of the Crown and Dr. Deane.

Gentlemen,

Foreign Office, March 13, 1880.

WITH reference to your Report of the 11th ultimo, I am directed by the Marquis of Salisbury to transmit to you a draft of the note which his Lordship proposes to address to the United States' Minister in London,* in reply to Mr. Welsh's note of the 13th August last, in which he preferred the claim of United States' fishermen to compensation for damage alleged to have been sustained by them at Fortune Bay on the 6th January, 1878.

I am also to inclose, for convenience of reference, the papers which accompanied my letter to you of the 1st January last,† and I am to request you to favour Lord Salisbury, at your earliest convenience, with your opinion as to whether the proposed reply on behalf of Her Majesty's Government is right and proper under the circumstances of the case.

I am to add that the United States' Government are urgently pressing for an immediate reply to the claim preferred by them.

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

* Draft to Mr. Lowell—collected affidavits inclosed therein.

† Papers inclosed in letter to Law Officers, January 1, 1880.

No. 29.

The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.—(Received March 16.)

My Lord,

Temple, March 16, 1880.

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 13th instant, stating that with reference to our Report of the 11th ultimo, he was directed by your Lordship to transmit to us a draft of the note which your Lordship proposed to address to the United States' Minister in London, in reply to Mr. Welsh's note of the 13th August last, in which he preferred the claim of United States' fishermen to compensation for damages alleged to have been sustained by them at Fortune Bay on the 6th January, 1878.

That Sir J. Pauncefote was also to inclose, for convenience of reference, the papers which accompanied his letter to us of the 1st January last; and that he was to request that we would favour your Lordship with our opinion as to whether the proposed reply on behalf of Her Majesty's Government is right and proper, under the circumstances of the case.

That Sir J. Pauncefote was to add that the United States' Government were urgently pressing for an immediate reply to the claim preferred by them.

In obedience to your Lordship's commands we have the honour to report—

That, in our opinion, the proposed reply to the United States' Minister is, in the circumstances of the case, right and proper.

We beg, however, to suggest that at page 5, line 13 of the proposed reply, after the words "rights than the British" the words "fishermen had at the date of the Treaty" be added; and that the rest of the paragraph following those words be omitted.

We have, &c.

(Signed)

JOHN HOLKER.

HARDINGE S. GIFFARD.

J. PARKER DEANE.

No. 30.

Mr. Herbert to Lord Tenterden.—(Received March 23.)

Sir,

Downing Street, March 23, 1880.

WITH reference to your letter of the 28th ultimo and subsequent verbal communications, I am directed by the Secretary of State for the Colonies to request that you will inform the Marquis of Salisbury that he concurs in the despatch which his Lordship proposes to address to the United States' Minister at this Court upon the subject of the claim advanced on the part of the United States' Government for compensation to United States' fishermen arising out of occurrences which took place at Fortune Bay, in Newfoundland, in January 1878.

I am, &c.

(Signed)

ROBERT G. W. HERBERT.

No. 31.

*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 Govern-

* Copies of this letter were sent to Sir E. Thornton and to the Colonial Office.

ment 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 Sullivan, 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 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 trespassed 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.

No. 32.

Mr. Hoppin to the Marquis of Salisbury.—(Received April 6.)

My Lord,

Legation of the United States, London, 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. 33.

Mr. Herbert to Sir J. Pauncefote.—(Received April 9.)

Sir,

Downing Street, April 7, 1880.

WITH reference to the letter from this Department of the 4th November last, and to your reply of the 18th of that month, I am directed by the Secretary of State for the Colonies to inquire whether, in the opinion of the Marquis of Salisbury, there is now any objection to the Act of the Legislature of Newfoundland, chapter 2 of 1879, entitled "An Act to amend the Law relating to the Coast Fisheries," being allowed to remain in operation.

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

No. 34.

Sir J. Pauncefote to Mr. Herbert.

Sir,

Foreign Office, April 23, 1880.

IN reply to your letter of the 7th instant I am directed by the Marquis of Salisbury to request you to inform Sir Michael Hicks Beach that his Lordship sees no objection to the Act of the Legislature of Newfoundland, cap. 2 of 1879, entitled "An Act to amend the Law relating to the Coast Fisheries," being allowed to remain in operation.

I am, however, to request you to point out that, as in Lord Salisbury's note to Mr. Hoppin of the 3rd instant, relative to the Fortune Bay case, it has been conceded that United States' fishermen cannot be affected by Colonial legislation enacted subsequent to the date of the Treaty of Washington, it may be advisable to consult the Government of Newfoundland whether, on the view that present legislation might operate to place British fishermen in a less advantageous position than those of the United States, the Colonial Government still desire that the Act in question should remain in force.

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

No. 35.

Earl Granville to Sir E. Thornton.

(Telegraphic.)

Foreign Office, May 5, 1880.

WITH reference to your private letter of the 19th ultimo to the Head of the United States' Department respecting Fortune Bay letter, make the correction mentioned. Error in signed copy rectified.

No. 36.

Lord Tenterden to Mr. Hoppin.

Dear Mr. Hoppin,

Foreign Office, May 5, 1880.

MY attention has been called to a clerical error which occurs in the draft of the communication addressed to you on the 3rd ultimo relative to the Fortune Bay case, and which I fear must have found its way into the letter received by you signed by the Marquis of Salisbury. In the paragraph beginning "That such" and ending "*in extenso*," the words "by Collector of Customs" should have been "to the Collector of Customs," and in the Circular addressed to the Collector of Customs, Boston, a transcript of which comes immediately after the paragraph just quoted, Mr. Marcy is made to style himself "Collector of the Customs, Boston." I shall therefore be much obliged, in the event of my fears proving well founded, if you will be so good as to cause the necessary corrections to be made in your copy.

I am, &c.
(Signed) TENTERDEN.

No. 37.

*Mr. Hoppin to Lord Tenterden.—(Received May 6.)**Legation of the United States, Members Buildings,*

Dear Lord Tenterden,

Victoria Street, Westminster Abbey, S.W., May 6, 1880.

I OBSERVED the clerical error of which you speak the first time that I read Lord Salisbury's note, but the true meaning is so apparent that I did not think it necessary to call his attention to it.

I have made the correction, however, as you request in the letter, and I shall send a copy of your note to Mr. Evarts that he may make the necessary alterations in the copy which I forwarded to him.

Very truly, &c.
(Signed) W. J. HOPPIN.

No. 38.

Mr. Herbert to Sir J. Pouncefote.—(Received May 8.)

Sir,

Downing Street, May 8, 1880.

I AM directed by the Earl of Kimberley to acknowledge the receipt of your letter of the 23rd ultimo, in which it is suggested that the Government of Newfoundland should be consulted as to the expediency of leaving in operation the Local Act, cap. 2 of 1879, "To amend the Law relating to the Coast Fisheries," in view of the possibility that such legislation might place British fishermen in a less advantageous position than those of the United States.

2. His Lordship observes that Earl Granville's predecessor, after consulting Sir Michael Hicks Beach, admitted in his letter to Mr. Hoppin of the 3rd ultimo, the principle that Colonial legislation subsequent to the Treaty of Washington cannot limit the rights acquired by United States' citizens under that Treaty; but that it has not yet been determined or even discussed whether this or any other of the recent Acts of the Legislature of Newfoundland, which was applicable alike to the people of Newfoundland and to foreigners, would, if enforced against the United States' citizens, affect their Treaty rights.

3. As regards Lord Salisbury's letter to Mr. Hoppin above referred to, I am to add that it has not yet been communicated to the Government of Newfoundland; but that as it is now being discussed in America, and its purport is no doubt becoming generally known, Lord Kimberley proposes, if Lord Granville sees no objection, to transmit without further delay a copy to Governor Sir John Glover for the information of himself and his Ministers.

4. With reference, however, to the Act under consideration, his Lordship would not propose to say more at the present time to the Government than that, having regard to the further discussion, which is imminent, of the point raised in the last paragraph

of Lord Salisbury's letter to Mr. Hoppin, it would seem advisable to consider carefully whether the present moment is a convenient one for bringing into operation any Acts which are not urgently required, and to which the United States' fishermen might object.

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

No. 39.

Mr. Herbert to Sir J. Pauncefote.—(Received May 14.)

Sir, *Downing Street, May 14, 1880.*

I AM directed by the Earl of Kimberley to transmit to you, to be laid before Earl Granville, the accompanying copy of a letter from the High Commissioner of Canada in this country requesting that he may be furnished with copies of correspondence respecting the claims advanced by the United States' Government in respect of occurrences at Fortune Bay, Newfoundland, in January 1878.

2. I am to observe that as the principles laid down by the Marquis of Salisbury in this correspondence will be applicable to the Canadian as well as to the Newfoundland fisheries, Lord Kimberley considers that it would be well, if there is no objection, to let Sir A. Galt have the papers without delay in as complete a form as may be convenient, and at the same time to communicate them to the Government of Newfoundland, as has been recently proposed.

3. I am desired to state that, so far as this Department is concerned, there is no objection to allowing Sir A. Galt to have the papers included in the inclosed prints, against which a note to that effect has been placed in the margin, but with regard to a considerable portion of the correspondence it remains with the Foreign Office to decide.

4. I am to request that you will move Lord Granville to inform the Secretary of State what portion may properly be given, and that, as the correspondence is in print at the Foreign Office, his Lordship may be furnished with printed copies of such portions as may be selected to be given to the High Commissioner.

5. I am to add that the Secretary of State would be glad to be informed whether it is proposed to give the papers on this question to Parliament at an early date.

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

Inclosure in No. 39.

Sir A. Galt to the Earl of Kimberley.

*Office of the High Commissioner, 10, Victoria Chambers,
London, S. W., May 5, 1880.*

My Lord,

I HAVE the honour to request that your Lordship will be pleased to procure, for the information of the Government of Canada, from the Secretary of State for Foreign Affairs, copies of the correspondence relating to the claims by the Government of the United States connected with the difficulty at Fortune Bay, Newfoundland.

I understand several of the points treated of in that correspondence largely concern the interests of the Dominion of Canada.

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

No. 40.

Sir E. Thornton to Earl Granville.—(Received May 16.)

(No. 135.)

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. 41.

Sir E. Thornton to Earl Granville.—(Received May 18.)

(Telegraphic.)

Washington, May 18, 1880.

IN a message sent yesterday to Congress by the President of the United States with regard to Fortune Bay affair, he supports a recommendation made by the Secretary of State, that import duties on fish and fish-oil should be reimposed until agreement shall have been come to between the Powers as to the interpretation and execution of the Treaty of Washington.

No. 42.

Earl Granville to Sir E. Thornton.

(Telegraphic.)

Foreign Office, May 20, 1880, 5.30 P.M.

WHAT papers have been laid before Congress relative to Fortune Bay?

No. 43.

Sir J. Pouncefote to Mr. Herbert.

Sir,

Foreign Office, May 20, 1880.

I AM directed by Earl Granville to acknowledge the receipt of your letter of the 8th instant relative to the question of the expediency of leaving in operation the Newfoundland Act, cap. 2 of 1879, and I am to request you to state to the Earl of Kimberley in reply that his Lordship concurs in the propriety of the instructions proposed to be addressed to the Governor of Newfoundland on this subject.

With reference, however, to the second paragraph of your letter, I am to observe that section 4, cap. 6, of the Newfoundland Act 39 Vict.—that prohibiting Sunday fishing—is an instance of legislation which would be held to affect the rights of fishing granted to United States' fishermen under the Treaty of Washington, and that this law has consequently been suspended in accordance with the suggestion made in Lord Tenterden's letter of the 4th March, 1879.

I am further to state that Lord Granville concurs in Lord Kimberley's suggestion that Lord Salisbury's note to Mr. Hoppin of the 3rd ultimo should now be communicated to the Governor of Newfoundland for the information of his Excellency and of his Government.

I am to add that, with regard to fishery questions affecting the Island of Newfoundland, it is desirable for departmental reasons in this office that the two questions of the French and of the United States' rights should, as far as practicable, be kept distinct, in order that they may be printed in different series.

I am, &c.

(Signed) JULIAN PAUNCEFOTE.

No. 44.

Sir J. Pouncefote to Mr. Herbert.

Sir,

Foreign Office, May 20, 1880.

I AM directed by Earl Granville to acknowledge the receipt of your letter, marked Immediate, of the 14th instant, transmitting a copy of a letter from the High Commissioner of Canada in this country, requesting that he may be furnished with copies of correspondence respecting the claims advanced by the United States' Government in respect of the occurrences at Fortune Bay, Newfoundland, in January 1878; and I am to state to you in reply that if, as your Lordship presumes, these papers are intended to be given to Sir A. Galt, confidentially, for the use of the Governor-General of Canada and of his Excellency's Council, and on the understanding that they are not to be published, there is no objection on the part of the Foreign Office to the whole of the printed correspondence in the Fortune Bay case being communicated to him.

The question of laying the papers before Parliament is now under consideration.

I am, &c.

(Signed) JULIAN PAUNCEFOTE.

No. 45.

Sir E. Thornton to Earl Granville.—(Received May 21.)

(Telegraphic.)

Washington, May 20, 1880.

A BILL was yesterday presented to House of Representatives, and referred to the Committee on Foreign Affairs, proposing to reimpose the duties on fish and fish oil, and to appropriate 125,000 dollars out of the proceeds to pay the American fishermen who claim on account of the Fortune Bay affair.

No. 46.

Sir E. Thornton to Earl Granville.—(Received May 21.)

(Telegraphic.)

Washington, May 20, 1880.

ALL the correspondence relative to the Fortune Bay affair has been sent to Congress, beginning with Secretary of State's despatch to United States' Minister in London of the 2nd March, 1878, down to Lord Salisbury's note of the 3rd ultimo, including Secretary of State's note to me of the 5th August, and a report, which I have never seen, made upon the fisheries by Messrs. Babson and Forster, who were sent in the "Kearsage" for that purpose. There must be upwards of 60 documents which are not yet printed.

No. 47.

Lord Tenterden to Mr. Herbert.

Sir,

Foreign Office, May 22, 1880.

WITH reference to my letter of the 20th instant I am directed by Earl Granville to transmit to you, to be laid before the Earl of Kimberley, copies of three telegrams which have been received from Her Majesty's Minister at Washington relative to the Fortune Bay affair.*

I have, &c.

(Signed) TENTERDEN.

No. 48.

Earl Granville to Sir E. Thornton.

(No. 79.)

Sir, *Foreign Office, May 23, 1880.*
 I HAVE received your despatch No. 142 of the 10th instant, reporting a conversation between Mr. Evarts and yourself in regard to a clerical error in the note which my predecessor addressed to Mr. Hoppin in regard to the Fortune Bay affair; and I have to express to you my approval of the course you pursued with a view to the correction of the error in the copy of the note with which Mr. Evarts had been furnished.

I have, &c.
 (Signed) GRANVILLE.

No. 49.

Sir E. Thornton to Earl Granville.—(Received May 30.)

(No. 150.)

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. 49.

*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.
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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 fish'ng 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 cruisers, 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 cruises. 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 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 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 States 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."

* * * * *

"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.*

* * * * *

"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 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, 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.)

* * * * *

"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.

* * * * *

"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.

Appendices to Letter to Mr. Hoppin of April 3, 1880
(page 44).

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.

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 M 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.

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 X mark.

Sworn before me at Tickle Beach, Long Harbour, this 13th day of June, A.D. 1878.

(Signed) GEO. L. SULLIVAN,

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. SULLIVAN,
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 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. SULLIVAN,
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. SULLIVAN,
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. SULLIVAN,
Captain and Senior Officer on the Coast of Newfoundland.

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; 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. SULLIVAN,

*Captain and Senior Officer on the Coast of Newfoundland.**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 faken 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. SULLIVAN,
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. SULLIVAN,
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 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.*

(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 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 E. 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.

Nets of 2 3-8 inch scale to be used from the 20th December until the 1st April.

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, makes, 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.

Regulation as to nets with double bottom, &c.

No person shall interfere with the nets of others.

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.

Herring not to be taken from the 20th April until the 20th October between Cape Chapeau Rouge and Point Rosey.

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.

Penalty for violation of this Act.

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.

Prohibition for using salmon nets at certain times, and against erecting weirs, and penalty.

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.

Manner of recovering penalties, and in default term of imprisonment.

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.

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. Spearings 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 game.
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 moxes, 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.

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