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FURTHER CORRESPONDENCE

WITH THE

GOVERNMENTS

OF

CANADA, PRINCE EDWARD ISLAND, AND NEWFOUNDLAND,

RESPECTING THE

TREATY OF WASHINGTON.

(In continuation of Papers presented May 1, 1873.)

(C. 750.)



Presented to both Houses of Parliament by Command of Her Majesty,
June 1873.

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TABLE OF CONTENTS.

Serial No.		Date.	SUBJECT	Page
1	From Foreign Office ..	Apr. 25, 1873	Copy of Act passed by United States' Congress for carrying out provisions of Fishery Articles of Treaty of Washington	1
2	To Governor-General of Canada and Lieutenant-Governor of Prince Edward Island	Apr. 29, 1873 (Telegram.)	Articles of Treaty to come into operation July 1, Will you issue proclamation?	2
3	From Lieutenant-Governor of Prince Edward Island	Apr. 30, 1873 (Telegram.)	Will issue proclamation on learning that Protocol has been signed	3
4	From Governor of Canada	May 2, 1873 (Telegram.)	Ditto ditto	3
5	To Under Secretary, Foreign Office	May 3, 1873	Copies of telegrams for information	3
6	From Foreign Office ..	June 9, 1873	Protocol signed on the 7th instant	3
7	To Governor of Canada ..	June 17, 1873 (Telegram.)	Protocol signed, issue proclamation, and inform Prince Edward Island	3
8	From Governor of Newfoundland	May 6, 1873	Incloses Newfoundland Act relating to Treaty	4
9	To Governor of Newfoundland	June 17, 1873	In reply	7
10	From Lieutenant-Governor of Prince Edward Island	June 20, 1873 (Telegram.)	July 1 fixed as date for Act to come into operation..	8

Further Correspondence with the Governments of Canada, Prince Edward Island, and Newfoundland, respecting the Treaty of Washington.

No. 1.

Mr. Hammond to the Under-Secretary of State, Colonial Office.

Sir,

Foreign Office, April 25, 1873.

I AM directed by Earl Granville to request that you will inform the Earl of Kimberley that the American Minister called upon him to-day, and placed in his hands the inclosed copy of the Act which has been passed by the United States' Congress in order to make the necessary arrangements for carrying out the provisions contained in Articles XVIII to XXV inclusive, and Article XXX of the Treaty of Washington, and which is to take effect on the 1st of July next.

The Parliaments of Great Britain and of the Dominion of Canada, and the Legislature of Prince Edward's Island, having also passed the necessary Acts, the American Minister suggested, for Lord Granville's consideration, that it might be desirable that he should be authorized by Mr. Fish to sign a Protocol reciting these several Acts, with a declaration that the Articles are to take effect on the 1st of July.

I am to request that you will inform Lord Kimberley that, if he concurs, Lord Granville is disposed to give his assent to this proposal.

I am, &c.

(Signed)

E. HAMMOND.

Inclosure in No. 1.

[GENERAL NATURE.—No. 46.]

An Act to carry into effect the Provisions of the Treaty between the United States and Great Britain, signed in the City of Washington, the 8th day of May, 1871, relating to the Fisheries.

BE it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that whenever the President of the United States shall receive satisfactory evidence that the Imperial Parliament of Great Britain, the Parliament of Canada, and the Legislature of Prince Edward's Island have passed laws on their part to give full effect to the provisions of the Treaty between the United States and Great Britain signed at the city of Washington on the eighth day of May, eighteen hundred and seventy-one, as contained in Articles eighteenth to twenty-fifth inclusive, and Article thirtieth of said Treaty, he is hereby authorized to issue his Proclamation declaring that he has such evidence, and thereupon, from the date of such Proclamation, and so long as the said Articles eighteenth to twenty-fifth, inclusive, and Article thirtieth of said Treaty shall remain in force, according to the terms and conditions of Article thirty-third of said Treaty, all fish-oil and fish of all kinds (except fish of the inland lakes and of the rivers falling into them, and except fish preserved in oil), being the produce of the fisheries of the Dominion of Canada or of Prince Edward's Island, shall be admitted into the United States free of duty.

Section 2. That whenever the Colony of Newfoundland shall give its consent to the application of the stipulations and provisions of the said Articles eighteenth to twenty-fifth of said Treaty, inclusive, to that Colony, and the Legislature thereof, and the Imperial Parliament shall pass the necessary laws for that purpose, the above enumerated articles, being the produce of the fisheries of the Colony of Newfoundland,

shall be admitted into the United States free of duty, from and after the date of a Proclamation by the President of the United States, declaring that he has satisfactory evidence that the said Colony of Newfoundland has consented, in a due and proper manner, to have the provisions of the said Articles eighteenth to twenty-fifth, inclusive, of the said Treaty extended to it, and to allow the United States the full benefits of all the stipulations therein contained, and shall be so admitted free of duty so long as the said Articles eighteenth to twenty-fifth, inclusive, and Article thirtieth of said Treaty, shall remain in force, according to the terms and conditions of Article thirty-third of said Treaty.

Section 3. That from the date of the President's Proclamation authorized by the first Section of this Act, and so long as the Articles eighteenth to twenty-fifth, inclusive, and Article thirtieth, of said Treaty, shall remain in force, according to the terms and conditions of Article thirty-third of said Treaty, all goods, wares, or merchandize arriving at the ports of New York, Boston, and Portland, and any other ports in the United States which have been, or may from time to time be, specially designated by the President of the United States and destined for Her Britannic Majesty's possessions in North America, may be entered at the proper Custom-house and conveyed in transit, without the payment of duties, through the territory of the United States, under such rules, regulations, and conditions for the protection of the revenue as the Secretary of the Treasury may from time to time prescribe; and, under like rules, regulations, and conditions, goods, wares or merchandise may be conveyed in transit, without the payment of duties, from such possessions, through the territory of the United States, for export from the said ports of the United States.

Section 4. That from the date of the President's Proclamation, authorized by the first section of this Act, and so long as Articles eighteenth to twenty-fifth, inclusive, and Article thirtieth, of said Treaty, shall remain in force, according to the terms and conditions of Article thirty-third of said Treaty, all subjects of Her Britannic Majesty may carry in British vessels, without payment of duty, goods, wares, or merchandise from one port or place within the territory of the United States, upon the Saint Lawrence, the great lakes, and the rivers connecting the same, to another port or place within the territory of the United States, as aforesaid: Provided, that a portion of such transportation is made through the Dominion of Canada by land-carriage and in bond, under such rules and regulations as may be agreed upon between the Government of Her Britannic Majesty and the Government of the United States: And provided further, that the President of the United States may, by Proclamation, suspend the right of carrying provided for by this section, in case the Dominion of Canada should at any time deprive the citizens of the United States of the use of the canals in the said Dominion on terms of equality with the inhabitants of the Dominion, as provided in Article twenty-seventh of said Treaty: And provided further, that in case any export or other duty continues to be levied after the sixteenth day of June, eighteen hundred and seventy-two, on lumber or timber of any kind cut on that portion of the American territory, in the State of Maine, watered by the River Saint John and its tributaries, and floated down that river to the sea, when the same is shipped to the United States from the Province of New Brunswick, that then, and in that case, the President of the United States may, by Proclamation, suspend all rights of carrying provided for by this section for such period as such export or other duty may be levied.

Section 5. That this Act shall not take effect until the first day of July, eighteen hundred and seventy-three, and shall not apply to any article of merchandise therein mentioned which shall be held in bond on that day by the Customs Officers of the United States.

Approved, March 1, 1873.

No. 2.

The Earl of Kimberley to the Governor-General of Canada and Lieutenant-Governor of Prince Edward Island.

(Telegram.)

April 29, 1873, 5:30 P.M.

AMERICAN Government propose Protocol reciting Acts passed, and declaring that Articles of Treaty shall take effect on 1st July. Will you issue Proclamation fixing July 1st, on learning from me that Protocol has been signed?

No. 3.

The Lieutenant-Governor of Prince Edward Island to the Earl of Kimberley.—
(Received April 30, 6.30 P.M.)

(Telegram.)

April 30, 1873.

I WILL issue Proclamation fixing July 1st on learning that Protocol has been signed.

No. 4.

The Governor of Canada to the Earl of Kimberley.—(Received May 3, 12.20 A.M.)

(Telegram.)

May 2, 1873.

I WILL issue Proclamation when Protocol has been signed.

No. 5.

Mr. Holland to the Under-Secretary of State, Foreign Office.

Sir,

Downing Street, May 3, 1873.

I AM directed by the Earl of Kimberley to transmit to you, to be laid before Earl Granville, copies of the replies received by telegraph from the Governor-General of Canada and the Lieutenant-Governor of Prince Edward Island to the telegrams recently addressed to them respecting the issue of the Proclamation, giving effect from the 1st July next to the local Acts relating to the Treaty of Washington.

As the two Colonial Governments are prepared to issue such Proclamations on learning that the proposed Protocol has been signed, Lord Kimberley sees no objection to the course suggested by the United States' Minister, as explained in your letter of the 25th of April.

I am, &c.
(Signed) H. T. HOLLAND.

No. 6.

Mr. Hammond to the Under-Secretary of the Colonial Office.—(Received June 10.)

Sir,

Foreign Office, June 9, 1873.

I AM directed by Earl Granville to acquaint you, for the information of the Earl of Kimberley, that a telegram has been received from Her Majesty's Minister at Washington, stating that he and Mr. Fish had signed on the 7th instant the Protocol respecting the Fishery Articles of the Treaty of Washington, with some slight and unimportant alterations

I am, &c.
(Signed) E. HAMMOND.

No. 7.

The Earl of Kimberley to the Governor of Canada

(Telegram.)

Downing Street, June 17, 1873.

PROTOCOL signed. Proclamation should now issue appointing 1st July for bringing Act relating to Treaty of Washington into force. Inform me by telegraph when issued. Send copy to Prince Edward Island.

The Governor of Newfoundland to the Earl of Kimberley.—(Received May 17.)

My Lord,

Government House, Newfoundland, May 6, 1873.

I HAVE the honour to transmit herewith to your Lordship copies of an Act passed during the recent Session of this Legislature entitled "An Act relating to the Treaty of Washington, 1871." I also transmit the Colonial Crown Law Officers' report upon this Bill.

2. I have to invite your Lordship's attention to the proviso contained in the first section of the Act, respecting the time for the prosecution of the herring fishery on the western coast of the island, to which the Attorney-General, in his report, refers.

3. The other sections of the measure accept on the part of this Colony such provisions of the Treaty of Washington as relate to Newfoundland.

I have, &c.

(Signed) STEPHEN J. HILL.

Inclosure 1 in No. 8.

An Act relating to the Treaty of Washington, 1871.

Passed the House of Assembly, March 31, 1873.

Passed the Legislative Council, April 28, 1873.

Received Governor's Assent, May 5, 1873.

(Signed) J. L. NOONAN, *Colonial Secretary.*

WHEREAS a Treaty between Her Majesty and the United States of America was signed at Washington on the eighth day of May, one thousand eight hundred and seventy-one, and was duly ratified on the seventeenth day of June in that year, which, amongst other things, contained the following Article:—

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

And whereas it is expedient to provide for giving effect as regards the Island of Newfoundland and its dependencies, to said Articles eighteen to twenty-five of said Treaty, inclusive, so far as they are applicable to this Colony:

Be it therefore enacted, by the Governor, Legislative Council and Assembly, in Legislative Session convened, as follows:—

1. As soon as the law required to carry into operation, on the part of the United States of America, the Articles set out in the Schedule to this Act has been passed by the Congress of the United States, and come into force, all laws of this Colony which operate to prevent the said Articles from taking full effect shall, so far as they so operate, be suspended and have no effect during the period mentioned in the Article numbered thirty-three in the Schedule to this Act: Provided that such laws, rules, and regulations relating to the time and manner of prosecuting the fisheries on the coast of this island shall not be in any way affected by such suspension.

2. The Governor in Council, by any order or orders to be made for that purpose, may do anything further in accordance with the spirit and intention of the Treaty, which shall be found necessary to be done on the part of this Island, to give full effect to the Treaty, and any such order shall have the same effect as if the object thereof were expressly provided for by this Act.

3. This Act shall not come in force until Her Majesty's assent thereto shall have been given, and until the issuing of a Proclamation under provisions of section two of the Act of the Imperial Parliament, entitled "The Treaty of Washington Act, one

thousand eight hundred and seventy-two," and shall remain in force during the term of years mentioned in Article thirty-three in the Schedule to this Act.

SCHEDULE.

Articles of the Treaty of Washington of the 8th of May, 1871, which are referred to in the foregoing Act.

ARTICLE XVIII.

It is agreed by the High Contracting Parties that, in addition to the liberty secured to the United States' fishermen by the Convention between Great Britain and the United States, signed at London on the twentieth day of October, one thousand eight hundred and eighteen, 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 Thirty-three of this Treaty, to take fish of every kind, except shell-fish, on the sea-coasts and shores, and in the bays, harbours, and creeks of the Provinces of Quebec, Nova Scotia, and New Brunswick, and the Colony of Prince Edward's Island, and of the several islands thereunto adjacent, without being restricted to any distance from the shore, with permission to land upon the said coasts and shores and islands, and also upon the Magdalen Islands, for the purpose of drying their nets and curing their fish: Provided that, in so doing, they do not interfere with the rights of private property, or with British fishermen, in the peaceable use of any part of the said coasts in their occupancy for the same purpose.

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

ARTICLE XIX.

It is agreed by the High Contracting Parties that British subjects, shall have, in common with the citizens of the United States, the liberty, for the terms of years mentioned in Article Thirty-three of this Treaty, to take fish of every kind, except shell-fish, on the eastern sea-coasts and shores of the United States north of the thirty-ninth parallel of north latitude, and on the shores of the several islands thereunto adjacent, and in the bays, harbours, and creeks of the said sea-coasts and shores of the United States and of the said islands, without being restricted to any distance from the shore, with permission to land upon the said coasts of the United States and of the islands aforesaid, for the purpose of drying their nets and curing their fish: Provided that, in so doing, they do not interfere with the rights of private property, or with the fishermen of the United States, in the peaceable use of any part of the said coasts in their occupancy for the same purpose.

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

ARTICLE XX.

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

ARTICLE XXI.

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

ARTICLE XXII.

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

ARTICLE XXIII.

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

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

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

ARTICLE XXIV.

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

If in the case submitted to the Commissioners either Party shall have specified or alluded to any Report or document in his own exclusive possession, without annexing a copy, such Party shall be bound, if the other Party thinks proper to apply for it, to furnish that Party with a copy thereof; and either Party may call upon the other, through the Commissioners, to produce the originals or certified copies of any papers adduced as evidence, giving in each instance such reasonable notice as the Commissioners may require.

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

Commissioners under the circumstances contemplated in Article Twenty-three of this Treaty.

ARTICLE XXV.

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

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

ARTICLE XXXIII.

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

Inclosure 2 in No. 8.

Sir,

St. John's, May 5, 1873.

I HAVE the honour to report, for the information of his Excellency the Governor, that the Legislature of this Colony during the last Session passed an Act intitled "An Act relating to the Treaty of Washington, 1871.

This Act was adopted to give effect to the provisions of the Treaty of Washington, 1871, so far as they apply to this Colony.

The proviso contained in the first section has reference to the time for the prosecution of the Herring Fishery on the western coast of the island, and is merely intended to place American citizens on the same footing with our own people in that particular.

I have, &c.

(Signed) JAS. T. LITTLE, *Attorney-General.*

Captain H. J. F. Shea, R.A.,
Private Secretary,
&c. &c. &c.

No. 9.

The Earl of Kimberley to Governor Hill.

Sir,

Downing Street, June 17, 1873.

I SHALL advise the Queen to confirm the Act of the Legislature of Newfoundland entitled "An Act relating to the Treaty of Washington, one thousand eight hundred and seventy-one," by Order in Council, and you will be informed by telegraph when the Order has been passed by Her Majesty.

As regards the time for bringing the Act into operation, Sir E. Thornton has been instructed to inquire whether the President of the United States will be prepared to issue a Proclamation with reference to Newfoundland in accordance with the 2nd section of the recent Act of Congress relating to the Treaty of Washington, and to propose to Mr. Fish the signing of a separate Protocol fixing the date for bringing into effect, as regards Newfoundland, the Articles of the Treaty applicable to that island.

I inclose, for your information, a copy of a telegram addressed by Earl Granville to Sir Edward Thornton on the 13th instant, suggesting the 2nd or 3rd of July as the date which should be fixed for this object.

Sir E. Thornton has also been instructed that the proposed Protocol should contain

a clause following, as nearly as possible, the proviso at the end of the 1st Article of the Newfoundland Act, namely, that the laws, rules, and regulations of the Colony relating to the time and manner of prosecuting the fisheries on the coast of the island shall not in any way be affected by the suspension of the laws of the Colony which operate to prevent the Articles XVIII to XXV of the Treaty of Washington from taking full effect during the period mentioned in the XXXIIIrd Article of that Treaty.

When the Protocol has been signed I shall communicate with you by telegraph as to the issue of your Proclamation under the 2nd section of the Imperial Act 35 and 36 Vict., cap. 45.

I have, &c.
(Signed) **KIMBERLEY.**

Inclosure in No. 9.

Earl Granville to Sir E. Thornton.

(Telegram.)

Foreign Office, June 13, 1873.

WITH reference to my despatch of the 7th instant, I am informed by Colonial Office that, under Imperial Act of last Session relative to Fishery Articles of Treaty, Governor of Newfoundland can only issue Proclamation extending these Articles to Newfoundland during the suspension of certain Acts of Parliament, which Acts will only be suspended when the United States Act shall have come into force. As this will not take place until the 1st of July, it appears that the Governor's Proclamation cannot be issued before that date, and the Protocol should, therefore, fix the 2nd or 3rd of July as the day for bringing the Articles of the Treaty into effect in Newfoundland.

No. 10.

The Lieutenant-Governor of Prince Edward Island to the Earl of Kimberley.—(Received June 20, 11:30 P.M.)

(Telegram.)

June 20, 1873.

I HAVE issued Proclamation fixing July 1 for Treaty Act to go into operation.

FURTHER CORRESPONDENCE with the
Governments of Canada, Prince Edward
Island, and Newfoundland, respecting
the Treaty of Washington.

(In continuation of Papers presented May 1, 1873.)
(C. 750.)

*Presented to both Houses of Parliament by Com-
mand of Her Majesty. June 1873.*
