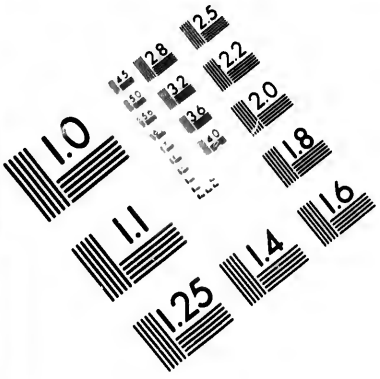

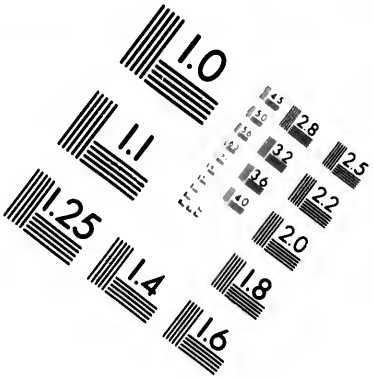

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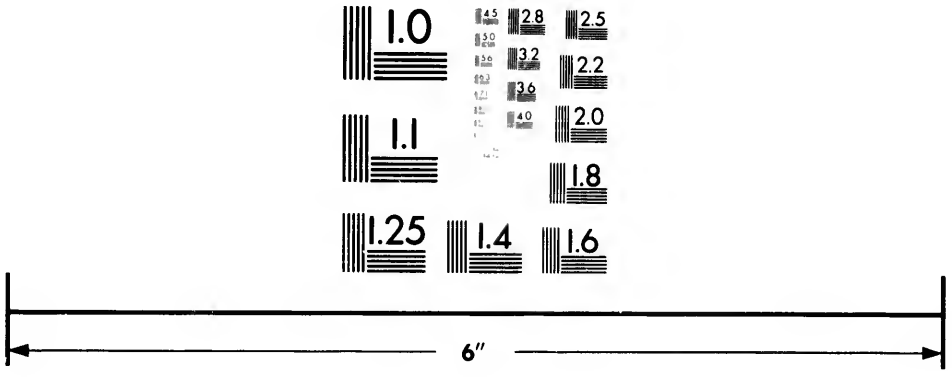

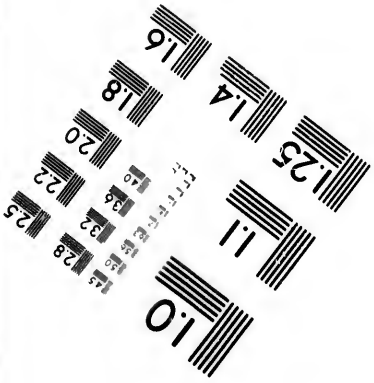

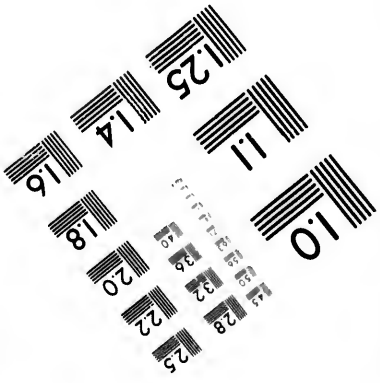

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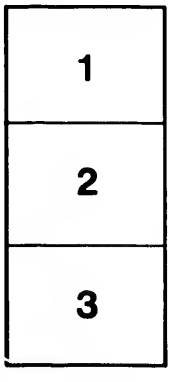

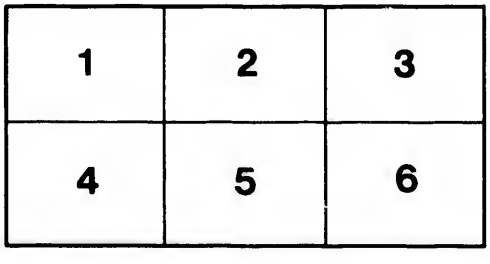

To
Sir Julian Pauncefote K.C.B.
G.C.M.G. diplomatist & Statesman
with many warm regards
from the Author

THE FISHERIES DISPUTE

AND

ANNEXATION OF CANADA

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B

THE FISHERIES DISPUTE

AND

ANNEXATION OF CANADA

BY

J. H. DE RICCI

LONDON

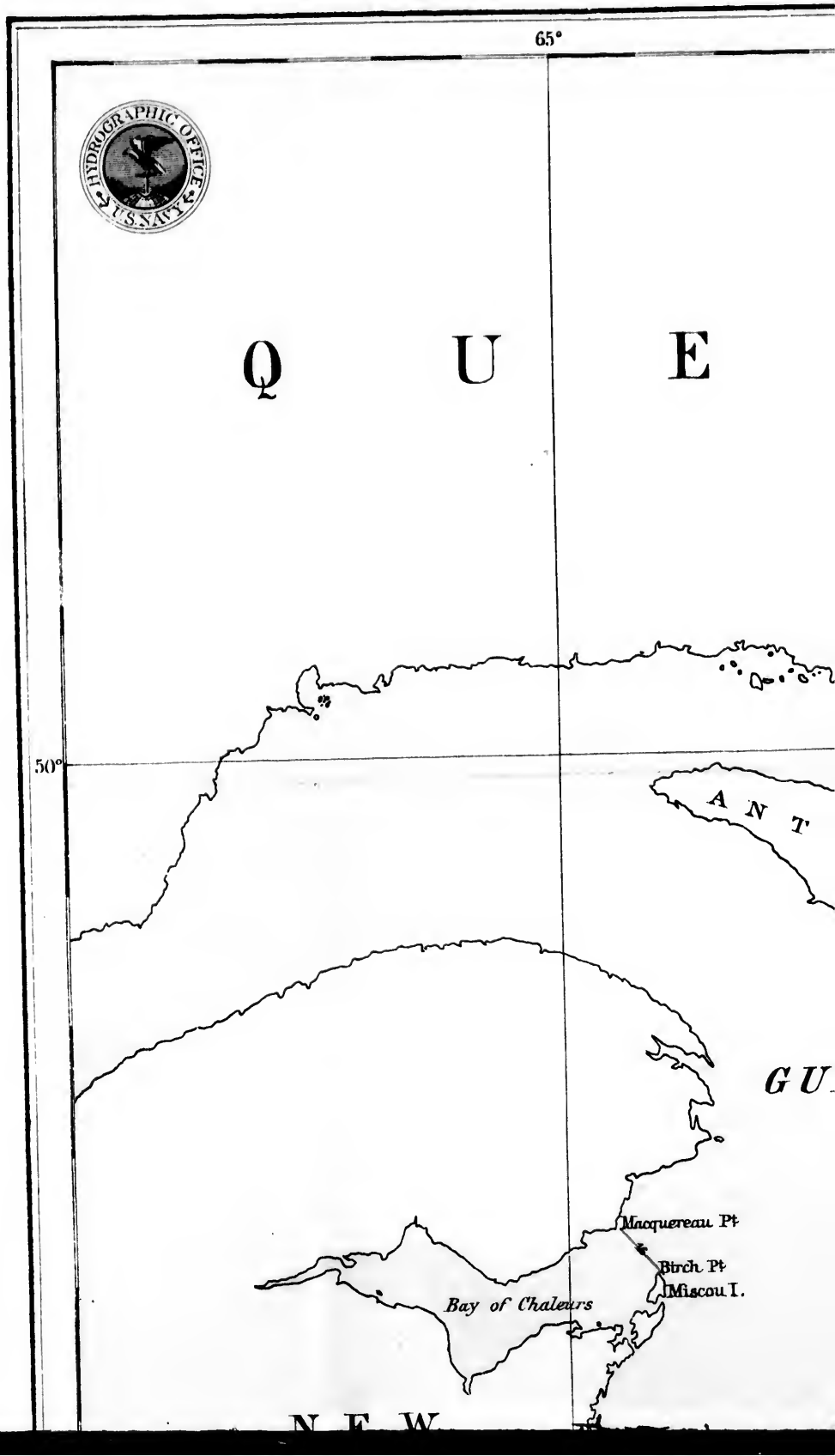
SAMPSON LOW, MARSTON, SEARLE, & RIVINGTON

Limited

St. Dunstan's House

FETTER LANE, FLEET STREET, E.C.

1888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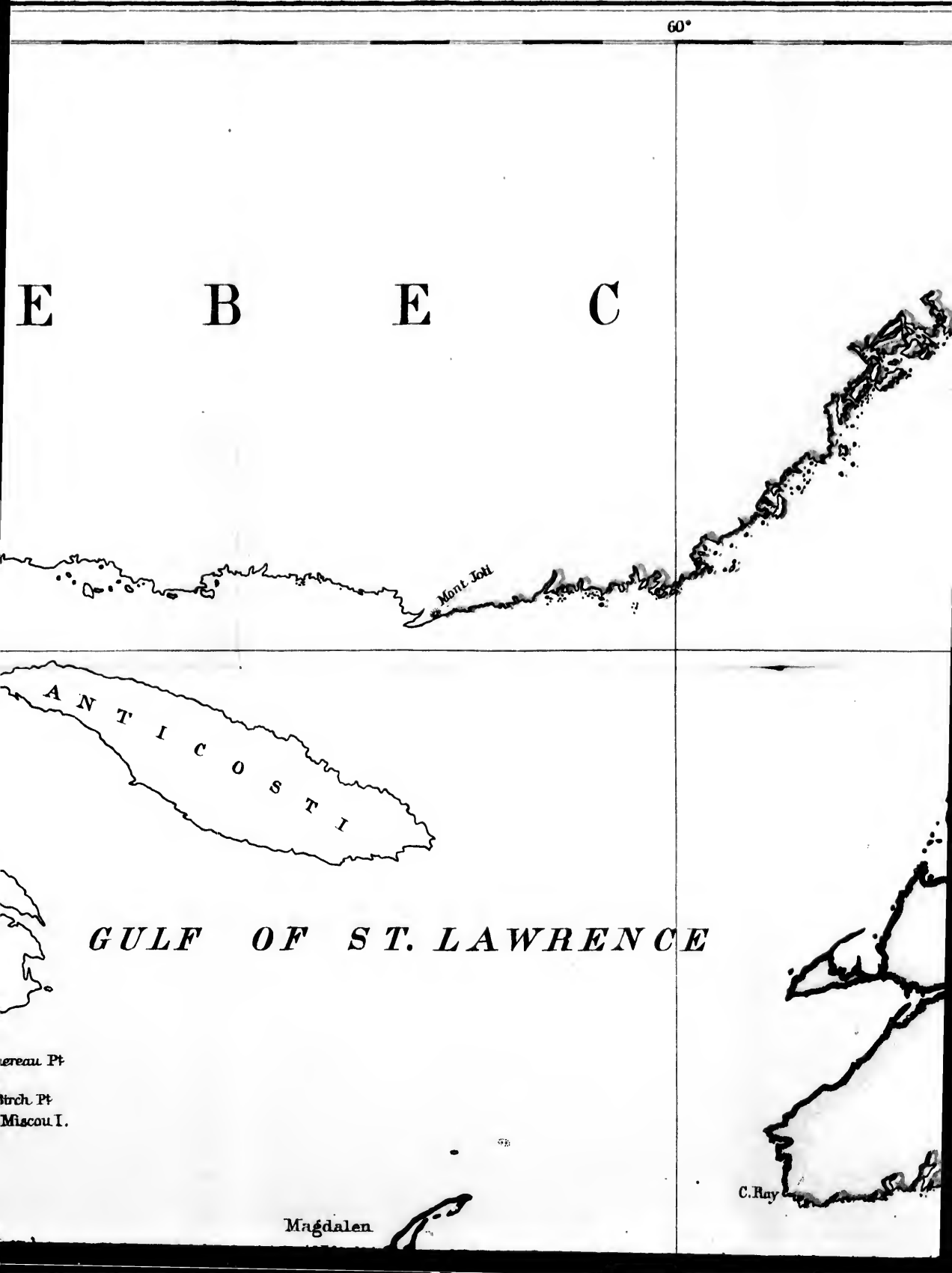


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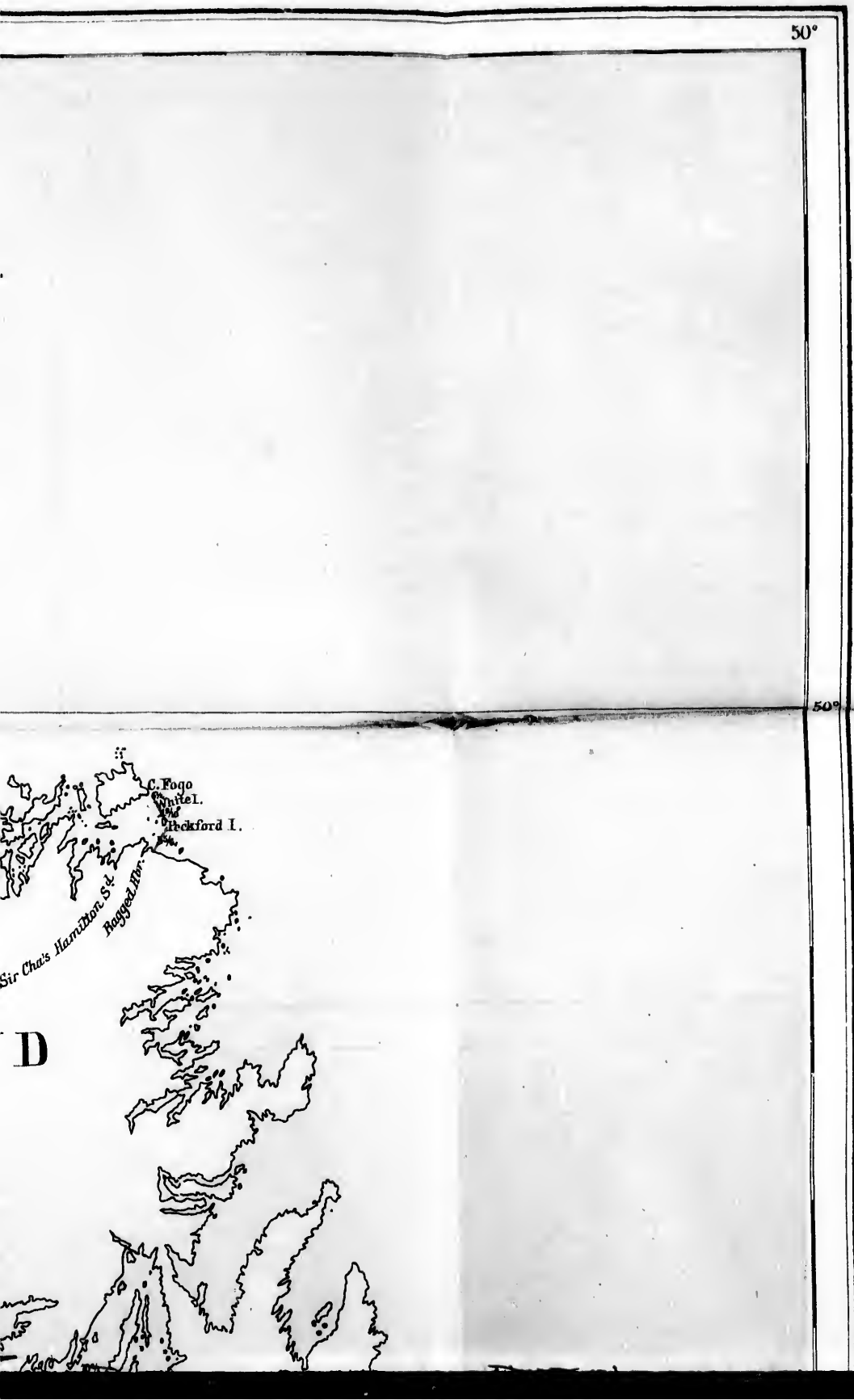
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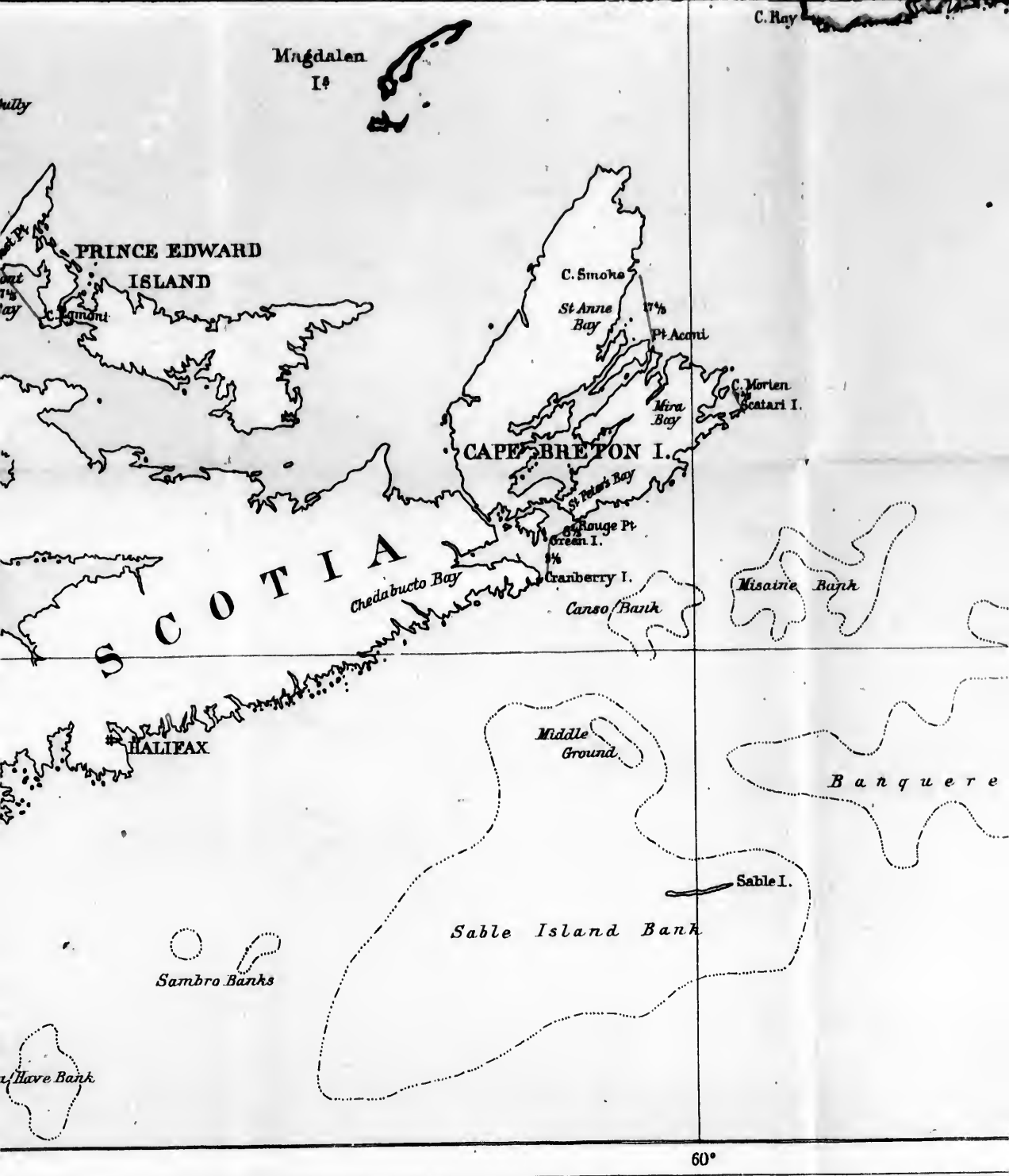

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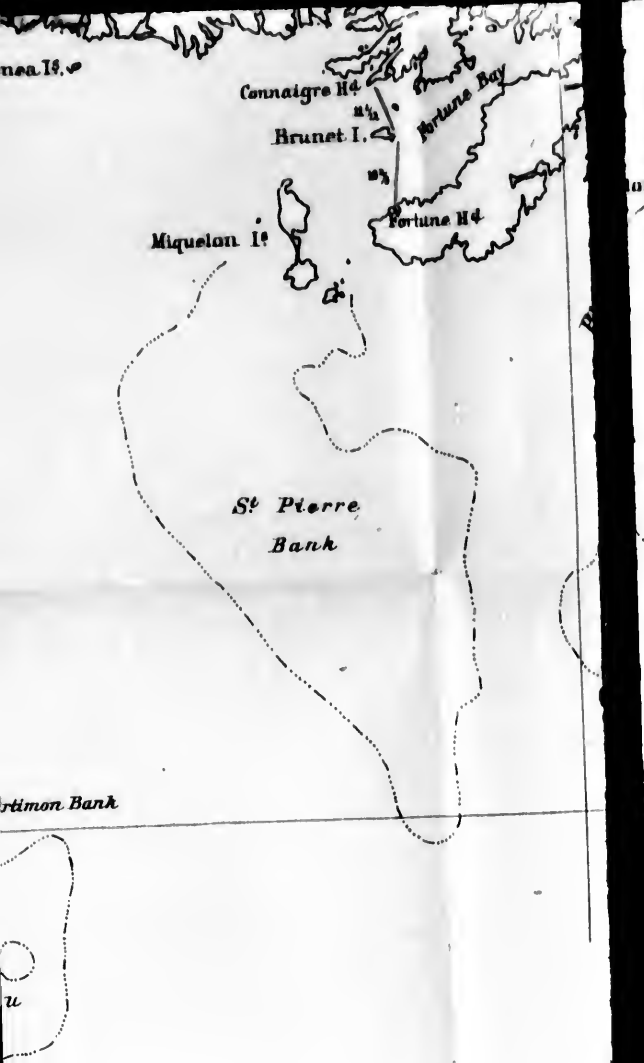

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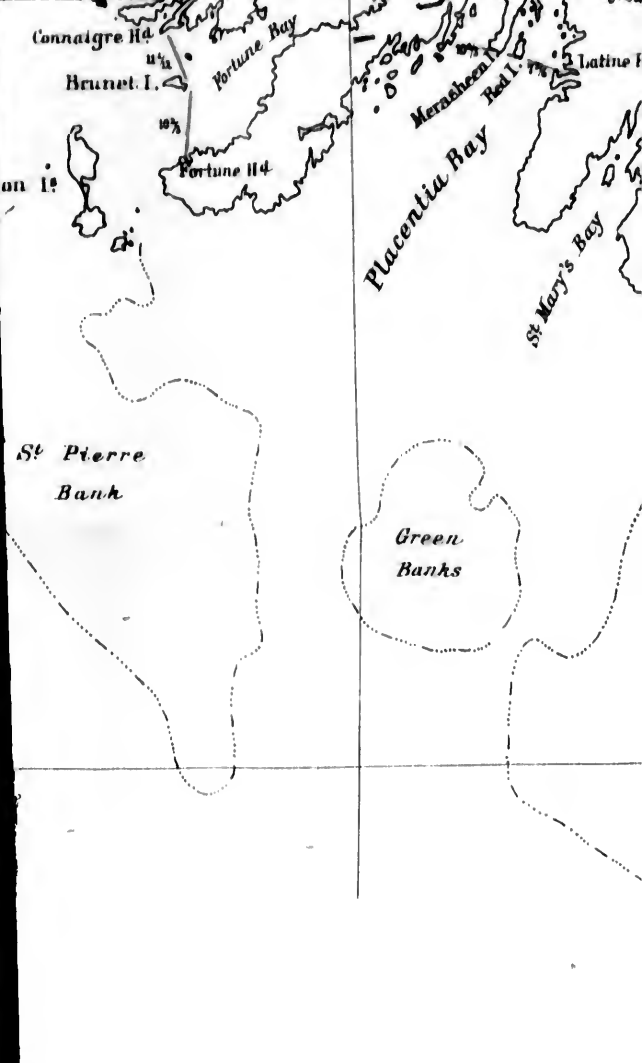

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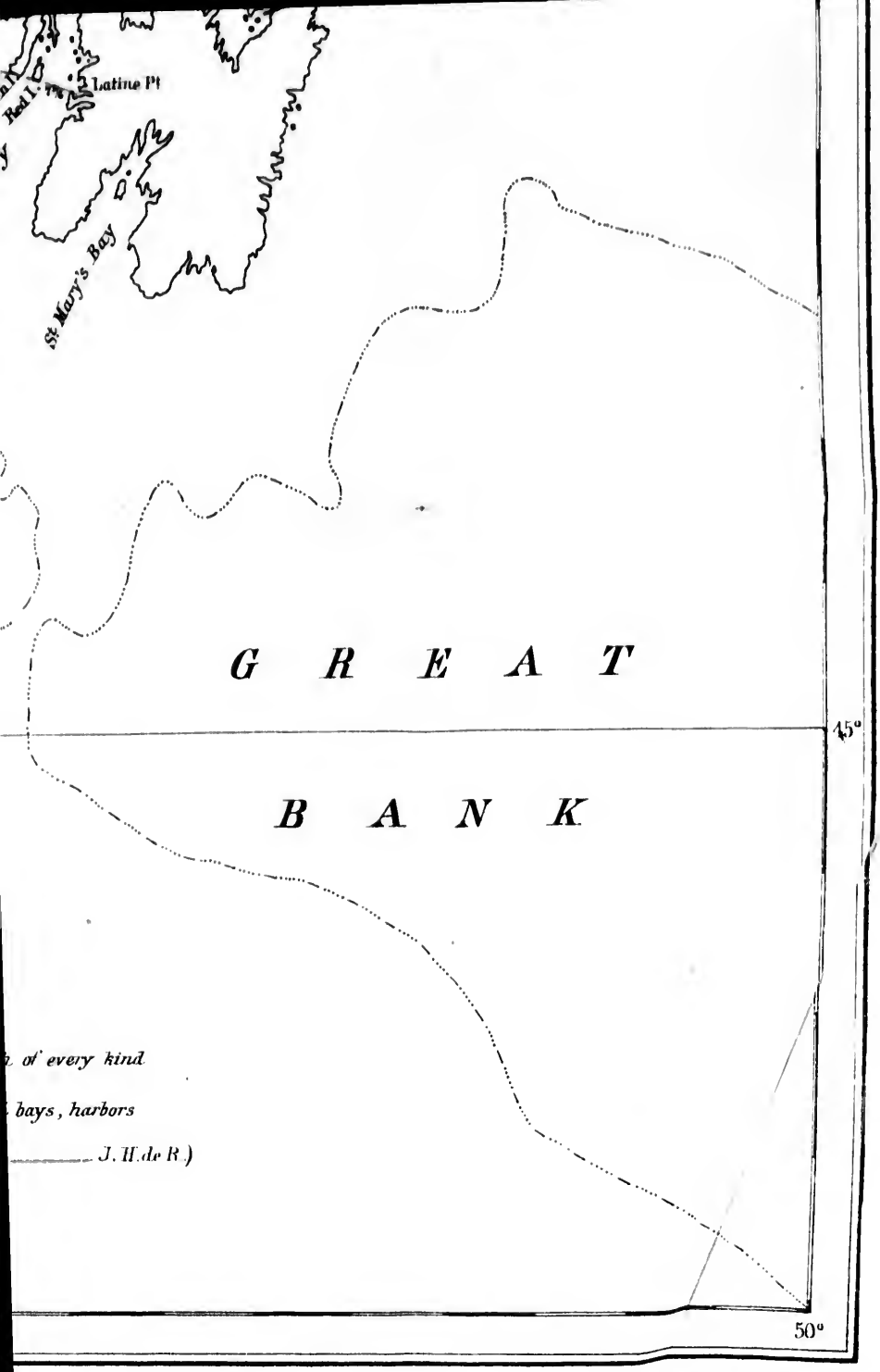

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Drawn by A. C. Roberts

INTRODUCTION.

"Peace hath her victories no less renowned than war."
MILTON.

THE cardinal difficulty of conveying information to the electorate, on complex questions of internal policy and diplomatic foreign affairs, in such manner that all may be in a position to arrive at an impartial judgment, must ever be one of the most interesting problems of Representative Government. If the actual Presidential campaign in the United States has palpably demonstrated that this art has not yet attained a sufficient perfection, in one of the most highly educated countries in the world, it must then be self-evident, notwithstanding our marvellously organized and conscientious Press, notwithstanding the praiseworthy efforts made in recent years in the supreme cause of education, that the enlightenment of those who exercise the franchise in the United Kingdom should unceasingly occupy the close and unbiassed attention of all who are possessed of the necessary leisure and means to devote themselves to the loyal service of their fellow-countrymen.

At the Cutlers' Feast at Sheffield, on September

6th, replying to the toast of "The Colonies and Dependencies of the British Crown," proposed by Col. Howard Vincent, M.P., Sir Charles Tupper, in the course of his speech, said:—"I feel that as I had the great honour of being one of her Majesty's Plenipotentiaries at the Treaty of Washington on a recent occasion, you will expect a few words from me before I sit down touching the somewhat extraordinary message which the President of the United States has recently sent to the Senate. I am the more anxious to make reference to the subject because I find a great want of information in a considerable portion of the press of this great country in regard to that treaty."

This lack of information, in a popular form, accordingly must be deemed the *raison d'être* of this work, in which an endeavour shall be made to throw some light on the burning question now agitating two kindred and mighty peoples.

J. H. DE RICCI.

50, Cornwall Gardens, London, S.W.,
28*th September*, 1888.

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APPENDIX.

THE FISHERIES DISPUTE,

AND

ANNEXATION OF CANADA.

CHAPTER I.

TREATY CLAUSES.

"Yet lives the blood of England in our veins!
* * * *
Yet still from either beach,
The voice of blood shall reach,
More audible than speech,
'We are one!'"

WASHINGTON ALLSTON.

IN order to a just comprehension of the entire question, a rapid glance over some of the principal Treaty Clauses, upon which the main issue depends, will be primarily necessary.

The 3rd Article of the Treaty of Peace of 1783, which ended the war between Great Britain and the United States, provided that the people of the last-mentioned country ["shall continue to enjoy unmolested the right to take fish of every kind on the Grand Bank, and on all the other banks of Newfoundland; also in the Gulf of St. Lawrence, and at all

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

This Article having only provided for the rights of fishing, in the year 1794 a further Treaty was signed, regulating commercial intercourse between the United States and Canada, and His Majesty's islands and ports in the West Indies and British territories in the East Indies, and Article 13 provided that there should be between the dominions of His Majesty (George III.) in Europe, and the territories of the United States, a reciprocal and perfect liberty of commerce and navigation.

These were the chief features of the commercial Treaty arrangements between Great Britain and the United States, until the outbreak of the second war

between the two countries in 1812. During the negotiation of the Treaty of Peace of 1814; the British representatives expressly declared that their Government "did not intend to grant to the United States gratuitously the privileges formerly granted by Treaty to them of fishing within the limits of the British sovereignty, and of using the shores of the British territories for purposes connected with the British fisheries."

Further, they contended that not only had whatever "right" and "liberty" recognized or granted under the Convention of 1783, become abrogated by the declaration of war by the United States against England in 1812, but that such concessions could not be revived unless for an equivalent. The Treaty of Ghent having been signed, it was followed by another Treaty in 1815, which again declared that there should be reciprocal liberty of commerce between all the territories of His Britannic Majesty in Europe and the territories of the United States, and likewise provided that each party should remain in complete possession of its commercial rights and intercourse, between the United States and His Majesty's possessions in the West Indies and North America.

Next in chronological order comes the Treaty of 1818, which, besides regulating all fishing liberties, rights, or interests whatever of United States' citizens in the territorial waters of the British dominions in North America, also contains the very essence of the whole dispute within its first Article, which runs in these words :—

"Whereas differences have arisen respecting the

liberty claimed by the United States for the inhabitants thereof to take, dry, and cure fish on certain coasts, bays, harbours, and creeks of His Britannic Majesty's dominions in America, it is agreed between the High Contracting Parties, that the inhabitants of the said United States shall have, for ever, in common with the subjects of His Britannic Majesty, the liberty to take fish of every kind on that part of the southern coast of Newfoundland which extends from Cape Ray to the Rameau Islands, on the western and northern coast of Newfoundland, from the said Cape Ray to the Quirpon Islands, on the shores of the Magdalen Islands, and also on the coasts, bays, harbours, and creeks from Mount Joly, on the southern coast of Labrador, to and through the Straits of Belle Isle, and thence northwardly indefinitely along the coast, without prejudice, however, to any of the exclusive rights of the Hudson's Bay Company; and that the American fishermen shall also have liberty, for ever, to dry and cure fish in any of the unsettled bays, harbours, and creeks of the southern part of the coast of Newfoundland, hereabove described, and of the coast of Labrador; but so soon as the same, or any portion thereof, shall be settled, it shall not be lawful for the said fishermen to dry or cure fish at such portion so settled without previous agreement for such purpose with the inhabitants, proprietors, or possessors of the ground.

"And the United States hereby renounce for ever any liberty heretofore enjoyed or claimed by the inhabitants thereof to take, dry, or cure fish on or

within three marine miles of any of the coasts, bays, creeks, or harbours of His Britannic Majesty's dominions in America, not included within the above-mentioned limits; provided, however, that the American fishermen shall be admitted to enter such bays or harbours, for the purpose of shelter and repairing of damages therein, of purchasing wood and of obtaining water, and for no other purpose whatever. But they shall be under such restrictions as may be necessary to prevent their taking, drying, or curing fish therein, or in any other manner whatever abusing the privileges hereby reserved to them."

The various misunderstandings which have cropped up from time to time under this article, resulted in the "Reciprocity Treaty," signed respectively by Lord Elgin and Mr. Marcy for Great Britain and the United States in 1854.

These were the principal stipulations :—

"Article I.—It is agreed by the High Contracting Parties that in addition to the liberty secured to the United States' fishermen by the above-mentioned Convention of the 20th October, 1818, of taking, curing, and drying fish on certain coasts of British North American Colonies therein defined, the inhabitants of the United States shall have, in common with the subjects of Her Britannic Majesty, the liberty to take fish of every kind, except shell-fish, on the sea-coasts and shores, and in the bays, harbours, and creeks of Canada, New Brunswick, Nova Scotia, Prince Edward Island, and of the several islands thereunto adjacent (and, by another Article, New

foundland), without being restricted to any distance from shore, with permission to land upon the coasts and shores of those Colonies and the islands thereof, and also upon the Magdalen Islands, for the purpose of drying their nets and curing their fish; provided that in so doing they do not interfere with the rights of private property, or with British fishermen in the peaceable use of any part of the same coast in their occupancy for the same purpose. It is understood that the above-mentioned liberty applies solely to the sea-fishery, and that the salmon and chad fisheries and all fisheries in rivers and the mouths of rivers are hereby reserved exclusively for British fishermen."

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

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

They were the incidents of a larger question, namely, the terms of commercial intercourse between the United States and the British Colonies in North America.[1]

It is worthy of observation that this most important

[1] *Vide* British Parlt. Blue Book, p. 40, No. 2, 1887.

Treaty effectually disposed of all pending difficulties, by placing upon an entirely satisfactory basis the fishing rights in dispute, and otherwise regulating commerce and navigation between the British North American Colonies and the United States.

But, besides allaying irritation between the two countries, it is important to note that the President declared, the immediate marked improvement in the trade between the United States and the British Provinces in America, was principally due to this Treaty. For the fiscal year ending in June, 1856, the increase of imports and exports had amounted to thirteen millions of dollars.

But, notwithstanding these admirable results, this Treaty was abrogated "at the demand of the United States Government."

The next Convention was concluded at Washington on the 8th of May, 1871, and contains the following Articles bearing on this question :—

"ARTICLE XVIII.

"It is agreed by the High Contracting Parties that, in addition to the liberty secured to the United States' fishermen, by the Convention between the United States and Great Britain, signed at London on the 20th day of October, 1818, of taking, curing, and drying fish on certain coasts of the British North American Colonies therein defined, the inhabitants of the United States shall have in common with the subjects of Her Britannic Majesty, the liberty, for the

term of years mentioned in Article XXXIII. of this Treaty, to take fish of every kind, except shell-fish, on the sea-coasts and shores, and in the bays, harbours, and creeks of the Provinces of Quebec, Nova Scotia, and New Brunswick, and the Colony of Prince Edward's Island, and of the several islands thereunto adjacent, without being restricted to any distance from the shore, with permission to land upon the said coasts and shores and islands, and also upon the Magdalen Islands, for the purpose of drying their nets and curing their fish; provided that in so doing they do not interfere with the rights of private property, or with British fishermen in the peaceable use of any part of the said coasts in their occupancy for the same purpose.

"It is understood that the above-mentioned liberty applies solely to the sea fishery, and that the salmon and shad fisheries, and all other fisheries in rivers and the mouths of rivers, are 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 term of years mentioned in Article XXXIII. of this Treaty, to take fish of every kind, except shell-fish, on the eastern sea-coasts and shores of the United States north of the 39th parallel of north latitude, and on the shores of the several islands thereunto adjacent, and in the bays,

harbours, and creeks of the said sea-coasts and shores of the United States and of the said islands, without being restricted to any distance from the shore, with permission to land upon the said coasts of the United States and of the islands aforesaid, for the purpose of drying their nets and curing their fish; provided that, in so doing, they do not interfere with the rights of private property, or with the fishermen of the United States in the peaceable use of any part of the said coasts in their occupancy for the same purpose.

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

"ARTICLE XX.

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

Commission shall be appointed to designate such places, and shall be constituted in the same manner, and have the same powers, duties, and authority, as the Commission appointed under said 1st Article of the Treaty of the 5th June, 1854.

"ARTICLE XXI.

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

"ARTICLE XXII.

"Inasmuch as it is asserted by the Government of Her Britannic Majesty that the privileges accorded to the citizens of the United States under Article XVIII. of this Treaty are of greater value than those accorded by Articles XIX. and XXI. of this Treaty to the subjects of Her Britannic Majesty, and this assertion is not admitted by the Government of the United States, it is further agreed that Commissioners shall be appointed to determine (having regard to the privileges accorded by the United States to the subjects of Her Britannic Majesty, as stated in Articles XIX. and XXI. of this Treaty) the amount of any compensation which, in

their opinion, ought to be paid by the Government of the United States to the Government of Her Britannic Majesty in return for the privileges accorded to the citizens of the United States under Article XVIII. of this Treaty; and that any sum of money which the said Commissioners may so award shall be paid by the United States' Government, in a gross sum, within twelve months after such Award shall have been given.

"ARTICLE XXIII.

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

"The Commissioners so named shall meet in the

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

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

"ARTICLE XXIV.

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

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

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

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

"ARTICLE XXV.

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

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

"ARTICLE XXX.

"It is agreed that, for the term of years mentioned in Article XXXIII. of this Treaty, subjects of Her Britannic Majesty may carry in British vessels, with-

out payment of duty, goods, wares, or merchandise from one port or place within the territory of the United States upon the St. 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.

"Citizens of the United States may for the like period carry in United States' vessels, without payment of duty, goods, wares, or merchandise from one port or place within the possessions of Her Britannic Majesty in North America to another port or place within the said possessions: Provided, That a portion of such transportation is made through the territory of the United States by land carriage and in bond, under such rules and regulations as may be agreed upon between the Government of the United States and the Government of Her Britannic Majesty.

"The Government of the United States further engage not to impose any export duties on goods, wares, or merchandise carried under this Article through the territory of the United States; and Her Majesty's Government engage to urge the Parliament of the Dominion of Canada and the Legislatures of the other Colonies not to impose any export duties on goods, wares, or merchandise carried under this

Article; and the Government of the United States may, in case such export duties are imposed by the Dominion of Canada, suspend, during the period that such duties are imposed, the right of carrying granted under this Article in favour of the subjects of Her Britannic Majesty.

"The Government of the United States may suspend the right of carrying granted in favour of the subjects of Her Britannic Majesty under this Article, 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 XXVII."

"ARTICLE XXXII.

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

The before-mentioned Articles of this Treaty, having been terminated by notice, given by the President of the United States under Article XXXIII. thereof, on the 1st of July, 1885, the 1st Article of the Treaty of 1818 came again into operation, and so it remains at the present time.

CHAPTER II.

FRIENDLY OVERTURES.

"And he who has sought to set foot on its shore
In mazes perplexed, has beheld it no more;
It fleets on the vision, deluding the view;
Its banks still retire as the hunters pursue."

From YAMOYDEN.

MEANWHILE, in December, 1883, a joint resolution having been introduced by Mr. Maybury in the House of Representatives at Washington, requesting the President to negotiate with Great Britain, for a renewal of the "Reciprocity Treaty" of 1854, the following communication, was forwarded from our Foreign Office to the Colonial Office, on the 20th of November, 1884.

(*Extract.*)

"Lord Granville would suggest that the views of the Canadian Government should at once be definitely obtained as to the course to be pursued in the negotiations with the United States, in view of the fact that the Fishery Articles of the Treaty of Washington will expire on the 1st July next, and that it appears to be very desirable that some satisfactory arrangement should be come to before that date, in

order to avoid the risks and complications which might arise from the Fishery question being left in an undecided state.

"If negotiations with the United States' Government were once commenced, and it were found during the course of them that an agreement were not likely to be reached by the 1st July, it is possible that a proposal for continuing the *status quo*—at all events in regard to Newfoundland—for some stated period, such as a year, might permit the conclusion of a definite arrangement without the inconvenience arising from a displacement of trade, and a sudden change in the area open for fishing purposes to American and colonial fishermen respectively."

In the following month the Canadian Government, having been approached on the subject, thus replied :—

(*Extract.*)

"6. The expiration of the Fishery Articles, although it will no doubt produce some dislocation of this branch of the commerce of the Dominion, will only replace it in the position which it occupied between the expiration of the Treaty of 1854 and the commencement of the Treaty of 1871. Each party will be restricted to its own waters, and steps will be taken to protect from trespassers those of the Dominion, which are admitted to be of far greater value than those of the United States. It is probable that a considerable portion of the catch of the Canadian fishermen would find its way, as it did during the period referred to, to the same markets as now, but

carried in American vessels, the owners of which would purchase the fish from the Canadian fishery vessels, whilst afloat, and enter them at their own ports free of duty as their own catch, for re-sale in the West Indies and elsewhere.

"7. In another respect, however, the action of the United States' Government is no doubt likely to have inconvenient, and, perhaps, embarrassing results, though not to Canadian fishermen. The Fishery Clauses will cease to operate on the 1st July, 1885. At that time vessels belonging to the United States will be engaged in fishing in Canadian waters. These vessels will have been equipped and fitted out for the season's fishery, and will have made all their arrangements in the belief that they would be able to prosecute their business until its end. If these vessels were, upon the day following that upon which the Articles ceased to operate, either captured for trespass or compelled on pain of seizure to desist from fishing in Canadian waters, considerable loss would be occasioned to the owners, and much ill-feeling created between the two countries. The Government of the Dominion has no desire to be instrumental in producing such a state of things, and I am able to inform your Lordship that, should such a course be acceptable to the Government of the United States, we should be prepared to agree to an extension of the operation of the clauses in regard both to "free fishing" and to "free fish" until the 1st January, 1886. If this were to be done, their expiration would take place between the fishing sea-

son of 1885 and that of 1886, instead of in the middle of that of 1885, with the result of avoiding those complications of which I have already spoken.

"8. The delay thus gained would, if the United States were to show any desire for the discussion of the commercial relations of the two countries, give time for such a discussion, and the Government of the Dominion would have no object in restricting the scope to the subject of the fisheries. It is indeed a matter of notoriety that the Dominion has consistently expressed its readiness to become a party to an arrangement which might have the effect of affording increased facilities for international commerce between itself and the United States. It has given the best proof of its sincerity by taking under its existing Customs Laws powers of which your Lordship is aware to admit upon favourable terms by Proclamation of the Governor-General those products of the United States which were included in the Treaty of 1854, whenever a similar course in regard to the natural products of the Dominion may be adopted by the Government of Washington. It regretted at the time the termination of the Treaty of 1854, which it believed to be advantageous to the interests of both countries, and it would be fully prepared, on receiving from the Government of the United States an intimation that negotiations would be likely to produce useful results, to enter into such negotiations in an amicable spirit.

"9. I think it my duty, in conclusion, to make your Lordship aware that in a letter to Her Majesty's

Minister at Washington, dated the 23rd instant, I asked him to be good enough to inform me whether such an *ad interim* arrangement as I have indicated in paragraph 7 was likely to be agreeable to the Government to which he is accredited.

"I have, &c.,

(Signed) "LANSDOWNE."

The Newfoundland Government expressed itself in like conciliatory terms. In consequence of these friendly overtures initiated by Great Britain, and taken up in the most cordial spirit by Canada and Newfoundland, an Agreement was entered into on the 22nd of June, 1885, between the two countries, whereby Great Britain without any demand being made upon her, and animated solely with the amicable object of promoting good neighbourhood and friendly intercourse between the two peoples, granted an extension of the Fishery Clauses of the Treaty of Washington, from the period on which they otherwise would have expired, namely the 1st of July, 1885, until the termination of the fishing season in the same year.

This Agreement, however, was entered into by England on the distinct understanding that, "the President of the United States would bring the whole question of the fisheries before Congress at the next Session in December, and recommend the appointment of a Commission in which the Governments of the United States and of Great Britain should be respectively represented, which Commission should be charged with the consideration and settlement upon a just, equitable

and honourable basis, of the entire question of the fishing rights of the two Governments and their respective citizens on the coasts of the United States and British North America."

As appears from the following passage of the President's message to Congress in December, 1885, both he and Mr. Secretary Bayard, loyally fulfilled this undertaking:—"In the interest of good neighbourhood and of the commercial intercourse of adjacent communities, the question of the North American Fisheries is one of much importance. Following out the intimation given by me when the extensory arrangement above described was negotiated, I recommend that the Congress provide for the appointment of a Commission, in which the Governments of the United States and Great Britain shall be respectively represented, charged with the consideration and settlement upon a just, equitable, and honourable basis of the entire question of the fishing rights of the two Governments and their respective citizens on the coasts of the United States and British North America. The fishing interest being intimately related to other general questions dependent upon contiguity and intercourse, consideration thereof in all their equities might also properly come within the purview of such a Commission, and the fullest latitude of expression of both sides should be permitted.[1]

But, notwithstanding this entirely satisfactory evidence of good faith, on the part of the American Executive, the Senate rejected the President's recom-

[1] *Vide* No. 23, p. 24, No. 1 of 1887, British Parlt. Blue Book.

mendation, and refused to sanction the proposed Commission.

But the friendly sentiments that moved the British Government, did not rest only on the temporary arrangement made on the 22nd of June, 1885, and which terminated on the 31st of December of that year. In the month of March, 1886, our Minister at Washington, sounded Mr. Bayard regarding the expediency of a notice, being issued by the United States' Government to American fishermen, that "they are now precluded from fishing in British North American Waters."

Mr. T. F. Bayard replied, that inasmuch as a notification of this character, had been already given by the President's proclamation of the 31st of January, 1885 (i.e. more than a year before), it was "not deemed necessary now to repeat it." Further, this friendly feeling is evidenced in the instructions, issued by the Canadian Minister of Marine, for the protection of the Dominion Fisheries; the officers being specially "urged," and "earnestly" enjoined to perform their duties in a "conciliatory spirit," "with forbearance and discrimination," and with "prudence and discretion." Again, bearing in mind the invasion of Canadian waters, the personal conflicts between the fishermen of the Dominion and the United States, the seizure of boats, the destruction of nets, and the consequent intense irritation on both sides, following the termination by America, of the "Reciprocity Treaty" in 1866, no means were left unexhausted, to come to some satisfactory understanding

with the United States. Accordingly Great Britain, even went so far as to propose a prolongation of the temporary arrangement of 1885, in order to give further time for negotiation ; but this, as well as a suggestion of a joint Commission, was rejected.

Thus, it is clear, to demonstration, that through no fault of their own, the Canadians were thrown back, without choice or option, on the provisions of the Treaty of 1818.

CHAPTER III.

THE STRUGGLE FOR THE MARKETS.

"But ocean mingled with the sky
With such an equal hue,
That vainly strove the 'wildered eye
To part their gold and blue."

J. O. ROCKWELL.

THESE amicable precautions, on the part of England and Canada, unfortunately proved of no avail; either the temptation to United States' fishermen, to revert to the happy order of things, so recently of right under Treaty was too strong, or there was too often a difficulty experienced by them, as well in comprehending the revolution which had but too silently taken place, as in realizing and accommodating themselves to its rigorous necessities.

But, independently of just some glimmering of a suspicion, tha twire-pullers and caucus-mongers, had not been unmindful of the development of a very simple commercial matter into an international question of the first magnitude, there remains the plain fact, that the whole affair had resolved itself into a struggle, between Canadian and American fishermen, for the privilege of the markets of the United States

Thus in September, 1885, we find the Boston Fish Bureau, an important organization numbering amongst its members, "the principal wholesale dealers and commission merchants in fish" of that city, passing the following resolution:—

"Resolved, That the Boston Fish Bureau earnestly favours such an arrangement between the United States, the Dominion of Canada, and the Province of Newfoundland as shall include the reciprocal admission, free of duties, of the products of the fisheries of these countries."

Or, in other words, the Fish Bureau, fully anticipating the difficulty under the new order of things, of making the Canadian shores a base for fishing operations and supplies, and especially for obtaining bait, desired to hold on tenaciously to the United States' heavy duties; but, failing this, under the specious guise of Reciprocity, they offered to the Canadians that which they did not themselves possess, for we must not forget that the most valuable fishing-grounds of the North Atlantic, do not touch the coasts of the United States; but, on the contrary, impinge on the British possessions of Canada and Newfoundland.

It is true that the United States' authorities have not always admitted this undeniable fact; they have indeed shown some disposition to contest its accuracy. But Canadians, so far from being shaken, sturdily continue to nurture the belief, that the fish have not, for some phenomenal and unexplained reason, deserted their shores for American waters, nor was Senator

Morgan of a very different opinion, when he ironically observed, during the debate on the Fisheries question, at Washington in January, 1886, that:—

"We have found out, according to the statement of the Senator from Massachussets (Senator Hoar), that the fish themselves, by some new instinct, had commenced floating to our Massachussets shores, and therefore we found that it was convenient and proper for us to change the fundamental law between the United States and Great Britain on the subject of the fisheries." "If that," he continued, "is not bringing the Government of the United States down upon its knees in an attitude of humiliation before the other nations of the world, I do not understand the subject. . . . It turns out that the whole trouble is that the mackerel have changed the course of their run, and that we are now making a bad bargain out of what was formerly a good one."

In a word, while the fishing community of the States desired a monopoly of the trade, Canadians, resenting this attempted exclusion of their fish from American markets, insisted upon the enforcement of their privileges, under Article I. of the Treaty of 1818.

The following extract, from a letter addressed by the Governor-General of Canada, to the British Government on the 11th of May, 1886 (*vide* Inclosure 4, in No. 59, No. 1 of 1887),[1] makes this most important part of the Canadian case still more clear:—

"American fishing-vessels frequenting the coast of Canada have been in the habit of depending to a

[1] *Vide* British Parlt. Blue Book.

great extent upon Canadian fishermen for their supplies of bait. It has been usual for such vessels hailing from New England ports, as soon as the supply with which they had provided themselves on starting for their trip had become exhausted, to renew it in Canadian waters. Such vessels, if compelled as soon as they ran short of bait to return from the Canadian banks to an American port, would lose a great part of their fishing season, and be put to considerable expense and inconvenience. Some idea of the importance of this point may be formed from the fact that Mr. Joncas, Commissioner to the London Fisheries Exhibition, and a high authority on all matters connected with the fisheries of the Dominion, in a paper read before the British Association at Montreal in 1884, estimates the cost of the bait used by each vessel engaged in the cod fishery at one-fourth of the value of her catch of cod.

"8. There can, however, be no doubt that, under the terms of the Convention of 1818, foreign fishing-vessels are absolutely precluded from resorting to Canadian waters for the purpose of obtaining supplies of bait, and in view of the injury which would result to the fishing interests of the Dominion, which the Convention of 1818 was manifestly intended to protect, if any facilities not expressly authorized by that Convention were conceded to foreign fishermen, my Government will, so long as the relations of the Dominion with the United States are regulated by the Convention, be disposed to insist upon a strict observance of its provisions in this respect."

Moreover, in adhering to a strict interpretation of Article I. of the Treaty of 1818, the Canadians have not only been within their undoubted legal rights, but they also must be held to have exercised a wise discretion, in not having yielded a valuable source of industry, and means of livelihood to thousands of her population, without endeavouring to secure for them a tangible *quid pro quo*, and such as might fitly find expression in a new Reciprocity Treaty. For, although Canada has something to lose from reciprocity in fishing, she has much to gain from reciprocity in other articles of produce than those yielded by the sea, and accordingly she has omitted no opportunity of repeating her readiness to forward any renewed negotiations that might lead to the establishing of "extended trade relations between the Republic and Canada, and of removing all sources of irritation between the two countries.

CHAPTER IV.

ANNEXATION.

"Ambition's grasp at greatness; the quenched light
Of broken spirits; the forgiven wrong,
And the abiding curse. Ay, bear along
These wrecks of thine own making. Lo! thy knell
Gathers upon the windy breath of night,
Its last and faintest echo! Fare thee well!"

J. G. WHITTIER, "To the Dying Yeare."

IT should be well understood that the "trade relations" referred to in the preceding chapter, do not mean an exclusive free trade between America and the Dominion; they do not mean "an American Zollverein with Canada commercially dependent on the United States and politically dependent on Great Britain, admitting American goods free while adopting the almost prohibitory duties of the States against Britain."

Still less do they mean any commercial union whatsoever, which could be eventually tortured into such a political union, as that comprehended in the sublime conception of a leviathan continent, touching

in its northern and southern limits, the Arctic Ocean and the Rio Grande !

No ! neither is this consummation "devoutly to be wished;" nor do we, with all respect, believe it to be within the womb of destiny ! (*vide* Senator Sherman's speech, 18th of September, 1888).[1]

But what, we venture to hold, such "extended trade relations" do mean, has recently been so admirably and comprehensively expressed by one of Canada's most distinguished sons, that we gladly here reproduce his very words:—"All that Canada asks now, all she has ever asked—is a fair and plain and rational application of the principles contained in the Treaty of 1818.

[1] "Senator Sherman's speech, delivered in the Senate, outlining the Republican policy of establishing closer relations with Canada, attracts much attention. After criticizing the President's request for more power to use retaliatory measures, he said that the Retaliation Bill passed by the House had got there by a 'grape-vine line,' and that it was unwise to give the President the additional powers asked for. The time had come when the people of the United States and Canada should take a broader view of their relations than had been hitherto practicable. The whole history of the two countries had been a continuous warning that they could not remain at peace with each other except by a political as well as commercial union. It would be better for all if the whole continent north of Mexico shared in the prosperity and blessings of the American Union. But the way to union with Canada was not by unfriendly legislation, but by friendly overtures. The true policy of the Government of the United States was to tender Canada freedom of trade intercourse, and to make that tender in such a fraternal way that it should be an overture to the Canadian people to become part of the American Government."—*Times*, September 20, 1888.

While that has been our attitude, we have not been unmindful of the importance to England and of the importance to Canada of the most friendly intercourse between the great Republic of the United States and ourselves, and we have always been ready—as we are ready now—to extend our commercial relations to them in regard to the natural productions of the two countries, which do not conflict in the slightest degree with the interest of the people of the mother country; we have been ready to go as far by concession as it was right and proper we should go for the great and Imperial object of maintaining the closest and most friendly relations with our Republican neighbours. But while I say that, I must at the same time say that the day will never come—and it might be quite as well that it should be understood in the United States—the day will never come when the people of Canada, owing, as they do, everything to the mother country, will adopt a policy, fiscal or otherwise, that will be detrimental to the people of this great country" (*vide* speech of Sir Charles Tupper, Bart., G.C.M., G.C.B., at Cutlers' Feast, Sheffield, 6th of September, 1888).

Having, moreover, regard to the prosaic fact, that the population of the United States is only *eighteen* per square mile, as compared with the density of population of the British Isles, which amounts to 300 per square mile; and further bearing in mind, that the Union and the Dominion together embrace an area little short of twice the entire extent of Europe, it may be fairly contended, in view of the restricted European boundaries of at least sixteen different Countries under separate

Governments [2] of the Old World, that there yet remains for Americans and Canadians sufficiently absorbing possibilities in the working-out of their glorious destinies, without thought of encroachment on the forty-ninth parallel.

[2] Besides the United Kingdom, but including United Germany, and excluding Andorra, Bulgaria, Montenegro, and Monaco.

CHAPTER V.

SOME BURNING ISSUES.

"O! where are the visions of ecstasy bright,
That can burst o'er the darkness and banish the night?"
JAMES WALLIS EASTBURN.

WITHIN three short months from the exchange of the most cordial amenities, affairs had reached the following acute phase:—

"MR. PHELPS TO THE EARL OF ROSEBERY.

(*Received July* 17.)

"Legation of the United States,
"London, July 16, 1886.

"MY LORD,—I have the honour to inclose herewith the copy of a telegram which I have just received from the Secretary of State, and to which I beg that your lordship will give the earliest possible attention.

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

"Inclosure in No. 74.

"MR. BAYARD TO MR. PHELPS.

(Telegraphic.)

(Received at the Legation, July 16, 1886.)

"You will state to Lord Rosebery that, realizing fully any embarrassment or delays attendant upon pending

changes of British Administration, it is our duty to call upon Imperial Government to put a stop to the unjust, arbitrary, and vexatious action of Canadian authorities towards our citizens engaged in open sea-fishing and trading, but not violating or contemplating violation of any Law or Treaty. Our readiness, long since expressed, to endeavour to come to a just and fair joint interpretation of Treaty rights and commercial privileges, is ill met by persistent and unfriendly action of Canadian authorities, which is rapidly producing a most injurious and exasperating effect. I am without reply from British Minister, who is now absent."

This language savours not of diplomatic rigmarole; in a word it is strong. Nor would it serve any good purpose were the many cases now reopened that led up to this admittedly severe crisis. Accordingly, while referring those who may be further interested in the numerous and somewhat intricate points, which from time to time arose, to the American and Canadian Briefs,[1] we would merely here briefly invite attention to the following salient considerations.

The very essence of the differences at issue, turned on the interpretation of Article I. of the Treaty of 1818, which having provided that American fishermen might do certain things within certain limits, proceeds thus:—

"And the United States *hereby renounce for ever any liberty heretofore enjoyed or claimed by the inhabitants* thereof, to take, dry, or cure, fish on or within three

[1] *Vide* Appendix.

marine miles of any of the coasts, bays, creeks, or harbours of His Britannic Majesty's dominions in America not included within the above-mentioned limits:

"Provided, however, that the American fishermen shall be permitted to enter such bays or harbours (1) for the purpose *of shelter,* and (2) of *repairing damages* therein; of (3) *purchasing wood,* and (4) of *obtaining water,* and *for no other purpose whatever.* (5) But they shall be under such restrictions as may be necessary to prevent their taking, drying, or curing fish therein, or in any other manner whatever abusing the privileges hereby reserved to them."

Here, then, we have firstly a distinct renunciation of the exercise of the old fishing rights under the Treaty of 1783, nor can we conceive, in the presence of such very plain and explicit language, how any question can have cropped up, as to the present existence, or survival of those rights; likewise the stipulation, relating to the precise meaning of the three miles' limit, may be set aside with the remark, that it has on more than one former occasion been fully thrashed out, and, as proved by after events, was not very seriously at stake. There remains the important proviso permitting American fishermen to enter British North-American territorial waters, for the *four* specific objects only of *shelter, repairing damages, purchasing wood, obtaining water,* and for no other purpose whatever. This was the key of the position!

In all conscience, be it frankly confessed that no language could be more clear; yet on behalf of the United States it has been solemnly averred that these unmistakable terms required *interpretation!* This

was the palladium of the whole question, and in order to its full and unadulterated exposition, it is not too much to say, that eminent jurists and diplomatists have ransacked International Law until the very learning of the Grotius's, the Puffendorfs, the Vattels, and the Wheatons has been exhausted !

A notable issue raised was in regard to the legality of certain Legislation and Regulations adopted by Canada, for the enforcement of these provisions of the Treaty.

The following were the statutes on which she relied :—

(59 Geo. III., Cap. 38, England) ; (31 Vic. cap. 60 of Canada) ; (31 Vic. cap. 61 of Canada) ; (33 Vic. cap. 15, Canada) ; (34 Vic. cap. 23, Canada) ; (Chapter 94 Revised Statutes, 3rd series, Nova Scotia); (29 Vic. cap. 35) ; (16 Vic. cap. 69, New Brunswick) ; (6 Vic. cap. 14, Prince Edward Island), and later on, while the dispute was yet pending, "An Act further to amend the Act respecting Fishing by Foreign Vessels," which, having passed the Canadian Parliament, was reserved by the Governor-General for Her Majesty's pleasure the 2nd of June, 1886, and eventually received the Royal Assent on the 26th of November, 1886.[2]

In March, 1886, the Canadian Government promulgated *inter alia* the following instructions, which to all intents and purposes are the same as those issued in 1870, for compelling the "observance of the requirements of the Fisheries Acts and Regulations by *foreign fishing-vessels* :"—

[2] It may be of interest to note that one of the Privy Councillors present when Her Majesty's assent was declared, was Lord Stanley of Preston, now Governor-General of Canada.

"By this you will observe United States' fishermen are secured the liberty of taking fish on the southern coasts of Labrador, and around the Magdalen Islands, and of drying and curing fish along certain of the southern shores of Labrador, where this coast is unsettled, or if settled, after previous agreement with the settlers or owners of the ground.

"In all other parts the exclusion of foreign vessels and boats is absolute, so far as fishing is concerned, and is to be enforced within the limits laid down by the Convention of 1818, they being allowed to enter bays and harbours for four purposes only, viz. *for shelter, the repairing of damages, the purchasing of wood, and to obtain water.*

"You are to compel, if necessary, the maintenance of peace and good order by foreign fishermen pursuing their calling and enjoying concurrent privileges of fishing or curing fish with British fishermen in those parts to which they are admitted by the Treaty of 1818.

"You are to see that they obey the laws of the country, that they do not molest British fishermen in the pursuit of their calling, and that they observe the Regulations of the Fishery Laws in every respect.

"You are to prevent foreign fishing-vessels and boats which enter bays and harbours for the four legal purposes above-mentioned from taking advantage thereof to take, dry, or cure fish therein, to purchase bait, ice, or supplies, or to tranship cargoes, or from transacting any business in connection with their fishing operations.

"It is not desired that you should put a narrow construction on the term 'unsettled,'" &c.

But while it would be easy to conclusively establish, that exception had been taken to Canadian Legislation and Regulations on insufficient grounds,[3] neither is it difficult to effectually dispose of another striking point that was urged by the United States, namely the expediency of adjusting by diplomatic action a case then *sub judice* in the Canadian Law Courts.[4]

This claim was successfully resisted, and for good reasons, not inconsistent with International Comity successfully maintained by the United States itself, on at least one former occasion.

The steamer *Crescent City*, carrying the U.S. Mail, running between New York and New Orleans, and touching at Havana, carried an individual named Smith; he was the purser of the packet, and being suspected, in the autumn of 1852, of aiding and abetting the Revolutionary Party in the island of Cuba, by carrying messages to and from their agents and friends in the States, and otherwise fanning the flame of insurrection, the Captain-General of Cuba gave orders that he should not be permitted to land on the island.

The owner of the steamer having threatened to resist these orders by force, President Pierce notified the Collector of New York and the owner of the *Crescent City* that, if his vessel were *forfeited owing to a violation of the laws of a foreign country within its own jurisdiction*, he could not hope for "indemnity for such an act of folly from the United States Government."

[3] *Vide* Appendix.

[4] *Vide* Appendix.

No doubt this incident finally became a matter of diplomatic negotiation, but the important fact remains, that although the island of Cuba happened at that time to be particularly engaging the attentions of the great Transatlantic Republic, the President did not hesitate, at whatever cost, to strenuously and honourably uphold the cause of Municipal Law.

But under the Laws and Regulations before-mentioned, this vital distinction was made on the part of Canada, and it is here dwelt upon, inasmuch as nearly all the unhappy differences which have arisen may be traced, more or less, to signal misapprehension of this phase of the question, that, "any foreign vessel, 'not manned nor equipped nor in any way prepared for taking fish,' has full liberty of commercial intercourse in Canadian ports upon the same conditions as are applicable to regularly registered foreign merchant-vessels; nor is any restriction imposed upon any foreign vessel dealing in fish of any kind different from those imposed upon foreign merchant-vessels dealing in other commercial commodities."

Again: "The Regulations under which foreign vessels may trade at Canadian ports are contained in the Customs Law of Canada" . . . "and which render it necessary, among other things, that upon arrival at any Canadian port a vessel must at once enter inward at the custom-house, and upon the completion of her loading clear outwards for her port of destination." [5]

Thus the necessity was insisted upon of placing on

[5] *Vide* United States, British Parlt. Blue Book, p. 22, No. 2 of 1887, Inclosure in No. 27.

an indubitable and different footing fishing-vessels seeking to utilize the Canadian litoral, as a base of operations for competition in a valuable industry with Canadian fishermen, in contradistinction to commercial vessels, pure and simple, resorting to the bays and harbours of the Dominion "in the ordinary course of business."

Although neither the Convention of 1818, nor the Treaty of Washington conferred any right or privilege of trading on American fishermen, it must be remembered that by sufferance they had nevertheless enjoyed most important advantages of traffic, including the purchase of bait, ice, and other supplies; and the cutting off of that which had come to be looked upon in the light of a privilege, and as of right, could not fail to become a sore grievance, and stepping-stone to discontent.

But with an extended sea-coast of some thousands of miles, with numberless ports, harbours, bays, and inlets, Canada had no other option than to require a rigorous conformity to such laws and regulations as may be requisite for guarding against contraband traffic, and the protection, not only of her fishing industry, but her revenue. On the other hand, the terms of Article I. of the Convention of 1818, were the unhappy outcome of an embittered, fratricidal war, and are admittedly, in their conception and stringency, no longer altogether in harmony with more fortunately accepted and cheerfully recognized latter-day facts. Nevertheless, we cannot avoid the conclusion that, although such considerations as these (and

many others urged with such pre-eminent ability by Mr. Bayard and Mr. Phelps) may, and do undoubtedly afford a fair basis for the negotiation of a new and permanent understanding between the two countries, they appear in no sense to warrant on any ground, whether of law or fact, the misinterpretation or straining of actual International Treaty obligations.[6]

[6] For the various other points raised by both sides, *vide* Appendix.

CHAPTER VI.

RETALIATION.

"There never was a good war or a bad peace."
BENJAMIN FRANKLIN.

WHAT with loose rumour, exaggerated statement, misrepresentation, sensational assertion, and a very general misconception of the new order of things, the position became more and more strained; so that the narrative of events occurring subsequently to Mr. Bayard's communication in July, 1886, may be summed up in the lively diplomatic exchanges, and the several Protectionist Resolutions and so-called Retaliation Bills that were either laid before, or passed by Congress during that year, and in the early part of 1887.[1]

The pronounced spirit of retaliation shown in these measures was, however, agreeably tempered by an *ad interim* arrangement proposed by the Secretary of State of America, and transmitted to the British Government on the 3rd of December, 1886. This welcome proposal, although never carried into execution, nevertheless bore excellent fruit in the New Treaty signed at Washington on the 15th of February, 1888.[2]

[1] *Vide*-Appendix,

[2] *Vide* Appendix.

Notwithstanding this Treaty has not been ratified, and that the immediate solution of the question appears for the moment somewhat complicated by President Cleveland's recent message to Congress, no one who has closely followed the tyrannical exigencies of the Presidential campaign now proceeding can doubt that, apart from the self-evident under-play accompanying that periodic cataclysm, there exists a widespread acceptation among moderate and thoughtful men of both nations, that the question of the North-American Fisheries dispute shall not long remain an open one; that recent mutual concessions have been both honourable and reasonable; that a great historic precedent redounding equally to the credit and glory of Great Britain and America has been firmly established; and that the arduous and distinguished labours of the plenipotentiaries have not been in vain.

We have now reached President Cleveland's message to Congress on the 23rd of August, 1888. He said:—

"I fully believe the Treaty just rejected by the Senate was well suited to the exigency. Its provisions were adequate for our security in the future from vexatious incidents, and for the promotion of friendly neighbourhood and intimacy, without sacrificing in the least our national pride or dignity. I am quite conscious that neither my opinion of the value of the rejected Treaty, nor the motives which prompted its negotiation, are of importance in the light of the judgment of the Senate thereupon. But

it is of importance to note that this Treaty has been rejected without any apparent disposition on the part of the Senate to alter or amend its provisions, and with the evident intention, not wanting expression, that no negotiation should at present be concluded touching the matter at issue. I recommend immediate legislative action conferring upon the Executive power to suspend by proclamation the operation of all laws and regulations permitting the transit of goods, wares, and merchandise in bond across or over the territory of the United States to or from Canada. There need be no hesitation in suspending these laws, arising from the supposition that their continuation is secured by Treaty obligations; for it seems quite plain that Article XXIX. of the Treaty of 1871, which was the only Article incorporating such laws, terminated on the 1st of July, 1885."

The immediate gist of this manifesto is to be found in its last words; for unless Article XXIX. of the Treaty of 1871 were terminated, any such legislation would be a violation and breach of the Treaty. Bearing this in mind, the following *précis* of Senator Morgan's speech on the Senate Manager's Report on the former Retaliatory Bills is not without interest. Its point appears unblunted by the efflux of time, and will doubtless be regarded by many as apposite as ever:—

"Senator Morgan said that the only difficulty in coming to a final arrangement was the apprehension of the Senate Conferees that the proposition submitted by the House would lead to a belligerent

conflict with an existing Treaty between Great Britain and the United States. There was no agreement between the two countries in respect to commercial rights, except under statute and legislation, and in one particular under Article XXIX. of the Treaty of Washington, and it was clearly the duty of the Senate to consider the question whether the proposition of the House was a violation of that Treaty, or whether it might be considered as a threat of the violation of it."

Animadverting on retaliation, he continued :—

"The Committee cannot sanction the proposition.

"It is said that the Administration is in favour of it, but he could scarcely think that, in view of the power conferred on the President by the Senate Bill, the Administration sought also the power to prohibit intercourse between the United States and the people of Canada. He could not, he said, conceive any act of legislation, or any act of diplomacy that can be named which is as near the border-line of belligerency as that of prohibiting intercourse and communication between the people of two countries.

"Proclaim non-intercourse between father and son, families, friends, merchants, traders, railroad officers, betw en the United States and Canada, as a measure of retaliation, because of injury done to the fisheries, or anything else, and how long can a position so strenuous, so dangerous, and so belligerent be sustained? A greater power could not be put in the hands of Great Britain than merely to make a proclamation in this country that the best means to prevent aggression on the fishing interests would

be absolute non-intercourse, personal non-intercourse between the people of Canada and the United States. It could not be sustained for three months, perhaps not for three weeks, in the absence of actual hostilities.

"He then proceeded to say that as far as the House of Representatives was concerned as claiming for themselves that they are the more immediate representatives of the people than the Senate, he denied it. They are not so in heart or in sentiment. They are not so in any other respect.

"The Senate had done all that was necessary under the circumstances, and the Bill they had passed was sufficient, and gave sufficient power to the President. But the power which is demanded as the one supreme thing to be insisted upon is the power to proceed to the very last line of friendly action towards Great Britain, the power next to which only can come the loading of guns and the array of men under arms." [3]

Mr. Hitt also attacked the Secretary of State on the Canadian Non-Intercoure Bill. . . . He said:—

"Retaliatory measures had become necessary, but he strongly objected to the clause in the Bill providing for stopping locomotives and cars from coming from Canada, which, he said, had a hidden purpose, namely, to defy a Treaty and violate national faith. Under the XXIXth Article of the Treaty of 1871 with Great Britain, goods in transit have a right to go either way through the United States to Canada from American seaports, or through Canada

[3] *Vide* Inclosure No. 63 in No. 2 of 1867, British Parlt. Blue Book.

to the United States from Canadian seaports, or the reverse.

"Goods in transit are therefore allowed to go through by the Treaty, and the only way it can be done away with is to give two years' notice for its termination. One party to it cannot be held to grant the privilege or right when the other denies it. It expires when violated. But it is intended to reach it by this clause, which adroitly includes cars and locomotives among the things that may be stopped, though they are loaded with goods in transit under Treaty through the United States. The goods may go, but the cars which carry them must not.

"Now," said Mr. Hitt, "if such a proposition as that were presented by some crafty savage chief in making a Treaty he would be laughed at, and yet it is deliberately proposed to the American Congress in order to evade and set at naught, not to violate squarely, a Treaty which is admitted to be in force.

"He then proceeded to point out the inconvenience and delay which would be caused by adopting this clause which the Senate had almost unanimously rejected in their Bill, and would probably reject again when sent up to them by the House. A Conference must then ensue, the outcome of which was doubtful." (Extract from *précis* of debate on the Canadian Non-intercourse Bill, *vide* Inclosure 2, in No. 59, No. 2 of 1887.)[4]

But a vote of the Lower House of Congress, on the 23rd of February, 1887, even farther elucidates this

[4] United States, British Parlt. Blue Book.

point; on that date, by a majority of 252 to 1, the House of Representatives passed a Retaliation Bill, in which will be found a virtual recognition that Article XXIX. was then still in force.

It is thus apparent that, even in the United States some considerable authority may be cited against the contention that Article XXIX. of the Treaty of 1871 ("Washington"), terminated on the 1st of July, 1885.

Neither in England, nor in Canada does any doubt at all obtain in the matter. Article XXIX. is most unquestionably in full force; and so far from having terminated on the 1st of July, 1885, the fact is, that in the proclamation issued on that very date by President Arthur for putting an end to the Fishery Clauses of the Treaty of Washington, no mention whatever is made of Article XXIX. *Expressio unius est exclusio alterius.* Indeed, it is clear that *scienter* it has been omitted; we have, moreover, the conclusive knowledge that both countries have recognized this, inasmuch as they have acted continuously on it ever since![5]

[5] "ARTICLE XXIX.

"It is agreed that for the term of years mentioned in Article XXX. of this Treaty, goods, wares, or merchandise 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 Government of the United States may from time to time prescribe; and, under like rules, regulations,

What the immediate result of the message may be remains to be estimated; but, so far as concerns the Retaliation or Non-Intercourse Bill that it recommends, we know, that, having passed the Lower House

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. It is further agreed that for the like period goods, wares, or merchandise arriving at any of the ports of Her Britannic Majesty's possessions in North America, and destined for the United States, may be entered at the proper customs-house and conveyed in transit without the payment of duties through the said possessions, under such rules and regulations and conditions for the protection of the revenue, as the Governments of the said possessions may from time to time prescribe, and under like rules, regulations, and conditions, goods, wares, or merchandise may be conveyed in transit, without payment of duties, from the United States through the said possessions to other places in the United States, or for export from ports in the said possessions."

"ARTICLE XXXIII.

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

of Congress, by a vote of 174 to 4, it has at the present time been referred by the Foreign Committee of the Senate to a Sub-Committee, and it is confidently believed that there it will remain for some time.

In these circumstances it would be idle to speculate upon the ultimate effect of what, after all, may prove to be a still-born measure!

CHAPTER VII.

ELECTIONEERING!

"And are you free? behold your barter'd polls!
Wisdom is silent—while intrigue cajoles."

W. L. PIERCE.

BUT it may not unreasonably be asked why were not these stirring controversies, and apparently aimless differences, avoided *ab initio* by a substantial Convention being entered into immediately on the expiration of the Fisheries Clauses of the Treaty of Washington in July, 1885? The answer is that there was some alleged discontent felt at the result of the "Halifax award," made under Articles XXII., XXIII., XXIV., and XXV. of that Treaty, and which required a payment of five millions and a half of dollars by the United States to Great Britain; but, inasmuch as it has been authoritatively suggested, and never denied that, there was an estimated surplus of British money in the United States' Treasury, at least sufficient to discharge this award, after the Alabama claims were satisfied, it cannot gravely be contended that this was a serious grievance.

The real truth, however, was that a Presidential Campaign was in full fling, and everything accordingly

was necessarily made subservient to that all-absorbing function.

A makeshift Agreement therefore took the place of the definitive Convention, which it was hoped and believed there would be a much better chance of negotiating with the new Government.

That is actually the position at the present time, saving that we do not even possess a makeshift Agreement—an untoward circumstance that cannot be contemplated without the liveliest apprehension.

Only on the 21st of August last, Mr. Morgan (Alabama), made a speech in favour of the Treaty. After declaring that its rejection puts the country into a category where war was one of the dismal prospects of the near future in the contemplation of many men, he continued as follows:—

"The Senate places the people of the United States in rough and immediate contact with the most dangerous question that can possibly be stated, and does so under the influence and shadow of the report of the Foreign Relations Committee, which is intended and well calculated to prevent Great Britain from doing anything more in the way of negotiations with us except merely to learn what we mean. If the British Parliament had acted in a similar manner as the Senate has now done in reference to a Treaty which we had approved or were willing to approve, we should accept that as a challenge to war. How the British will accept the rejection I know not, but I trust that God will avert the calamities which seem to be before us under such an aggravated character,

as to force these two great and magnificent peoples into a collision about so small a matter as the duty on salt fish."

History repeats itself! At the commencement of this century (1812), the outbreak of the second war took place between England and America; and although the party opposed to it in the United States called it "Madison's War," there can be little doubt that discernment and fact are on the side of those who ascribe it to the policy of Jefferson, his predecessor.

The abortive negotiations which had preceded the beginning of hostilities, though founded on grievances not purely imaginary, were, nevertheless, not wholly dissimilar from those presently in view. The British Government had suggested that if, on the one hand the President would issue a "Proclamation for the renewal of the intercourse with Great Britain," his Majesty George III. would be "willing to withdraw his Orders in Council," and also to send an Envoy Extraordinary "invested with full powers to conclude a Treaty on all the points of the relations between the two countries."

This chief distinction, however, remains to be drawn: whereas it is the United States that now refuses to ratify the Treaty recently assented to by the Plenipotentiaries of both nations, then the nominal provocation of the crisis proceeded from the refusal of Great Britain to ratify the agreement of Erskine, the British Minister at Washington. The great grievance of the United States, apart from the *Leopard* and *Chesapeake* incident, was the English Navigation Laws, and

on the failure of the further negotiations, conducted on the recall of Erskine by Francis, James Jackson, it is a remarkable circumstance that, even then, as at the present time, a policy of retaliation was recommended by the President and adopted by Congress.

To further point the parallel! In 1811 a presidential election was also pending, and it was ingenuously asserted that the political ascendancy of the Democratic Party, and the re-election of Madison depended in no small degree "on the hostile spirit that they can keep alive towards Great Britain."

Therefore—while the ears of the sovereign people were remorselessly tickled by the naval encounter between the United States *President* 44, and H.M.S. *Little Belt,* and the chance shot at the British man-of-war from the United States 44, flying the pennant of Commodore Decatur—President Madison did not fail to keep up the necessary "spirit," by vehemently declaiming against the unfriendliness of the communications from British ministers.

In his message, early in November, 1811, Madison said, "Congress will feel the duty of putting the United States into an armour and an attitude demanded by the crisis."

Thus, briefly, did the then Democratic President, amidst the resounding din of "Free Trade and Sailors' Rights," secure his re-election for a second term of office, and lead up to his war message to Congress on the 1st June, 1812.

And, after all, the supreme question of the present hour, as we have seen, agitating the minds of some

statesmen, is not the "duty on salt-fish;" it is the annexation of Canada![1]

But while attaching no undue importance to this Utopian development of the Monroe doctrine, we can afford not to forget, that on the 13th of April, 1846, President Polk gave his approval to a War Bill, which resulted in an area scarcely less than that of the entire Union, as constituted by the Treaty of Versailles in 1783, being incorporated in the United States.

And so it was that that Democratic President, supported by a Party, hoping to stand well with the people at the next elections, sent forth his *fiat* for the annexation of California and New Mexico.

Having said so much, we may also add, there can be no question, that whatever Government, either in England or Canada, ventured to shilly-shally for one moment with the annexation of the great North-American Dominion and the United States—its existence would not be worth a week's purchase.

Let those who incontinently vapour, and with inflated bunkum, talk of twisting the lion's tail, not forget:—"A power which has dotted over the surface of the whole globe with her possessions and military posts, whose morning-drum-beat, following the sun, and keeping company with the hours, circles the earth with one continuous and unbroken strain of the martial airs of England!"

These words of Daniel Webster, perhaps the most famous, eloquent, and patriotic of American statesmen, yet hold good. No doubt times have fortunately

[1] *Vide* Senator Sherman's speech.

changed, and at the present day enlightened men of all countries, would rather indulge their prowess, in the gentle and cultured arts of peace than in recalling—"War that since o'er ocean came,"[2] or "Vigil on the field."[3] But, be it conceded, there is a certain limit to all things—even to tail-twisting!

"While we shall at all times be prepared to vindicate the national honour, our most earnest desire will be to maintain an unbroken peace."

Heartily endorsing this lofty and patriotic sentiment, spoken by President John Tyler, in his address to the people of the Union, on the 9th of April, 1841, it only remains for us to respectfully dedicate these pages to the citizens of Great Britain on both sides of the Atlantic, and our kinsmen of the United States.

[2] John Pierpoint. [3] Walt Whitman.

APPENDIX.

THE UNITED STATES' CASE.

No. 1 *of* 1887.[1]

Inclosure in No. 19.

MR. BAYARD TO SIR L. WEST.

Department of State, Washington,
December 11, 1886.

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

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

I have, &c.

(Signed) T. F. BAYARD.

[1] *Vide* United States, British Parliamentary Blue Book.

No. 40.

SIR L. WEST TO THE EARL OF ROSEBERY.

(Received May 24.)

Washington, May 11, 1886.

MY LORD,—I have the honour to inclose to your Lordship herewith copy of a note which I have received from the Secretary of State, commenting on the action of the Dominion Government in seizing certain American fishing-vessels under the restrictive provisions of the Treaty of 1818, and inviting a frank expression of the views of her Majesty's Government upon the subject, believing that, should any difference of opinion or disagreement as to facts exist, they will be found to be so minimized that an accord can be established for the full protection of the inshore fishing of the British provinces, without obstructing the open sea-fishing operations of the citizens of the United States, or disturbing the Trade Regulations now subsisting between the countries.

I have communicated copy of this note to the Marquis of Lansdowne.

I have, &c.

(Signed) L. S. SACKVILLE WEST.

Inclosure in No. 40.

MR. BAYARD TO SIR L. WEST.

Department of State, Washington,
May 10, 1886.

SIR,—On the 6th instant I received from the Consul-General of the United States at Halifax a statement of the seizure of an American schooner, the *Joseph Story*, of

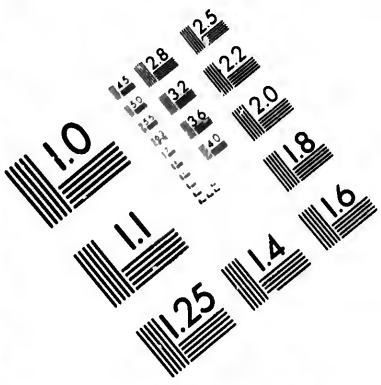
Gloucester, Mass., by the authorities at Baddeck, Cape Breton, and her discharge, after a detention of twenty-four hours.

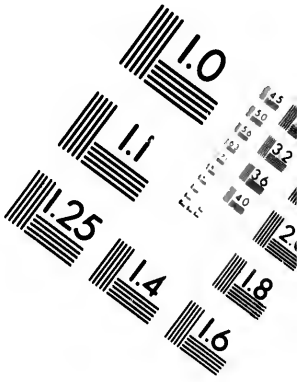
On Saturday, the 8th instant, I received a telegram from the same official, announcing the seizure of the American schooner *David J. Adams*, of Gloucester, Mass., in the Annapolis Basin, Nova Scotia, and that the vessel had been placed in the custody of an officer of the Canadian steamer *Lansdowne*, and sent to St. John, New Brunswick, for trial.

As both of these seizures took place in closely land-locked harbours, no invasion of the territorial waters of British provinces with the view of fishing there could well be imagined. And yet the arrests appear to have been based upon the act or intent of fishing within waters as to which, under the provision of the Treaty of 1818 between Great Britain and the United States of America, the liberty of the inhabitants of the United States to fish has been renounced.

It would be superfluous for me to dwell upon the desire which, I am sure, controls those respectively charged with the administration of the Governments of Great Britain and of the United States to prevent occurrences tending to create exasperation and unneighbourly feeling or collision between the inhabitants of the two countries; but, animated with this sentiment, the time seems opportune for me to submit some views for your consideration, which I confidently hope will lead to such administration of the laws regulating the commercial interests and the mercantile marine of the two countries as may promote good feeling and mutual advantage, and prevent hostility to commerce under the guise of protection to inshore fisheries.

The treaty of 1818 is between two nations, the United States of America and Great Britain, who, as the Contract-





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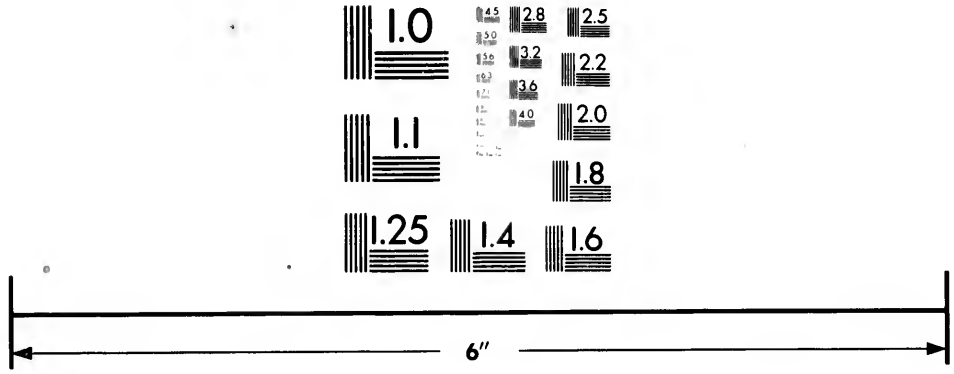

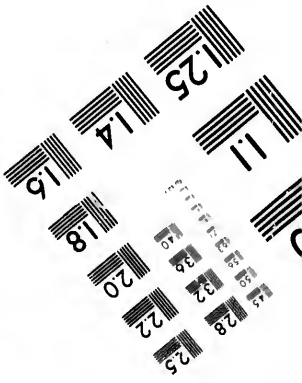

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ing Parties, can alone apply authoritative interpretation thereto, or enforce its provisions by appropriate legislation.

The discussion prior to the conclusion of the Treaty of Washington in 1871 was productive of a substantial agreement between the two countries as to the existence and limit of the three marine miles within the line of which, upon the regions defined in the Treaty of 1818, it should not be lawful for American fishermen to take, dry, or cure fish. There is no hesitancy upon the part of the Government of the United States to proclaim such inhibition and warn their citizens against the infraction of the Treaty in that regard, so that such inshore fishing cannot lawfully be enjoyed by an American vessel being within three marine miles of the land.

But since the date of the Treaty of 1818 a series of Laws and Regulations importantly affecting the trade between the North American provinces of Great Britain and the United States have been respectively adopted by the two countries, and have led to amicable and mutually beneficial relations between their respective inhabitants.

This independent and yet concurrent action by the two Governments has effected a gradual extension, from time to time, of the provisions of Article I. of the Convention of the 3rd July, 1818, providing for reciprocal liberty of commerce between the United States and the territories of Great Britain in Europe, so as gradually to include the colonial possessions of Great Britain in North America and the West Indies within the results of that Treaty.

President Jackson's Proclamation of the 5th October, 1830, created a reciprocal commercial intercourse, on terms of perfect equality of flag, between this country and the British American dependencies, by repealing the Navigation Acts of the 18th April, 1818, 15th May, 1820, and 1st March, 1823, and admitting British vessels and their

cargoes "to an entry in the ports of the United States, from the islands, provinces, and Colonies of Great Britain on or near the American continent, and north or east of the United States." These commercial privileges have since received a large extension in the interests of propinquity, and in some cases favours have been granted by the United States without equivalent concession. Of the latter class is the exemption granted by the Shipping Act of the 26th June, 1884, amounting to one-half of the regular tonnage dues on all vessels from the British North American and West Indian possessions entering ports of the United States; of the reciprocal class are the arrangements for transit of goods, and the remission by Proclamation, as to certain British ports and places, of the remainder of the tonnage tax, on evidence of equal treatment being shown to our vessels.

On the other side, British and colonial legislation, as notably in the case of the Imperial Shipping and Navigation Act of the 26th June, 1849, has contributed its share toward building up an intimate intercourse and beneficial traffic between the two countries, founded on mutual interest and convenience. These arrangements, so far as the United States are concerned, depend upon municipal statute and upon the discretionary powers of the Executive thereunder.

The seizure of the vessels I have mentioned, and certain published "warnings" purporting to have been issued by the Colonial authorities, would appear to have been made under a supposed delegation of jurisdiction by the Imperial Government of Great Britain, and to be intended to include authority to interpret and enforce the provisions of the Treaty of 1818, to which, as I have remarked, the United States and Great Britain are the Contracting Parties, who can alone deal responsibly with questions arising thereunder.

The effect of this colonial legislation and executive inter-

pretation, if executed according to the letter, would be not only to expand the restrictions and renunciations of the Treaty of 1818, which related solely to inshore fishing within the three-mile limit, so as to affect the deep-sea fisheries, the right to which remained unquestioned and unimpaired for the enjoyment of the citizens of the United States, but further to diminish and practically destroy the privileges expressly secured to American fishing-vessels to visit those inshore waters for the objects of shelter, repair of damages, and purchasing wood and obtaining water.

Since 1818 certain important changes have taken place in fishing in the regions in question, which have materially modified the conditions under which the business of inshore fishing is conducted, and which must have great weight in any present administration of the Treaty.

Drying and curing fish, for which a use of the adjacent shores was at one time requisite, is now no longer followed, and modern invention of processes of artificial freezing, and the employment of vessels of a larger size, permit the catch and direct transportation of fish to the markets of the United States without recourse to the shores contiguous to the fishing-grounds.

The mode of taking fish inshore has also been wholly changed, and from the highest authority on such subjects I learn that bait is no longer needed for such fishing, that purse-seines have been substituted for the other methods of taking mackerel, and that by their employment these fish are now readily caught in deeper waters entirely exterior to the three-mile line.

As it is admitted that the deep-sea fishing was not under consideration in the negotiation of the Treaty of 1818, nor was affected thereby, and as the use of bait for inshore fishing has passed wholly into disuse, the reasons which may have formerly existed for refusing to permit American fisher-

men to catch or procure bait within the line of a marine league from the shore, lest they should also use it in the same inhibited waters for the purpose of catching other fish, no longer exist.

For it will, I believe, be conceded as a fact that bait is no longer needed to catch herring or mackerel, which are the objects of inshore fishing, but is used, and only used, in deep-sea fishing, and, therefore, to prevent the purchase of bait or any other supply needed in deep-sea fishing, under colour of executing the provisions of the Treaty of 1818, would be to expand that Convention to objects wholly beyond its purview, scope, and intent, and give to it an effect never contemplated by either party, and accompanied by results unjust and injurious to the citizens of the United States.

As, therefore, there is no longer any inducement for American fishermen to "dry and cure" fish on the interdicted coasts of the Canadian provinces, and as bait is no longer used or needed by them (for the prosecution of inshore fishing) in order to "take" fish in the inshore waters to which the Treaty of 1818 alone relates, I ask you to consider the results of excluding American vessels, duly possessed of permits from their own Government to touch and trade at Canadian ports as well as to engage in deep-sea fishing, from exercising freely the same customary and reasonable rights and privileges of trade in the ports of the British Colonies as are freely allowed to British vessels in all the ports of the United States under the Laws and Regulations to which I have adverted. Among these customary rights and privileges may be enumerated the purchase of ship-supplies of every nature, making repairs, the shipment of crews in whole or part, and the purchase of ice and bait for use in deep-sea fishing.

Concurrently, these usual rational and convenient

privileges are freely extended to, and are fully enjoyed by, the Canadian merchant marine of all occupations, including fishermen, in the ports of the United States.

The question, therefore, arises whether such a construction is admissible as would convert the Treaty of 1818 from being an instrumentality for the protection of the inshore fisheries along the described parts of the British American coast into a pretext or means of obstructing the business of deep-sea fishing by citizens of the United States, and of interrupting and destroying the commercial intercourse that, since the Treaty of 1818, and independent of any Treaty whatever, has grown up, and now exists, under the concurrent and friendly Laws and mercantile Regulations of the respective countries.

I may recall to your attention the fact that a proposition to exclude the vessels of the United States engaged in fishing from carrying also merchandise was made by the British negotiators of the Treaty of 1818, but, being resisted by the American negotiators, was abandoned. This fact would seem clearly to indicate that the business of fishing did not then and does not now disqualify a vessel from also trading in the regular ports of entry.

I have been led to offer these considerations by the recent seizures of American vessels to which I have adverted, and by indications of a local spirit of interpretation in the provinces, affecting friendly intercourse, which is, I firmly believe, not warranted by the terms of the stipulations on which it professes to rest. It is not my purpose to prejudge the facts of the cases, nor have I any desire to shield any American vessel from the consequences of violation of international obligation. The views I advanced may prove not to be applicable in every feature to these particular cases, and I should be glad if no case whatever were to arise calling in question the good understanding of the two

countries in this regard, in order to be free from the grave apprehensions which otherwise I am unable to dismiss.

It would be most unfortunate, and, I cannot refrain from saying, most unworthy, if the two nations who contracted the Treaty of 1818 should permit any questions of mutual right and duty under that Convention to become obscured by partisan advocacy or distorted by the heat of local interests. It cannot but be the common aim to conduct all discussion in this regard with dignity and in a self-respecting spirit, that will show itself intent upon securing equal justice rather than unequal advantage.

Comity, courtesy, and justice cannot, I am sure, fail to be the ruling motives and objects of discussion.

I shall be most happy to come to a distinct and friendly understanding with you as the Representative of her Britannic Majesty's Government, which will result in such a definition of the rights of American fishing-vessels under the Treaty of 1818 as shall effectually prevent any encroachments by them upon the territorial waters of the British provinces for the purpose of fishing within those waters, or trespassing in any way upon the littoral or marine rights of the inhabitants, and, at the same time, prevent that Convention from being improperly expanded into an instrument of discord by affecting interests and accomplishing results wholly outside of and contrary to its object and intent, by allowing it to become an agency to interfere with and perhaps destroy those reciprocal commercial privileges and facilities between neighbouring communities which contribute so importantly to their peace and happiness.

It is obviously essential that the administration of the Laws regulating the Canadian inshore fishing should not be conducted in a punitive and hostile spirit, which can only tend to induce acts of a retaliatc nature.

Everything will be done by th. United States to cause

their citizens engaged in fishing to conform to the obligations of the Treaty, and prevent an infraction of the Fishing Laws of the British provinces; but it is equally necessary that ordinary commercial intercourse should not be interrupted by harsh measures and unfriendly administration.

I have the honour, therefore, to invite a frank expression of your views upon the subject, believing that should any differences of opinion or disagreement as to facts exist, they will be found to be so minimized that an accord can be established for the full protection of the inshore fishing of the British provinces, without obstructing the open-sea fishing operations of the citizens of the United States, or disturbing the Trade Regulations now subsisting between the countries.

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

No. 48.

The Earl of Rosebery to Sir L. West.

Foreign Office, May 29, 1886.

Sir,—The American Minister called on me to-day and read me a telegram from Mr. Bayard, of which I inclose a copy.

He again discussed at some length the provisions of the Treaty of 1818, and said that the newspapers which had reached him from America treated the matter as of little moment, because the British Government were sure not to support the action of the Canadian Administration. He also alluded to a correspondence with Lord Kimberley in 1871, in which Lord Kimberley stated that the Imperial

Government was the sole interpreter of the British view of Imperial Treaties, and that they were not able to support the Canadian view of the Bait Clause. Mr. Phelps finally urged that the action of the Canadian Government should be suspended, which would then conduce to a friendly state of matters, which might enable negotiations to be resumed.

I replied to Mr. Phelps that, as regards the strict interpretation of the Treaty of 1818, I was in the unfortunate position that there were not two opinions in this country on the matter, and that the Canadian view was held by all authorities to be legally correct. If we are now under the provisions of the Treaty of 1818, it was by the action, not of her Majesty's Government, or of the Canadian Government, but by the wish of the United States. I had offered to endeavour to procure the prolongation of the temporary arrangement of last year, in order to allow an opportunity for negotiating, and that had been refused. A Joint Commission had been refused, and, in fact, any arrangement, either temporary or permanent, had been rejected by the United States; it was not a matter of option but a matter of course that we returned to the existing Treaty. As to Lord Kimberley's view, I had had no explanation from him on that point, and, of course, I entirely concurred with his opinion that the British Government were the interpreters of the British view of Imperial Treaties. As regarded the wish expressed by Mr. Phelps that the present action should be suspended, when possibly an opportunity might arrive for negotiation, I said that that amounted to an absolute concession of the Canadian position with no return whatever, and I feared that the refusal of the United States to negotiate, for so I could not help interpreting Mr. Bayard's silence in answer to my proposition, would produce a bad effect, and certainly would not assist the Imperial Government in their

efforts to deal with this question. In the meantime, however, I begged him simply to assure Mr. Bayard that I had received his communication, and that we were still awaiting the Canadian Case and the details of the other seizures; that when we had received these, for which we had telegraphed, I hoped to be in a better position for giving an answer. Mr. Phelps also touched on the seizures of these ships, and I said that the legality of that would be decided in a Court of Law, and Mr. Phelps objected that it would be a Dominion Court of Law and not an Imperial Court. I replied that an appeal would lie to the Courts in this country, and Mr. Phelps pointed out that that procedure would be expensive; but I reminded him again that it was not our fault that we had been thrown on the provisions of the Treaty of 1818.

I am, &c.

(Signed) ROSEBERY.

Inclosure in No. 49.

MR. BAYARD TO SIR L. WEST.

Department of State, Washington,
May 20, 1886.

SIR,—Although without reply to the note I had the honour to address to you on the 10th instant in relation to the Canadian fisheries, and the interpretation of the Treaty of 1818, between the United States and Great Britain, as to the rights and duties of the American citizens engaged in maritime trade and intercourse with the provinces of British North America, in view of the unrestrained and, as it appears to me, unwarranted, irregular, and severe action of Canadian officials towards American vessels in those waters, yet I feel it to be my duty to bring impressively to your attention in-

formation more recently received by me from the United States' Consul-General at Halifax, Nova Scotia, in relation to the seizure and continued detention of the American schooner *David J. Adams*, already referred to in my previous note, and the apparent disposition of the local officials to use the most extreme and technical reasons for interference with vessels not engaged in, or intended for, inshore fishing on that coast.

The Report received by me yesterday evening alleges such action in relation to the vessel mentiond as renders it difficult to imagine it to be that orderly proceeding and due "process of law" so well known and customarily exercised in Great Britain and the United States, and which dignifies the two Governments, and gives to private rights of property and the liberty of the individual their essential safeguards.

By the information thus derived it would appear that after four several and distinct visitations by boats' crews from the *Lansdowne* in Annapolis Basin, Nova Scotia, the *David J. Adams* was summarily taken into custody by the Canadian steamer *Lansdowne*, and carried out of the Province of Nova Scotia across the Bay of Fundy and into the port of St. John, New Brunswick, and without explanation or hearing, on the following Monday, the 10th May, taken back again by an armed crew to Digby, in Nova Scotia. That in Digby the paper alleged to be the legal precept for the capture and detention of the vessel was nailed to her mast in such manner as to prevent its contents being read, and the request of the captain of the *David J. Adams* and of the United States' Consul-General to be allowed to detach the writ from the mast for the purpose of learning its contents was positively refused by the Provincial official in charge; nor was the United States' Consul-General able to learn from the Commander of the *Lansdowne* the nature of the com-

plaint against the vessel, and his respectful application to that effect was fruitless.

In so extraordinarily confused and irresponsible condition of affairs, it is not possible to ascertain with that accuracy which is needful in matters of such grave importance the precise grounds for this harsh and peremptory arrest and detention of a vessel the property of citizens of a nation with whom relations of peace and amity were supposed to exist.

From the best information, however, which the United States' Consul-General was enabled to obtain after application to the prosecuting officials, he reports that the *David J. Adams* was seized and is now held—

1. For alleged violation of the Treaty of 1818;
2. For alleged violation of the Act 59 Geo. III.;
3. For alleged violation of the Colonial Act of Nova Scotia of 1868; and
4. For alleged violation of the Act of 1870 and also of 1883, both Canadian Statutes.

Of these allegations, there is but one which at present I press upon your immediate consideration, and that is the alleged infraction of the Treaty of 1818.

I beg to recall to your attention the correspondence and action of those respectively charged with the administration and government of Great Britain and the United States in the year 1870, when the same international questions were under consideration and the status of law was not essentially different from what it is at present.

The correspondence discloses the intention of the Canadian authorities of that day to prevent encroachment upon their inshore fishing-grounds, and their preparations in the way of a marine police force, very much as we now witness. The Statutes of Great Britain and of her Canadian provinces, which are now supposed to be invoked as authority for the

action against the schooner *David J. Adams*, were then reported as the basis of their proceedings.

In his note of the 26th May, 1870, Mr., afterwards Sir Edward, Thornton, the British Minister at this capital, conveyed to Mr. Fish, the Secretary of State, copies of the orders of the Royal Admiralty to Vice-Admiral Wellesley, in command of the naval forces "employed in maintaining order at the fisheries in the neighborhood of the coasts of Canada."

All of these orders directed the protection of Canadian fishermen and cordial co-operation and concert with the United States' force sent on the same service with respect to American fishermen in those waters. Great caution in the arrest of American vessels charged with violation of the Canadian Fishing Laws was scrupulously enjoined by the British authorities, and extreme importance of the commanding officers of ships selected to protect the fisheries exercising the utmost discretion in paying especial attention to Lord Granville's observation that no vessel should be seized unless it were evident, and could be clearly proved, that the offence of fishing had been committed, and the vessel captured, within three miles of land.

This caution was still more explicitly announced when Mr. Thornton, on the 11th June, 1870, wrote to Mr. Fish:—

"You are, however, quite right in not doubting that Admiral Wellesley, on receipt of the later instructions addressed to him on the 5th ultimo, will have modified the directions to the officers under his command so that they may be in conformity with the views of the Admiralty.

"In confirmation of this I have since received a letter from Vice-Admiral Wellesley, dated the 30th ultimo, informing me that he had received instructions to the effect that officers of her Majesty's ships employed in the protection of the fisheries should not seize any vessel unless it were evident,

and could be clearly proved, that the offence of fishing had been committed, and the vessel itself captured, within three miles of land."

This understanding between the two Governments wisely and efficiently guarded against the manifest danger of intrusting the execution of powers so important, and involving so high and delicate a discretion, to any but wise and responsible officials, whose prudence and care should be commensurate with the magnitude and national importance of the interest involved, and I should fail in my duty if I do not endeavour to impress you with my sense of the absolute and instant necessity that now exists for a restriction of the seizure of American vessels charged with violations of the Treaty of 1818 to the conditions announced by Sir Edward Thornton.to his Government in June 1870.

The charges of violating the local Laws and Commercial Regulations of the ports of the British provinces (to which I am desirous that due and full observance should be paid by citizens of the United States) I do not consider in this note; and I will only take this occasion to ask you to give me full information of the official action of the Canadian authorities in this regard, and what Laws and Regulations, having the force of law, in relation to the protection of their inshore fisheries and preventing encroachments thereon, are now held by them to be in force. But I trust that you will join with me in realizing the urgent and essential importance of restricting all arrests of American fishing-vessels for supposed or alleged violations of the Convention of 1818 within the limitations and conditions laid down by the authorities of Great Britain in 1870, to wit: that no vessel shall be seized unless it is evident, and can be clearly proved, that the offence of fishing has been committed, and the vessel itself captured, within three miles of land.

In regard to the necessity for the instant imposition of

such restrictions upon the arrest of vessels, you will, I believe, agree with me, and I will therefore ask you to procure such steps to be taken as shall cause such orders to be forthwith put in force under the authority of her Majesty's Government.

I have, &c.

(Signed) T. F. BAYARD.

No. 61.

MR. PHELPS TO THE EARL OF ROSEBERY.

(Received June 7.)

Legation of the United States, London,
June 2, 1886.

MY LORD,—Since the conversation I had the honour to hold with your Lordship on the morning of the 29th ultimo, I have received from my Government a copy of the Report of the Consul-General of the United States at Halifax, giving full details and depositions relative to the seizure of the *David J. Adams*, and the correspondence between the Consul-General and the Colonial authorities in reference thereto.

The Report of the Consul-General, and the evidence annexed to it, appear fully to sustain the points I submitted to your Lordship in the interview above referred to, touching the seizure of this vessel by the Canadian officials.

I do not understand it to be claimed by the Canadian authorities that the vessel seized had been engaged, or was intending to engage, in fishing within any limit prohibited by the Treaty of 1818. The occupation of the vessel was exclusively deep-sea fishing, a business in which it had a perfect right to be employed. The ground upon which the capture was made was that the master of the vessel had

purchased of an inhabitant of Nova Scotia, near the port of Digby in that province a day or two before, a small quantity of bait to be used in fishing in the deep sea outside the three-mile limit.

The question presented is whether under the terms of the Treaty, and the construction placed upon them in practice for many years by the British Government, and in view of the existing relations between the United States and Great Britain, that transaction affords a sufficient reason for making such a seizure, and for proceeding under it to the confiscation of the vessel and its contents.

I am not unaware that the Canadian authorities, conscious, apparently, that the affirmative of this proposition could not easily be maintained, deemed it advisable to supplement it with a charge against the vessel of a violation of the Canadian Customs Act of 1883, in not reporting her arrival at Digby to the Customs officer. But this charge is not the one on which the vessel was seized, or which must now be principally relied on for its condemnation, and standing alone could hardly, even if well founded, be the source of any serious controversy. It would be at most, under the circumstances, only an accidental and purely technical breach of a Custom-house Regulation, by which no harm was intended, and from which no harm came, and would, in ordinary cases, be easily condoned by an apology, and perhaps the payment of costs.

But trivial as it is, this charge does not appear to be well founded in point of fact. Digby is a small fishing settlement, and its harbour not defined. The vessel had moved about and anchored in the outer part of the harbour, having no business at or communication with Digby, and no reason for reporting to the officer of Customs.

It appears by the Report of the Consul-General to be conceded by the Customs authorities there that fishing-

vessels have for forty years been accustomed to go in and out of the bay at pleasure, and have never been required to send ashore and report when they had no business with the port, and made no landing, and that no seizure had ever before been made or claimed against them for so doing.

Can it be reasonably insisted under these circumstances that by the sudden adoption, without notice, of a new rule, a vessel of a friendly nation should be seized and forfeited for doing what all similar vessels had for so long a period been allowed to do without question?

It is sufficiently evident that the claim of a violation of the Customs Act was an afterthought brought forward to give whatever added strength it might to the principal claim on which the seizure had been made.

Recurring, then, to the only real question in the case, whether the vessel is to be forfeited for purchasing bait of an inhabitant of Nova Scotia to be used in lawful fishing, it may be readily admitted that, if the language of the Treaty of 1818 is to be interpreted literally, rather than according to its spirit and plain intent, a vessel engaged in fishing would be prohibited from entering a Canadian port "for any purpose whatever," except to obtain wood or water, to repair damages, or to seek shelter. Whether it would be liable to the extreme penalty of confiscation for a breach of this prohibition, in a trifling and harmless instance, might be quite another question.

Such a literal construction is best refuted by considering its preposterous consequences. If a vessel enters a port to post a letter, or send a telegram, or buy a newspaper, to obtain a physician in case of illness, or a surgeon in case of accident, to land or bring off a passenger, or even to lend assistance to the inhabitants in fire, flood, or pestilence, it would, upon this construction, be held to violate the Treaty stipulations maintained between two enlightened, maritime,

and most friendly nations, whose ports are freely open to each other in all other places and under all other circumstances. If a vessel is not engaged in fishing, she may enter all ports. But if employed in fishing not denied to be lawful, she is excluded, though on the most innocent errand. She may buy water, but not food or medicine; wood, but not coal. She may repair rigging, but not purchase a new rope, though the inhabitants are desirous to sell it. If she even entered the port (having no other business) to report herself to the Custom-house, as the vessel in question is now seized for not doing, she would be equally within the interdiction of the Treaty. If it be said these are extreme instances of violation of the Treaty, not likely to be insisted on, I reply that no one of them is more extreme than the one relied upon in this case.

I am persuaded that your Lordship will, upon reflection, concur with me that an intention so narrow, and in its results so unreasonable and so unfair, is not to be attributed to the High Contracting Parties who entered into this Treaty.

It seems to me clear that the Treaty must be construed in accordance with those ordinary and well-settled rules applicable to all written instruments, which, without such salutary assistance, must constantly fail of their purpose. By these rules the letter often gives way to the intent, or, rather, is only used to ascertain the intent. The whole document will be taken together, and will be considered in connection with the attendant circumstances, the situation of the parties, and the object in view. And thus the literal meaning of an isolated clause is often shown not to be the meaning really understood or intended.

Upon these principles of construction, the meaning of the clause in question does not seem doubtful. It is a Treaty of friendship, and not of hostility. Its object was to define and

protect the relative rights of the people of the two countries in these fisheries, not to establish a system of non-intercourse, or the means of mutual and unnecessary annoyance. It should be judged in view of the general rules of international comity, and of maritime intercourse and usage, and its restrictions considered in the light of the purposes they were designed to serve.

Thus regarded, it appears to me clear that the words, "for no other purpose whatever," as employed in the Treaty, mean no other purposes inconsistent with the provisions of the Treaty, or prejudicial to the interests of the provinces or their inhabitants, and were not intended to prevent the entry of American fishing-vessels into Canadian ports for innocent and mutually beneficial purposes, or unnecessarily to restrict the free and friendly intercourse customary between all civilized maritime nations, and especially between the United States and Great Britain. Such, I cannot but believe, is the construction that would be placed upon this Treaty by any enlightened Court of Justice.

But even were it conceded that if the Treaty was a private contract instead of an international one, a Court, in dealing with an action upon it, might find itself hampered by the letter from giving effect to the intent, that would not be decisive of the present case.

The interpretation of Treaties between nations in their intercourse with each other proceeds upon broader and higher considerations. The question is not what is the technical effect of the words, but what is the construction most consonant to the dignity, the just interests, and the friendly relations of the sovereign Powers. I submit to your Lordship that a construction so harsh, so unfriendly, so unnecessary, and so irritating as that set up by the Canadian authorities is not such as her Majesty's Government has been accustomed either to accord or to submit to. It would

find no precedent in the history of British diplomacy, and no provocation in any action or assertion of the Government of the United States.

These views derive great if not conclusive force from the action of the British Parliament on the subject, adopted very soon after the Treaty of 1818 took effect, and continued without change to the present time. An Act of Parliament (59 Geo. III., cap. 38) was passed on the 14th June, 1819, to provide for carrying into effect the provisions of the Treaty. After reciting the terms of the Treaty, it enacts (in substance) that it shall be lawful for his Majesty, by Orders in Council, to make such Regulations and to give such directions, orders, and instructions to the Governor of Newfoundland, or to any officer or officers in that station, or to any other persons, "as shall or may be from time to time deemed proper and necessary for the carrying into effect the purposes of said Convention *with relation to the taking, drying, and curing of fish by inhabitants of the United States of America*, in common with British subjects, within the limits set forth in the aforesaid Convention."

It further enacts that any foreign vessel engaged in fishing, or preparing to fish, within three marine miles of the coast (not authorized to do so by Treaty) shall be seized or forfeited upon prosecution in the proper Court.

It further provides as follows:—

"That it shall and may be lawful for any fisherman of the said United States to enter into any such bays or harbours of his Britannic Majesty's dominions in America as are last mentioned, for the purpose of shelter and repairing damages therein, and of purchasing wood and of obtaining water, and for no other purpose whatever; subject, nevertheless, to such restrictions as may be necessary to prevent such fishermen of the said United States from taking, drying, or curing fish in the said bays or harbours, or in any other manner whatever

abusing the said privileges by the said Treaty and this Act reserved to them, and as shall for that purpose be imposed by any Order or Orders to be from time to time made by his Majesty in Council under the authority of this Act; and by any Regulations which shall be issued by the Governor, or person exercising the office of Governor, in any such parts of his Majesty's dominions in America, under or in pursuance of any such Order in Council as aforesaid."

It further enacts as follows:—

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

It will be perceived from these extracts, and still more clearly from a perusal of the entire Act, that while reciting the language of the Treaty in respect to the purposes for which American fishermen may enter British ports, it provides no forfeiture or penalty for any such entry, unless accompanied either (1) by fishing, or preparing to fish, within the prohibited limits; or (2) by the infringement of restrictions that may be imposed by Orders in Council to prevent such fishing, or the drying or curing of fish, or the abuse of privileges reserved by the Treaty; or (3) by a refusal to depart from the bays or harbours upon proper requisition.

It thus plainly appears that it was not the intention of Parliament, nor its understanding of the Treaty, that any other entry by an American fishing-vessel into a British port should be regarded as an infraction of its provisions, or as affording the basis of proceeding against it.

No other Act of Parliament for the carrying out of this Treaty has ever been passed. It is unnecessary to point out that it is not in the power of the Canadian Parliament to enlarge or alter the provisions of the Act of the Imperial Parliament, or to give to the Treaty either a construction or a legal effect not warranted by that Act.

But until the effort which I am informed is now in progress in the Canadian Parliament for the passage of a new Act on this subject, introduced since the seizures under consideration, I do not understand that any Statute has ever been enacted in that Parliament which attempts to give any different construction or effect to the Treaty from that given by the Act of 59 Geo. III.

The only Provincial Statutes which, in the proceedings against the *David J. Adams*, that vessel has thus far been charged with infringing are the Colonial Acts of 1868, 1870, and 1883. It is therefore fair to presume that there are no other Colonial Acts applicable to the case, and I know of none.

The Act of 1868, among other provisions not material to this discussion, provides for a forfeiture of foreign vessels "found fishing, or preparing to fish, or to have been fishing in British waters within three marine miles of the coast;" and also provides a penalty of 400 dollars against a master of a foreign vessel within the harbour who shall fail to answer questions put in an examination by the authorities. No other act is by this Statute declared to be illegal, and no other penalty or forfeiture is provided for.

The very extraordinary provisions in this Statute for facilitating forfeitures and embarrassing defence against or appeal

from them not material to the present case would, on a proper occasion, deserve very serious attention.

The Act of 1870 is an amendment of the Act just referred to, and adds nothing to it affecting the present case,

The Act of 1883 has no application to the case, except upon the point of the omission of the vessel to report to the Customs officer, already considered.

It results, therefore, that, at the time of the seizure of the *David J. Adams* and other vessels, there was no Act whatever, either of the British or Colonial Parliaments, which made the purchase of bait by those vessels illegal, or provided for any forfeiture, penalty, or proceedings against them for such a transaction; and even if such purchase could be regarded as a violation of that clause of the Treaty which is relied on, no Law existed under which the seizure could be justified. It will not be contended that Custom-house authorities or Colonial Courts can seize and condemn vessels for a breach of the stipulations of a Treaty when no legislation exists which authorizes them to take cognizance of the subject, or invests them with any jurisdiction in the premises. Of this obvious conclusion the Canadian authorities seem to be quite aware. I am informed that since the seizures they have pressed, or are pressing, through the Canadian Parliament in much haste an Act which is designed, for the first time in the history of the legislation under this Treaty, to make the facts upon which the American vessels have been seized illegal, and to authorize proceedings against them therefor.

What the effect of such an Act will be in enlarging the provisions of an existing Treaty between the United States and Great Britain need not be considered here. The question under discussion depends upon the Treaty, and upon such legislation, warranted by the Treaty, as existed when the seizures took place.

The practical construction given to the Treaty down to the present time has been in entire accord with the conclusions thus deduced from the Act of Parliament. The British Government has repeatedly refused to allow interference with American fishing-vessels, unless for illegal fishing, and has given explicit orders to the contrary.

On the 26th May, 1870, Mr. Thornton, the British Minister at Washington, communicated officially to the Secretary of State of the United States copies of the orders addressed by the British Admiralty to Admiral Wellesley, commanding her Majesty's naval forces on the North American Station, and of a letter from the Colonial Department to the Foreign Office, in order that the Secretary might "see the nature of the instructions to be given to her Majesty's and the Canadian officers employed in maintaining order at the fisheries in the neighbourhood of the coasts of Canada." Among the documents thus transmitted is a letter from the Foreign Office to the Secretary of the Admiralty, in which the following language is contained :—

"The Canadian Government has recently determined, with the concurrence of her Majesty's Ministers, to increase the stringency of the existing practice of dispensing with the warnings hitherto given, and seizing at once any vessel detected in violating the law.

"In view of this change, and of the questions to which it may give rise, I am directed by Lord Granville to request that you will move their Lordships to instruct the officers of her Majesty's ships employed in the protection of the fisheries that they are not to seize any vessel unless it is evident, and can be clearly proved, that the offence of fishing has been committed, and the vessel itself captured, within three miles of land."

In the letter from the Lords of the Admiralty to Vice-Admiral Wellesley of the 5th May, 1870, in accordance with

the foregoing request, and transmitting the letter above quoted from, there occurs the following language :—

"My Lords desire me to remind you of the extreme importance of Commanding Officers of the ships selected to protect the fisheries exercising the utmost discretion in carrying out their instructions, paying special attention to Lord Granville's observation, *that no vessel should be seized unless it is evident, and can be clearly proved, that the offence of fishing has been committed, and that the vessel is captured, within three miles of land.*"

Lord Granville, in transmitting to Sir John Young the aforesaid instructions, makes use of the following language :—

"Her Majesty's Government do not doubt that your Ministers will agree with them as to the propriety of these instructions, and will give corresponding instructions to the vessels employed by them."

These instructions were again officially stated by the British Minister at Washington to the Secretary of State of the United States, in a letter dated the 11th June, 1870.

Again, in February 1871, Lord Kimberley, Colonial Secretary, wrote to the Governor-General of Canada as follows :—

"The exclusion of American fishermen from resorting to Canadian ports, except for the purpose of shelter and of repairing damages therein, purchasing wood, and of obtaining water, might be warranted by the letter of the Treaty of 1818, and by the terms of the Imperial Act 59 Geo. III., cap. 38 ; but her Majesty's Government feel bound to state that it seems to them an extreme measure, inconsistent with the general policy of the Empire, and they are disposed to concede this point to the United States' Government, under such restrictions as may be necessary to prevent smuggling, and to guard against any substantial invasion of the exclusive rights of fishing which may be reserved to British subjects."

And in a subsequent letter from the same source to the Governor-General the following language is used :—

"I think it right, however, to add that the responsibility of determining what is the true construction of a Treaty made by her Majesty with any foreign Power must remain with her Majesty's Government, and that the degree to which this country would make itself a party to the strict enforcement of the Treaty rights may depend not only on the literal construction of the Treaty, but on the moderation and reasonableness with which these rights are asserted."

I am not aware that any modification of these instructions, or any different rule from that therein contained, has ever been adopted or sanctioned by her Majesty's Government.

Judicial authority upon this question is to the same effect. That the purchase of bait by American fishermen in the provincial ports has been a common practice is well known, but in no case, so far as I can ascertain, has a seizure of an American vessel ever been enforced on the ground of the purchase of bait, or of any other supplies. On the hearing before the Halifax Fisheries Commission in 1877-78 this question was discussed, and no case could be produced of any such condemnation. Vessels shown to have been condemned were in all cases adjudged guilty either of fishing, or preparing to fish, within the prohibited limit.

And in the case of the *White Fawn*, tried in the Admiralty Court at New Brunswick before Judge Hazen in 1870, I understand it to have been distinctly held that the purchase of bait, unless proved to have been in preparation for illegal fishing, was not a violation of the Treaty nor of any existing law, and afforded no ground for proceedings against the vessel.

But even were it possible to justify on the part of the Canadian authorities the adoption of a construction of the Treaty entirely different from that which has always hereto-

fore prevailed, and to declare those acts criminal which have hitherto been regarded as innocent, upon obvious grounds of reason and justice, and upon common principles of comity to the United States' Government, previous notice should have been given to it or to the American fishermen of the new and stringent restrictions it was intended to enforce.

If it was the intention of her Majesty's Government to recall the instructions which I have shown had been previously and so explicitly given relative to interference with American vessels, surely notice should have been given accordingly.

The United States have just reason to complain, even if these restrictions could be justified by the Treaty, or by the Acts of Parliament passed to carry it into effect, that they should be enforced in so harsh and unfriendly a manner, without notice to the Government of the change of policy, or to the fishermen of the new danger to which they were thus exposed.

In any view, therefore, which it seems to me can be taken of this question, I feel justified in pronouncing the action of the Canadian authorities in seizing and still retaining the *David J. Adams* to be not only unfriendly and discourteous, but altogether unwarrantable.

The seizure was much aggravated by the manner in which it was carried into effect. It appears that four several visitations and searches of the vessel were made by boats from the Canadian steamer *Lansdowne* in Annapolis Basin, Nova Scotia. The *Adams* was finally taken into custody, and carried out of the Province of Nova Scotia across the Bay of Fundy and into the port of St. John's, New Brunswick; and, without explanation or hearing, on the following Monday, the 10th May, taken back by an armed crew to Digby, in Nova Scotia. That, in Digby, the paper alleged to be the legal precept for the capture and detention of the

vessel was nailed to her mast in such manner as to prevent its contents being read, and the request of the captain of the *David J. Adams*, and of the United States' Consul-General, to be allowed to detach the writ from the mast, for the purpose of learning its contents, was positively refused by the Provincial official in charge. Nor was the United States' Consul-General able to learn from the Commander of the *Lansdowne* the nature of the complaint against the vessel, and his respectful application to that effect was fruitless.

From all the circumstances attending this case, and other recent cases like it, it seems to me very apparent that the seizure was not made for the purpose of enforcing any right or redressing any wrong As I have before remarked, it is not pretended that the vessel had been engaged in fishing, or was intending to fish, in the prohibited waters, or that it had done, or was intending to do, any other injurious act. It was proceeding upon its regular and lawful business of fishing in the deep sea. It had received no request, and, of course, could have disregarded no request, to depart, and was, in fact, departing when seized; nor had its master refused to answer any questions put by the authorities.

It had violated no existing Law, and had incurred no penalty that any known Statute imposed.

It seems to me impossible to escape the conclusion that this and other similar seizures were made by the Canadian authorities for the deliberate purpose of harassing and embarrassing the American fishing-vessels in the pursuit of their lawful employment, and the injury, which would have been a serious one if committed under a mistake, is very much aggravated by the motives which appear to have prompted it.

I am instructed by my Government earnestly to protest against these proceedings as wholly unwarranted by the

Treaty of 1818, and altogether inconsistent with the friendly relations hitherto existing between the United States and her Majesty's Government; to request that the *David J. Adams* and the other American fishing-vessels now under seizure in Canadian ports be immediately released; and that proper orders may be issued to prevent similar proceedings in the future; and I am also instructed to inform you that the United States will hold her Majesty's Government responsible for all losses which may be sustained by American citizens in the dispossession of their property growing out of the search, seizure, detention, or sale of their vessels lawfully within the territorial waters of British North America.

The real source of the difficulty that has arisen is well understood. It is to be found in the irritation that has taken place among a portion of the Canadian people on account of the termination, by the United States' Government, of the Treaty of Washington on the 1st July last, whereby fish imported from Canada into the United States, and which, so long as that Treaty remained in force, was admitted free, is now liable to the import duty provided by the General Revenue Laws. And the opinion appears to have gained ground in Canada that the United States may be driven, by harassing and annoying their fishermen, into the adoption of a new Treaty by which Canadian fish shall be admitted free.

It is not necessary to say that this scheme is likely to prove as mistaken in policy as it is indefensible in principle. In terminating the Treaty of Washington the United States were simply exercising a right expressly reserved to both parties by the Treaty itself, and of the exercise of which by either party neither can complain. They will not be coerced by wanton injury into the making of a new one. Nor would a negotiation that had its origin in mutual irritation be promising of success. The question now is not what fresh

Treaty may or might be desirable, but what is the true and just construction, as between the two nations, of the Treaty that already exists.

The Government of the United States, approaching this question in the most friendly spirit, cannot doubt that it will be met by her Majesty's Government in the same spirit, and feels every confidence that the action of her Majesty's Government in the premises will be such as to maintain the cordial relations between the two countries that have so long happily prevailed.

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

No. 63.

SIR L. WEST TO THE EARL OF ROSEBERY.
(Received June 11.)

Washington, May 30, 1886.

MY LORD,—I have the honour to inclose to your Lordship herewith copy of a note which I have received from the Secretary of State, protesting against the provisions of the Bill in the Canadian Parliament as an assumption of jurisdiction unwarranted by existing Conventions between Great Britain and the United States, and informing me that the United States' Minister in London has been instructed in this sense.

At an interview which I had yesterday with Mr. Bayard, he again alluded to the right of the Dominion Government to interpret a Treaty between Great Britain and the United States, but he was not at the time aware of the proceedings in the Canadian Parliament, and only sought for information as to the relation of the Legislatures of Great Britain and Canada. It was only after I left him that he received the

copy of the Bill in question, upon which he addressed to me the note, copy of which accompanies this despatch.

I have forwarded a copy of Mr. Bayard's note to the Marquis of Lansdowne for his Excellency's information.

I have, &c.

(Signed) L. S. SACKVILLE WEST.

Inclosure in No. 63.

MR. BAYARD TO SIR L. WEST.

Department of State, Washington,
May 29, 1886.

SIR,—I have just received an official imprint of House of Commons Bill No. 136, now pending in the Canadian Parliament, entitled, "An Act further to amend the Act respecting Fishing by Foreign Vessels," and am informed that it has passed the House, and is now pending in the Senate.

This Bill proposes the forcible search, seizure, and forfeiture of any foreign vessel within any harbour in Canada, or hovering within three marine miles of any of the coasts, bays, creeks, or harbours in Canada, where such vessel has entered such waters for any purpose not permitted by the laws of nations, or by Treaty or Convention, or by any law of the United Kingdom or of Canada now in force.

I hasten to call your attention to the wholly unwarranted proposition of the Canadian authorities, through their local agents, arbitrarily to enforce according to their own construction the provisions of any Convention between the United States and Great Britain, and, by the interpolation of language not found in any such Treaty, and by interpretation not claimed or conceded by either party to such Treaty, to invade and destroy the commercial rights and privileges of citizens of the United States under and by

virtue of Treaty stipulations with Great Britain, and Statutes in that behalf made and provided.

I have also been furnished with a copy of Circular No. 371, purporting to be from the Customs Department at Ottawa, dated the 7th May, 1886, and to be signed by J. Johnson, Commissioner of Customs, assuming to execute the provisions of the Treaty between the United States and Great Britain concluded the 20th October, 1818; and printed copies of a "Warning" purporting to be issued by George E. Foster, Minister of Marine and Fisheries, dated Ottawa, the 5th March, 1886, of a similar tenour, although capable of unequal results in its execution.

Such proceedings I conceive to be flagrantly violative of the reciprocal commercial privileges to which citizens of the United States are lawfully entitled under Statutes of Great Britain and the well-defined and publicly proclaimed authority of both countries, besides being in respect of the existing Conventions between the two countries an assumption of jurisdiction entirely unwarranted, and which is wholly denied by the United States.

In the interest of the maintenance of peaceful and friendly relations I give you my earliest information on the subject, adding that I have telegraphed Mr. Phelps, our Minister at London, to make earnest protest to her Majesty's Government against such arbitrary, unlawful, unwarranted, and unfriendly action on the part of the Canadian Government and its officials, and have instructed Mr. Phelps to give notice that the Government of Great Britain will be held liable for all losses and injuries to citizens of the United States and their property caused by the unauthorized and unfriendly action of the Canadian officials to which I have referred.

I have, &c.

(Signed) T. F. Bayard.

No. 71.

SIR L. WEST TO THE EARL OF ROSEBERY.
(Received June 28.)

Washington, June 15, 1886.

MY LORD,—I have the honour to inclose to your Lordship herewith copy of a note which I have received from the Secretary of State requesting the attention of her Majesty's Government to certain warnings alleged to have been given to American fishing-vessels by the Canadian authorities to keep outside imaginary lines drawn from headlands to headlands, which he characterizes as wholly unwarranted pretensions of extra-territorial authority, and usurpations of jurisdiction.

I have, &c.

(Signed) L. S. SACKVILLE WEST.

Inclosure in No. 71.

MR. BAYARD TO SIR L. WEST.

Department of State, Washington,
June 14, 1886.

SIR,—The Consul-General of the United States at Halifax communicates to me the information derived by him from the Collector of Customs at that port, to the effect that American fishing-vessels will not be permitted to land fish at that port o entry for transportation in bond across the province.

I have also to inform you that the masters of the four American fishing-vessels of Gloucester, Massachusetts —*Martha A. Bradly*, *Rattler*, *Eliza Boynton*, and *Pioneer*—have severally reported to the Consul-General

at Halifax that the Sub-Collector of Customs at Canso had warned them to keep outside an imaginary line drawn from a point three miles outside Canso Head to a point three miles outside St. Esprit, on the Cape Breton coast, a distance of forty miles. This line, for nearly its entire continuance, is distant twelve to twenty-five miles from the coast. The same masters also report that they were warned against going inside an imaginary line drawn from a point three miles outside North Cape, on Prince Edward Island, to a point three miles outside of East Point, on the same island, a distance of over 100 miles, and that this last-named line was for nearly that entire distance about thirty miles from the shore.

The same authority informed the masters of the vessels referred to that they would not be permitted to enter Bay Chaleur.

Such warnings are, as you must be well aware, wholly unwarranted pretensions of extra-territorial authority, and usurpations of jurisdiction by the Provincial officials.

It becomes my duty, in bringing this information to your notice, to request that if any such orders for interference with the unquestionable rights of the American fishermen to pursue their business without molestation at any point not within three marine miles of the shores, and within the defined limits as to which renunciation of the liberty to fish was expressed in the Treaty of 1818, may have been issued, the same may at once be revoked as violative of the rights of citizens of the United States under Convention with Great Britain.

I will ask you to bring this subject to the immediate attention of her Britannic Majesty's Government, to the end that proper remedial orders may be forthwith issued.

It seems most unfortunate and regrettable that questions which have been long since settled between the United

States and Great Britain should now be sought to be revived.

I have, &c.

(Sig .ed) T. F. BAYARD.

No. 108.

MR. PHELPS TO THE EARL OF IDDESLEIGH.

(Received September 13.)

Legation of the United States, London,
September 11, 1886.

MY LORD,—I have the honour to acknowledge the receipt of your note of the 1st September on the subject of the Canadian fisheries.

I received also on the 16th August last from Lord Rosebery, then Foreign Secretary, a copy of a note on the same subject, dated the 23rd July, 1886, addressed by his Lordship, through the British Minister at Washington, to Mr. Bayard, the Secretary of State of the United States, in reply to a note from Mr. Bayard to the British Minister of the 10th May, and also to mine addressed to Lord Rosebery under date of the 2nd June. The retirement of Lord Rosebery from office immediately after I received his note prevented a continuance of the discussion with him. And in resuming the subject with your Lordship, it may be proper to refer both to Lord Rosebery's note and to your own. In doing so I repeat in substance considerations expressed to you orally in recent interviews.

My note to Lord Rosebery was confined to the discussion of the case of the *David J. Adams*, the only seizure in reference to which the details had then been fully made known to me. The points presented in my note, and the arguments in support of them, need not be repeated.

No answer is attempted in Lord Rosebery's reply. He declines to discuss the questions involved, on the ground that they are "now occupying the attention of the Courts of Law in the Dominion, and may possibly form the subject of an appeal to the Judicial Committee of her Majesty's Privy Council in England."

He adds :—

"It is believed that the Courts in Canada will deliver Judgment in the above cases very shortly; and until the legal proceedings now pending have been brought to a conclusion, her Majesty's Government do not feel justified in expressing an opinion upon them, either as to facts or the legality of the action taken by the Colonial authorities."

And your Lordship remarks, in your note of the 24th August, "It is clearly right, according to practice and precedent, that such diplomatic action should be suspended pending the completion of the judicial inquiry."

This is a proposition to which the United States' Government is unable to accede.

The seizures complained of are not the acts of individuals claiming private rights which can be dealt with only by judicial determination, or which depend upon facts that need to be ascertained by judicial inquiry. They are the acts of the authorities of Canada, who profess to be acting, and in legal effect are acting, under the authority of her Majesty's Government. In the Report of the Canadian Minister of Marine and Fisheries, which is annexed to and adopted as a part of Lord Rosebery's note, it is said :—

"The Colonial Statutes have received the sanction of the British Sovereign, who, and not the nation, is actually the party with whom the United States made the Convention. The officers who are engaged in enforcing the Acts of Canada, or the laws of the Empire, are her Majesty's

officers, whether their authority emanates directly from the Queen or from her Representative the Governor-General."

The ground upon which the seizures complained of are principally justified is the allegation, that the vessels in question were violating the stipulations of the Treaty between the United States and Great Britain. This is denied by the United States' Government. The facts of the transaction are not seriously in dispute, and if they were, could be easily ascertained by both Governments, without the aid of the judicial tribunals of either. And the question to be determined is the true interpretation of the Treaty, as understood and to be administered between the High Contracting Parties.

The proposition of her Majesty's Government amounts to this: that before the United States can obtain consideration of their complaint, that the Canadian authorities, without justification, have seized, and are proceeding to confiscate, American vessels, the result of the proceedings in the Canadian Courts, instituted by the captors as the means of the seizures, must be awaited, and the decision of that tribunal on the international questions involved obtained.

The interpretation of a Treaty when it becomes the subject of discussion between two Governments is not, I respectfully insist, to be settled by the judicial tribunals of either. That would be placing its construction in the hands of one of the parties to it. It can only be interpreted for such a purpose by the mutual consideration and agreement which were necessary to make it. Questions between individuals arising upon the terms of a Treaty may be for the Courts to which they resort to adjust. Questions between nations as to national rights secured by Treaty are of a very different character, and must be solved in another way.

The United States' Government is no party to the proceedings instituted by the British authorities in Canada, nor

can it consent to become a party. The proceedings themselves are what the United States complain of, as unauthorized, as well as unfriendly. It would be inconsistent with the dignity of a Sovereign Power to become a party to such proceedings, or to seek redress in any way in the Courts of another country for what it claims to be the violation of Treaty stipulations by the authorities of that country.

Still less could it consent to be made indirectly a party to the suits by being required to await the result of such defence as the individuals whose property is implicated may be able and may think proper to set up. Litigation of that sort may be indefinitely prolonged. Meanwhile, fresh seizures of American vessels upon similar grounds are to be expected for which redress would in like manner await the decisions of the local tribunals, whose jurisdiction the captors invoke and the United States' Government denies.

Nor need it be again pointed out how different may be the question involved between the Governments from that which these proceedings raise in the Canadian Courts. Courts in such cases do not administer Treaties. They administer only the Statutes that are passed in pursuance of Treaties If a Statute contravenes the provisions of a Treaty, British Courts are nevertheless, bound by the Statute. And if, on the other hand, there is a Treaty stipulation which no Statute gives the means of enforcing, the Court cannot enforce it.

Although the United States' Government insists that there is no British or Colonial Act authorizing the seizures complained of, if the British Courts should, nevertheless, find such authority in any existing Statute, the question whether the Statute itself, or the construction given it, is warranted by the Treaty, would still remain; and also the still higher question, whether, if the strict technical reading of the

Treaty might be thought to warrant such a result, it is one which ought to be enforced between Sovereign and friendly nations, acting in the spirit of the Treaty.

The United States' Government must, therefore, insist that, irrespective of the future result of the Canadian legal proceedings, the authority and propriety of which is the subject of dispute, and without waiting their conclusion, it is to her Majesty's Government it must look for redress and satisfaction for the transactions in question, and for such instructions to the colonial authority as will prevent their repetition.

While, as I have observed, Lord Rosebery declines to discuss the question of the legality of these seizures, the able and elaborate Report on the subject from the Canadian Minister of Marine and Fisheries, which is made a part of it, attempts in very general terms to sustain their authority. He says:—

"It is claimed that the vessel (the *David J. Adams*) violated the Treaty of 1818, and *consequently* the Statutes which exist for the enforcement of the Treaty."

It is not clear from this language whether it is meant to be asserted that if an act, otherwise lawful, is prohibited by a Treaty, the commission of the act becomes a violation of a Statute which has no reference to it if the Statute was enacted to carry out the Treaty; or whether it is intended to say that there was in existence, prior to the seizure of the vessel in question, some Statute which did refer to the act complained of, and did authorize proceedings or provide a penalty against American fishing-vessels for purchasing bait or supplies in a Canadian port to be used in lawful fishing. The former proposition does not seem to require refutation. If the latter is intended, I have respectfully to request that your Lordship will have the kindness to direct a copy of such Act to be furnished to me. I have supposed that none such existed; and neither in the Report of the Canadian Minister, nor in the Customs Circulars or Warnings thereto appended,

in which attention is called to the various legislation on the subject, is any such Act pointed out.

The absence of such Statute provision, either in the Act of Parliament (59 Geo. III., cap. 38) or in any subsequent Colonial Act, is not merely a legal objection, though quite a sufficient one, to the validity of the proceedings in question. It affords the most satisfactory evidence that, up to the time of the present controversy, no such construction has been given to the Treaty by the British or by the Colonial Parliament as is now sought to be maintained.

No other attempt is made in the Report of the Canadian Minister to justify the legality of these seizures. It is apparent from the whole of it that he recognizes the necessity of the proposed enactment of the Act of the Canadian Parliament already alluded to in order to sustain them.

This remark is further confirmed by the communication from the Marquis of Lansdowne, Governor-General of Canada, to Lord Granville in reference to that Act, annexed by Lord Rosebery to his second note to the British Minister of the 23rd July, 1886, a copy of which was sent me by his Lordship, in connection with his other note of same date above referred to.

I do not observe upon other parts of the Minister's Report not bearing upon the points of my note to Lord Rosebery. So far as they relate to the communications addressed to the British Minister by Mr. Bayard, the Secretary of State will doubtless make such reply as may seem to him to be called for.

In various other instances American vessels have been seized or driven away by the provincial authorities when not engaged or proposing to engage in any illegal employment. Some of these cases are similar to that of the *Adams*; the vessels having been taken possession of for purchasing bait or supplies to be used in lawful fishing, or for alleged technical breach of Custom-house regulations, where no harm

was either intended or committed, and under circumstances in which, for a very long time, such regulations have been treated as inapplicable.

In other cases, an arbitrary extension of the three-mile limit fixed by the Treaty has been announced, so as to include within it portions of the high sea, such as the Bay of Fundy, the Bay of Chaleur, and other similar waters, and American fishermen have been prevented from fishing in those places by threats of seizure. I do not propose, at this time, to discuss the question of the exact location of that line, but only to protest against its extension in the manner attempted by the provincial authorities.

To two recent instances of interference by Canadian officers with American fishermen, of a somewhat different character, I am specially instructed by my Government to ask your Lordship's attention—those of the schooners *Thomas F. Bayard* and *Mascot*.

These vessels were proposing to fish in waters in which the right to fish is expressly secured to Americans, by the terms of the Treaty of 1818; the former in Bonne Bay, on the north-west coast of Newfoundland, and the latter near the shores of the Magdalene Islands. For this purpose the *Bayard* attempted to purchase bait in the port of Bonne Bay, having reported at the Custom-house and announced its object. The *Mascot* made a similar attempt at Port Amherst, in the Magdalene Islands, and also desired to take on board a pilot. Both vessels were refused permission by the authorities to purchase bait, and the *Mascot* to take a pilot, and were notified to leave the port within twenty-four hours on penalty of seizure. They were therefore compelled to depart, to break up their voyages, and to return home, to their very great loss. I append copies of the affidavits of the masters of these vessels stating the facts.

Your Lordship will observe upon reference to the Treaty

not only that the right to fish in these waters is conferred by it, but that the clause prohibiting entry by American fishermen into Canadian ports, except for certain specified purposes, which is relied on by the Canadian Government in the cases of the *Adams* and of some other vessels, has no application whatever to the ports from which the *Bayard* and the *Mascot* were excluded. The only prohibition in the Treaty having reference to those ports is against curing and drying fish there, without leave of the inhabitants, which the vessels excluded had no intention of doing. The conduct of the provincial officers toward these vessels was therefore not merely unfriendly and injurious, but in clear and plain violation of the terms of the Treaty. And I am instructed to say that reparation for the losses sustained by it to the owners of the vessels will be claimed by the United States' Government on their behalf as soon as the amount can be accurately ascertained.

It will be observed that interference with American fishing-vessels by Canadian authorities is becoming more and more frequent, and more and more flagrant in its disregard of Treaty obligations and of the principles of comity and friendly intercourse. The forbearance and moderation of the United States' Government in respect to them appear to have been misunderstood, and to have been taken advantage of by the Provincial Government. The course of the United States has been dictated not only by an anxious desire to preserve friendly relations, but by the full confidence that the interposition of her Majesty's Government would be such as to put a stop to the transactions complained of, and to afford reparation for what loss has already taken place. The subject has become one of grave importance, and I earnestly solicit the immediate attention of your Lordship to the questions it involves, and

to the views presented in my former note, and in those of the Secretary of State.

The proposal in your Lordship's note, that a revision of the Treaty stipulations bearing upon the subject of the fisheries should be attempted by the Governments upon the basis of mutual concession, is one that under other circumstances would merit and receive serious consideration. Such a revision was desired by the Government of the United States before the present disputes arose, and when there was a reasonable prospect that it might have been carried into effect. Various reasons, not within its control, now concur to make the present time inopportune for that purpose, and greatly to diminish the hope of a favourable result to such an effort. Not the least of them is the irritation produced in the United States by the course of the Canadian Government, and the belief thereby engendered that a new Treaty is attempted to be forced upon the United States' Government.

It seems apparent that the questions now presented and the transactions that are the subject of present complaint must be considered and adjusted upon the provisions of the existing Treaty, and upon the construction that is to be given to them.

A just construction of these stipulations, and such as would consist with the dignity, the interests, and the friendly relations of the two countries, ought not to be difficult, and can doubtless be arrived at.

As it appears to me very important to these relations that the collisions between the American fishermen and the Canadian officials should terminate, I suggest to your Lordship whether an *ad interim* construction of the terms of the existing Treaty cannot be reached, by mutual understanding of the Governments, to be carried out informally by instructions given on both sides, without prejudice to ultimate

claims of either, and terminable at the will of either, by which the conduct of the business can be so regulated for the time being as to prevent disputes and injurious proceedings until a more permanent understanding can be had.

Should this suggestion meet with your Lordship's approval, perhaps you may be able to propose an outline for such an arrangement. I am not prepared nor authorized to present one at this time, but may hereafter be instructed to do so if the effort is thought advisable.

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

No. 128.

SIR L. WEST TO THE EARL OF IDDESLEIGH.

(Received November 1.)

Washington, October 20, 1886.

MY LORD,—I have the honour to inclose to your Lordship herewith copy of a note which I have received from the Secretary of State, bringing to the notice of her Majesty's Government the case of the United States' fishing-vessel *Everett Steele*, which is alleged to have entered the port of Shelburne, Nova Scotia, for shelter, water, and repairs, and to have been detained by the captain of the Canadian cruiser *Terror*.

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

Inclosure in No. 129.

MR. BAYARD TO SIR L. WEST.

Department of State, Washington,
October 19, 1886.

SIR,—The *Everett Steele*, a fishing-vessel of Gloucester,

Massachusetts, in the United States, of which Charles E. Forbes, an American citizen, was master, was about to enter, on the 10th September, 1886, the harbour of Shelburne, Nova Scotia, to procure water and for shelter during repairs. She was hailed when entering the harbour by the Canadian cutter *Terror*, by whose captain, Quigley, her papers were taken and retained. Captain Forbes, on arriving off the town, anchored, and went with Captain Quigley to the Custom-house, who asked him whether he reported whenever he had come in. Captain Forbes answered that he had reported always, with the exception of a visit on the 25th March, when he was driven into the lower harbour for shelter by a storm, and where he remained only eight hours. The Collector did not consider that this made the vessel liable, but Captain Quigley refused to discharge her; said he would keep her until he heard from Ottawa, put her in charge of policemen, and detained her until the next day, when at noon she was discharged by the Collector. But a calm having come on, she could not get to sea, and by the delay her bait was spoiled and the expected profits of her trip lost.

It is scarcely necessary for me to remind you, in presenting this case to the consideration of your Government, that when the north-eastern coast of America was wrested from France in a large measure by the valour and enterprise of New England fishermen, they enjoyed, in common with other British subjects, the control of the fisheries with which that coast was enriched; and that by the Treaty of Peace of 1783, which, as was said by an eminent English judge when treating an analogous question, was a Treaty of "Separation," this right was expressly affirmed.

It is true that by the Treaty of 1818 the United States renounced a portion of its rights in these fisheries, retaining, however, the old prerogatives of visiting the bays and harbours of the British north-eastern possessions for the purpose

of obtaining wood, water, and shelter, and for objects incidental to those other rights of territoriality so retained and confirmed. What is the nature of these incidental prerogatives it is not, in considering this case, necessary to discuss. It is enough to say that Captain Forbes entered the harbour of Shelburne to obtain shelter and water; and that he had as much right to be there under the Treaty of 1818, confirming in this respect the ancient privileges of American fishermen on those coasts, as he would have had on the high seas, carrying on, under shelter of the flag of the United States, legitimate commerce. The Government which you so honourably represent has, with its usual candour and magnanimity, conceded that when a merchant-vessel of the United States is stopped in time of peace by a British cruiser on the groundless suspicion of being a slave-trader, damages are to be paid to this Government, not merely to redress the injury suffered, but as an apology for the insult offered to the flag of the United States. But the case now presented to you is a much stronger one than that of a seizure on the high seas of a ship unjustly suspected of being a slaver. When a vessel is seized on the high seas on such a suspicion, its seizure is not on waters where its rights, based on prior and continuous ownership, are guaranteed by the Sovereign making the seizure. If, in such case, the property of the owners is injured, it is, however wrongful the act, a case of rare occurrence, on seas comparatively unfrequented, with consequences not very far reaching; and if a blow is struck at a system of which such vessel is unjustly supposed to be a part, such system is one which the civilized world execrates. But seizures of the character of that which I now present to you have no such features. They are made in waters not only conquered and owned by American fishermen, but for the very purpose for which they were being used by Captain Forbes, guaranteed to them by two

successive Treaties between the United States and Great Britain. These fishermen, also, I may be permitted to remind you, were engaged in no nefarious trade. They pursue one of the most useful and meritorious of industries; they gather from the seas, without detriment to others, a food which is nutritious and cheap for the use of an immense population; they belong to a stock of men which contributed before the revolution most essentially to British victories on the North-eastern Atlantic; and it may not be out of place to say, they have shown since that revolution, when serving in the navy of the United States, that they have lost none of their ancient valour, hardihood, and devotion to their flag.

The indemnity which the United States has claimed, and which Great Britain has conceded, for the visitation and search of isolated merchantmen seized on remote African seas on unfounded suspicion of being slavers, it cannot do otherwise now than claim, with a gravity which the importance of the issue demands, for its fishermen seized on waters in which they have as much right to traverse for shelter as have the vessels by which they are molested. This shelter, it is important to observe, they will as a class be debarred from, if annoyances, such as I now submit to you, are permitted to be inflicted on them by minor officials of the British provinces.

Fishermen, as you are aware, have been considered, from the usefulness of their occupation, from their simplicity, from the perils to which they are exposed, and from the small quantity of provisions and protective implements they are able to carry with them, the wards of civilized nations; and it is one of the peculiar glories of Great Britain that she has taken the position—a position now generally accepted—that even in time of war they are not to be the subjects of capture by hostile cruisers. Yet, in defiance of this immu-

nity thus generously awarded by humanity and the laws of nations, the very shelter which they own in these seas, and which is ratified to them by two successive Treaties, is to be denied to them, not, I am confident, by the act of the wise, humane, and magnanimous Government you represent, but by deputies of deputies permitted to pursue, not uninfluenced by local rivalry, these methods of annoyance in fishing waters which our fishermen have as much right to visit on lawful errands as those officials have themselves. For let it be remembered that by annoyances and expulsions such as these, the door of shelter is shut to American fishermen as a class.

If a single refusal of that shelter such as the present is sustained, it is a refusal of shelter to all fishermen pursuing their tasks in those inhospitable coasts. Fishermen have not funds enough nor outfit enough, nor, I may add, recklessness enough to put into harbours where, perfect as is their title, they meet with such treatment as that suffered by Captain Forbes.

To sanction such treatment, therefore, is to sanction the refusal to the United States' fishermen as a body of that shelter to which they are entitled by ancient right, by the law of nations, and by solemn Treaty. Nor is this all. That Treaty is a part of a system of mutual concessions. As was stated by a most eminent English judge in the case of "Sutton *v.* Sutton" (1 Myl. and K., 675), which I have already noticed, it was the principle of the Treaty of Peace, and of the Treaties which followed between Great Britain and the United States, that the "subjects of the two parts of the divided Empire should, notwithstanding the separation, be protected in the mutual enjoyment" of the rights these Treaties affirmed. If, as I cannot permit myself to believe, Great Britain should refuse to citizens of the United States the enjoyment of the plainest and most undeniable

of these rights, the consequences would be so serious that they cannot be contemplated by this Government but with the gravest concern.

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

Inclosure 1 in No. 145.

Mr. Bayard to Mr. Phelps.

Department of State, Washington,
November 6, 1886.

Sir,—On October 7, 1886, the United States' fishing-vessel, the *Marion Grimes*, of Gloucester, Massachusetts, Alexander Landry, a citizen of the United States, being her captain, arrived shortly before midnight, under stress of weather, at the outer harbour of Shelburne, Nova Scotia. The night was stormy, with a strong head-wind against her, and her sole object was temporary shelter. She remained at the spot where she anchored, which was about seven miles from the port of Shelburne, no one leaving her until six o'clock the next morning, when she hoisted sail in order to put to sea. She had scarcely started, however, before she was arrested and boarded by a boat's crew from the Canadian cruiser *Terror*. Captain Landry was compelled to proceed to Shelburne, about seven miles distant, to report to the Collector. When the report was made, Captain Landry was informed that he was fined 400 dollars for not reporting on the previous night. He answered that the Custom-house was not open during the time that he was in the outer harbour. He further insisted that it was obvious from the storm that caused him to take shelter in

that harbour, from the shortness of his stay, and from the circumstances that his equipments were exclusively for deep-sea fishing, and that he had made no effort whatever to approach the shore, that his object was exclusively to find shelter. The fine, however, being imposed principally through the urgency of Captain Quigley, commanding the *Terror,* Captain Landry was informed that he was to be detained at the port of Shelburne until a deposit to meet the fine was made. He consulted Mr. White, the United States' Consular Agent at Shelburne, who at once telegraphed the facts to Mr. Phelan, United States' Consul-General at Halifax, it being of great importance to Captain Landry, and to those interested in his venture, that he should proceed on his voyage at once. Mr. Phelan then telegraphed to the Assistant-Commissioner of Customs at Ottawa that it was impossible for Captain Landry to have reported while he was in the outer harbour on the 8th instant, and asking that the deposit required to release the vessel be reduced. He was told, in reply, that the Minister declined to reduce the deposit, but that it might be made at Halifax. Mr. Phelan at once deposited at Halifax the 400 dollars, and telegraphed to Captain Landry that he was at liberty to go to sea. On the evening of the 11th October, Mr. Phelan received a telegram from Captain Landry, who had already been kept four days in the port, stating that "the Custom-house officers and Captain Quigley" refused to let him go to sea. Mr. Phelan the next morning called on the Collector at Halifax to ascertain if an order had issued to release the vessel, and was informed that the order had been given, "but that the Collector and Captain of the cruiser refused to obey it for the reason that the captain of the seized vessel hoisted the American flag while she was in custody of the Canadian officials." Mr. Phelan at once telegraphed this state of facts to the Assistant Commissioner

at Ottawa, and received, in reply, under date of the 12th August, the announcement that "Collector has been instructed to release the *Grimes* from Customs seizure. This Department has nothing to do with other charges." On the same day a despatch from the Commissioner of Customs at Ottawa was sent to the Collector of Customs at Halifax, reciting the order to release the *Grimes*, and saying, "This [the Customs] Department has nothing to do with other charges. It is Department of Marine."

The facts as to the flag were as follows:—

On the 11th October the *Marion Grimes*, being then under arrest by order of local officials for not immediately reporting at the Custom-house, hoisted the American flag. Captain Quigley, who, representing, as appeared, not the Revenue, but the Marine Department of the Canadian Administration, was, with his "cruiser," keeping guard over the vessel, ordered the flag to be hauled down. This order was obeyed, but about an hour afterwards the flag was again hoisted, whereupon Captain Quigley boarded the vessel with an armed crew and lowered the flag himself.[1] The vessel was finally released under orders of the Customs Department, being compelled to pay eight dollars costs in addition to the deposit of 400 dollars above specified.

The seriousness of the damage inflicted on Captain Landry and those interested in his venture will be understood when it is considered that he had a crew of twelve men, with full supplies of bait, which his detention spoiled.

You will at once see that the grievances I have narrated fall under two distinct heads. The first concerns the boarding by Captain Quigley of the *Marion Grimes* on the morning of the 8th October, and compelling her to go to the town of Shelburne, there subjecting her to a fine of 400 dollars for visiting the port without reporting, and detaining

[1] Apology was made for lowering flag. *Vide* p. 61, *ante*.

her there arbitrarily four days, a portion of which time was after a deposit to meet the fine had been made.

This particular wrong I now proceed to consider with none the less gravity, because other outrages of the same class have been perpetrated by Captain Quigley. On the 18th August last I had occasion, as you will see by the annexed papers, to bring to the notice of the British Minister at this capital several instances of aggression on the part of Captain Quigley on our fishing-vessels. On the 19th October, 1886, I had also to bring to the British Minister's notice the fact that Captain Quigley had, on the 10th September, arbitrarily arrested the *Everett Steele*, a United States' fishing-vessel, at the outer port of Shelburne. To these notes I have received no reply. Copies are transmitted, with the accompanying papers, to you, in connection with the present instruction, so that the cases, as part of a class, can be presented by you to her Majesty's Government.

Were there no Treaty relations whatever between the United States and Great Britain,—were the United States' fishermen without any other right to visit those coasts than are possessed by the fishing-craft of any foreign country simply as such, the arrest and boarding of the *Grimes*, as above detailed, followed by forcing her into the port of Shelburne, there subjecting her to fine for not reporting, and detaining her until her bait and ice were spoiled, are wrongs which I am sure her Majesty's Government will be prompt to redress. No Governments have been more earnest and resolute in insisting that vessels driven by stress of weather into foreign harbours should not be subject to port exactions than the Governments of Great Britain and the United States. So far has this solicitude been carried that both Governments, from motives of humanity, as well as of interest as leading Maritime Powers, have adopted many measures by which foreigners as well as citizens or subjects arriving

within their territorial waters may be protected from the perils of the sea. For this purpose not merely light-houses and light-ships are placed by us at points of danger, but an elaborate life-saving service, well equipped with men, boats, and appliances for relief, studs our seaboard in order to render aid to vessels in distress, without regard to their nationality. Other benevolent organizations are sanctioned by Government which bestow rewards on those who hazard their lives in the protection of life and property in vessels seeking in our waters refuge from storms. Acting in this spirit, the Government of the United States has been zealous, not merely in opening its ports freely, without charges to vessels seeking them in storm, but in insisting that its own vessels, seeking foreign ports under such circumstances, and exclusively for such shelter, are not under the law of nations subject to Custom-house exactions. "In cases of vessels carried into British ports by violence or stress of weather," said Mr. Webster in instructions to Mr. Everett, the 28th June, 1842, "we insist that there shall be no interference from the land with the relation or personal condition of those on board, according to the laws of their own country; that vessels under such circumstances shall enjoy the common laws of hospitality, subjected to no force, entitled to have their immediate wants and necessities relieved, and to pursue their voyage without molestation." In this case, that of the *Creole*, Mr. Wheaton, in the "Revue Française et Étrangère" (IX., 345), and M. Legaré (4 Op. At. Gen., 98), both eminent publicists, gave opinions that a vessel carried by stress of weather or forced into a foreign port is not subject to the law of such port; and this was sustained by Mr. Bates, the Umpire of the Commission, to whom the claim was referred (Rep. Com. of 1853; 244, 245): "The municipal law of England [so he said] cannot authorize a Magistrate to violate the law of

nations by invading with an armed force the vessel of a friendly nation that has committed no offence, and forcibly dissolving the relations which, by the laws of his country, the captain is bound to preserve and enforce on board. These rights, sanctioned by the law of nations, viz., the right to navigate the ocean and to seek shelter in case of distress or other unavoidable circumstances, and to retain over the ship, her cargo, and passengers, the law of her country, must be respected by all nations, for no independent nation would submit to their violation."

It is proper to state that Lord Ashburton, who conducted the controversy in its diplomatic stage on the British side, did not deny, as a general rule, the propositions of Mr. Webster. He merely questioned the applicability of the rule to the case of the *Creole*. Nor has the principle ever been doubted by either her Majesty's Government or the Government of the United States ; while, in cases of vessels driven by storm on inhospitable coasts, both Governments have asserted it, sometimes by extreme measures of redress, to secure indemnity for vessels suffering under such circumstances from port exactions, or from injuries inflicted from the shore.

It would be hard to conceive of anything more in conflict with the humane policy of Great Britain in this respect, as well as with the law of nations, than was the conduct of Captain Quigley towards the vessel in question on the morning of the 8th October.

In such coasts, at early dawn, after a stormy night, it is not unusual for boats, on errands of relief, to visit vessels which have been struggling with storm during the night. But in no such errand of mercy was Captain Quigley engaged. The *Marion Grimes*, having found shelter during the night's storm, was about to depart on her voyage, losing no time while her bait was fresh and her ice lasted, when

she was boarded by an armed crew, forced to go seven miles out of her way to the port, and was there under pressure of Captain Quigley, against the opinion originally expressed of the Collector, subjected to a fine of 400 dollars with costs, and detained there, as I shall notice hereafter, until her voyage was substantially broken up. I am confident her Majesty's Government will concur with me in the opinion that, as a question of international law, aside from Treaty and other rights, the arrest and detention under the circumstances of Captain Landry and of his vessel were in violation of the law of nations as well as the law of humanity, and that on this ground alone the fine and the costs should be refunded and the parties suffering be indemnified for their losses thereby incurred.

It is not irrelevant, on such an issue as the present, to inquire into the official position of Captain Quigley, "of the Canadian cruiser *Terror*." He was, as the term "Canadian cruiser" used by him enables us to conclude, not an officer in her Majesty's distinctive service. He was not the Commander of a Revenue cutter, for the Head of the Customs Service of Canada disavowed him. Yet he was arresting and boarding, in defiance of law, a vessel there seeking shelter, over-influencing the Collector of the port into the imposition of a fine, hauling down with his own hand the flag of the United States, which was displayed over the vessel, and enforcing arbitrarily an additional period of detention after the deposit had been made, simply because the captain of the vessel refused to obey him by executing an order insulting to the flag which the vessel bore. If armed cruisers are employed in seizing, harassing, and humiliating storm-bound vessels of the United States on Canadian Coasts, breaking up their voyages and mulcting them with fines and costs, it is important, for reasons presently to be specified, that this Government should be advised of the fact.

From her Majesty's Government redress is asked. And that redress, as I shall have occasion to say hereafter, is, not merely the indemnification of the parties suffering by Captain Quigley's actions, but his withdrawal from the waters where the outrages I represent to you have been committed.

I have already said that the claims thus presented could be abundantly sustained by the law of nations, aside from Treaty and other rights. But I am not willing to rest the case on the law of nations. It is essential that the issue between United States' fishing-vessels and the "cruiser *Terror*" should be examined in all its bearings, and settled in regard not merely to the general law of nations, but to the particular rights of the parties aggrieved.

It is a fact that the fishing-vessel *Marion Grimes* had as much right, under the special relations of Great Britain and the United States, to enter the harbour of Shelburne, as had the Canadian cruiser. The fact that the *Grimes* was liable to penalties for the abuse of such right of entrance does not disprove its existence. Captain Quigley is certainly liable to penalties for his misconduct on the occasion referred to. Captain Landry was not guilty of misconduct in entering and seeking to leave that harbour, and had abused no privilege. But whether liable or no for subsequent abuse of the rights, I maintain that the right of free entrance into that port, to obtain shelter, and whatever is incident thereto, belonged as much to the American fishing-vessel as to the Canadian cruiser.

The basis of this right is thus declared by an eminent jurist and statesman, Mr. R. R. Livingston, the first Secretary of State appointed by the Continental Congress, in instructions issued on the 7th January, 1782, to Dr. Franklin, then at Paris, entrusted by the United States with the negotiation of Articles of Peace with Great Britain:—

"The arguments on which the people of America found

their claim to fish on the banks of Newfoundland arise, first, from their having once formed a part of the British Empire, in which state they always enjoyed, as fully as the people of Britain themselves, the right of fishing on those banks. They have shared in all the wars for the extension of that right, and Britain could with no more justice have excluded them from the enjoyment of it (even supposing that one nation could possess it to the exclusion of another) while they formed a part of that Empire, than they could exclude the people of London or Bristol. If so, the only inquiry is, how have we lost this right? If we were tenants in common with Great Britain while united with her, we still continue so, unless by our own act we have relinquished our title. Had we parted with mutual consent, we should doubtless have made partition of our common rights by Treaty. But the oppressions of Great Britain forced us to a separation (which must be admitted, or we have no right to be independent); and it cannot certainly be contended that those oppressions abridged our rights, or gave new ones to Britain. Our rights, then, are not invalidated by this separation, more particularly as we have kept up our claim from the commencement of the war, and assigned the attempt of Great Britain to exclude us from the fisheries, as one of the causes of our recurring to arms."

As I had occasion to show in my note to the British Minister in the case of the *Everett Steele*, of which a copy is hereto annexed, this "tenancy in common," held by citizens of the United States in the fisheries, they were to "continue to enjoy" under the Preliminary Articles of 1782 as well as under the Treaty of Peace of 1783; and this right, as a right of entrance in those waters, was reserved to them, though with certain limitations in its use by the Treaty of 1818. I might here content myself with noticing that the Treaty of 1818, herein reciting a principle

of the law of nations as well as ratifying a right previously possessed by fishermen of the United States, expressly recognizes the right of these fishermen to enter the "bays or harbours" of her Majesty's Canadian dominions, "for the purpose of shelter and of repairing damages therein." The extent of other recognitions of rights in the same clause need not here be discussed. At present it is sufficient to say that the placing an armed cruiser at the mouth of a harbour in which United States' fishing-vessels are accustomed and are entitled to seek shelter on their voyages, such cruiser being authorized to arrest and board our fishing-vessels seeking such shelter, is an infraction not merely of the law of nations, but of a solemn Treaty stipulation. That, so far as concerns the fishermen so affected, its consequences are far-reaching and destructive, it is not necessary here to argue. Fishing-vessels only carry provisions enough for each particular voyage; if they are detained several days on their way to the fishing-banks, the venture is broken up. The arrest and detention of one or two operates upon all. They cannot, as a class, with their limited capital and resources, afford to run risks so ruinous. Hence, rather than subject themselves to even the chances of suffering the wrongs inflicted by Captain Quigley, "of the Canadian cruiser *Terror*," on some of their associates, they might prefer to abandon their just claim to the shelter consecrated to them alike by humanity, ancient title, the law of nations, and by Treaty, and face the gravest peril and the wildest seas in order to reach their fishing-grounds. You will therefore represent to her Majesty's Government that the placing Captain Quigley in the harbour of Shelburne to inflict wrongs and humiliation on United States' fishermen there seeking shelter is, in connection with other methods of annoyance and injury, expelling United States' fishermen from waters access to which, of great importance in the

pursuit of their trade, is pledged to them by Great Britain, not merely as an ancient right, but as part of a system of international settlement.

It is impossible to consider such a state of things without grave anxiety. You can scarcely represent this too strongly to her Majesty's Government.

It must be remembered, in considering this system, so imperilled, that the preliminaries to the Article of 1782, afterwards adopted as the Treaty of 1783, were negotiated at Paris by Dr. Franklin, representing the United States, and Mr. Richard Oswald, representing Lord Shelburne, then Colonial Secretary, and afterwards, when the Treaty was finally agreed on, Prime Minister. It must be remembered also that Lord Shelburne, while maintaining the rights of the Colonies when assailed by Great Britain, was nevertheless unwilling that their independence should be recognized prior to the Treaty of Peace, as if it were a concession wrung from Great Britain by the exigencies of war. His position was that this recognition should form part of a Treaty of Partition, by which, as is stated by the Court in Sutton *v.* Sutton, 1 Rus. and M. 675, already noticed by me, the two great sections of the British Empire agreed to separate, in their Articles of Separation recognizing to each other's citizens or subjects certain territorial rights. Thus the continuance of the rights of the United States in the fisheries was recognized and guaranteed; and it was also declared that the navigation of the Mississippi, whose sources were, in the imperfect condition of geographical knowledge of that day, supposed to be in British territory, should be free and open to British subjects and to citizens of the United States. Both Powers, also, agreed that there should be no further prosecutions or confiscations based on the war; and in this way were secured the titles to property held in one country by persons remaining loyal to the other.

This was afterwards put in definite shape by the following Article (Article X.) of Jay's Treaty :—

"It is agreed that British subjects who now hold lands in the Territories of the United States, and American citizens who now hold lands in the Dominion of his Majesty, shall continue to hold them according to the nature and tenure of their respective estates and titles therein, and may grant, sell, or devise the same to whom they please, in like manner as if they were natives; and that neither they nor their heirs or assigns shall, so far as may respect the said lands and the legal remedies incident thereto, be regarded as aliens."

It was this Article which the Court, in Sutton *v.* Sutton, above referred to, held to be one of the incidents of the "separation" of 1783, of perpetual obligation unless rescinded by the parties, and hence not abrogated by the war of 1812.

It is not, however, on the continuousness of the reciprocities recognized by the Treaty of 1783 that I desire now to dwell. What I am anxious you should now impress upon the British Government is the fact that, as the fishery clause in this Treaty, a clause continued in the Treaty of 1818, was a part of a system of reciprocal recognitions which are interdependent, the abrogation of this clause, not by consent, but by acts of violence and of insult such as those of the Canadian cruiser *Terror*, would be fraught with consequences which I am sure could not be contemplated by the Governments of the United States and Great Britain without immediate action being taken to avert them. To the extent of the system thus assailed I now direct attention.

When Lord Shelburne and Dr. Franklin negotiated the Treaty of Peace, the area on which its recognitions were to operate was limited. They covered, on the one hand, the

fisheries; but the Map of Canada in those days, as studied by Lord Shelburne, gives but a very imperfect idea of the Territory near which the fisheries lay. Halifax was the only port of entry on the coast; the New England States were there, and the other nine provinces, but no organized Governments to the west of them. It was on this area only, as well as on Great Britain, that the recognitions and guarantees of the Treaty were at first to operate. Yet, comparatively small as this field may now seem, it was to the preservation over it of certain reciprocal rights that the attention of the negotiators was mainly given. And the chief of these rights were—(1) the fisheries, a common enjoyment in which both parties took nothing from the property of either; and (2) the preservation to the citizens or subjects of each country of title to property in the other.

Since Lord Shelburne's Premiership this system of reciprocity and mutual convenience has progressed under the Treaties of 1842 and 1846, so as to give to her Majesty's subjects, as well as to citizens of the United States, the free use of the River Detroit, on both sides of the Island Bois Blanc, and between that island and the American and Canadian shores, [illegible] all the several channels and passages between the various islands lying near the junction of the River St. Clair with the lake of that name. By the Treaty of 1846, the principle of common border privileges was extended to the Pacific Ocean. The still existing commercial Articles of the Treaty of 1871 further amplified those mutual benefits, by embracing the use of the inland waterways of either country, and defining enlarged privileges of bonded transit by land and water through the United States for the benefit of the inhabitants of the Dominion. And not only by Treaties has the development of her Majesty's American dominion, especially to the westward, been aided by the United States, but the vigorous contemporaneous

growth under the enterprise and energy of citizens of the North-western States and territories of the United States has been productive of almost equal advantages to the adjacent possessions of the British Crown ; and the favouring legislation by Congress has created benefits in the way of railway facilities, which, under the sanction of State Laws, have been, and are freely and beneficially enjoyed by the inhabitants of the Dominion and their Government.

Under this system of energetic and co-operative development the Coast of the Pacific has been reached by the transcontinental lines of railway within the territorial limits of the respective countries, and as I have stated, the United States being the pioneers in this remarkable progress, have been happily able to anticipate and incidentally to promote the subsequent success of their neighbours in British America.

It will be scarcely necessary for you to say to Lord Iddesleigh that the United States, in thus aiding in the promotion of the prosperity, and in establishing the security of her Majesty's Canadian dominions, claims no particular credit. It was prompted, in thus opening its Territory to Canadian use, and incidentally for Canadian growth, in large measure by the consciousness that such good offices are part of a system of mutual convenience and advantage, growing up under the Treaties of Peace, and assisted by the natural forces of friendly contiguity. Therefore it is that we witness with surprise and painful apprehension the United States' fishermen hampered in their enjoyment of their undoubted rights in the fisheries.

The hospitalities of Canadian coasts and harbours, which are ours by ancient right, and which these Treaties confirm, cost Canada nothing, and are productive of advantage to her people. Yet, in defiance of the most solemn obligations, in utter disregard of the facilities and assistances granted by the United States, and in a way especially irritating, a deliberate

plan of annoyances and aggressions has been instituted and plainly exhibited during the last fishing season, a plan calculated to drive these fishermen from shores where. without injury to others, they prosecute their own legitimate and useful industry.

It is impossible not to see that if the unfriendly and unjust system, of which the cases now presented are part, is sustained by her Majesty's Government, serious results will almost necessarily ensue, great as is the desire of this Government to maintain the relations of good neighbourhood. Unless her Majesty's Government shall effectually check these aggressions, a general conviction on the part of the people of the United States may naturally be apprehended that, as Treaty stipulations in behalf of our fishermen, based on their ancient rights, cease to be respected, the maintenance of the comprehensive system of mutual commercial accommodation between Canada and the United States could not reasonably be expected.

In contemplation of so unhappy and undesirable a condition of affairs, I express the earnest hope that her Majesty's Government will take immediate measures to avert its possibility.

With no other purpose than the preservation of peace and good-will, and the promotion of international amity, I ask you to represent to the statesmen charged with the administration of her Majesty's Government the necessity of putting an end to the action of Canadian officials in excluding American fishermen from the enjoyment of their Treaty rights in the harbours and waters of the maritime provinces of British North America.

The action of Captain Quigley in hauling down the flag of the United States from the *Marion Grimes* has naturally aroused much resentment in this country, and has been made the subject of somewhat excited popular comment; and it is wholly impossible to account for so extraordinary and un-

warranted an exhibition of hostility and disrespect by that official. I must suppose that only his want of knowledge of what is due to international comity and propriety, and overheated zeal as an officer of police, could have permitted such action; but I am confident that, upon the facts being made known by you to her Majesty's Government, it will at once be disavowed, a fitting rebuke be administered, and the possibility of a repetition of Captain Quigley's offence be prevented.

It seems hardly necessary to say that it is not until after condemnation by a Prize Court that the national flag of a vessel seized as a prize of war is hauled down by her captor. Under the 14th section of the 20th chapter of the Navy Regulations of the United States, the Rule in such cases is laid down as follows:—

"A neutral vessel, seized, is to wear the flag of her own country until she is adjudged to be a lawful prize by a competent Court."

But, *à fortiori*, is this principle to apply in cases of Customs seizures, where fines only are imposed and where no belligerency whatever exists. In the port of New York, and other of the countless harbours of the United States, are merchant-vessels to-day flying the British flag which from time to time are liable to penalties for violation of Customs Laws and Regulations. But I have yet to learn that any official assuming, directly or indirectly, to represent the Government of the United States, would, under such circumstances, order down, or forcibly haul down, the British flag from a vessel charged with such irregularity; and I now assert that if such act were committed, this Government, after being informed of it, would not wait for a complaint from Great Britain, but would at once promptly reprimand the parties concerned in such misconduct, and would cause proper expression of regret to be made.

A scrupulous regard for international respect and courtesy should mark the intercourse of the officials of these two

great and friendly nations, and anything savouring of the contrary should be unhesitatingly and emphatically rebuked. I cannot doubt that these views will find ready acquiescence from those charged with the administration of the Government of Great Britain.

You are at liberty to make Lord Iddesleigh acquainted with the contents of this letter, and, if desired, leave with him a copy.

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

No. 38.

MR. PHELPS TO THE MARQUIS OF SALISBURY.

(Received January 29.)

Legation of the United States, London,
January 26, 1887.

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

It is not without surprise that I have read Lord Iddesleigh's remark in the note above mentioned, referring to the Treaty of 1818, that her Majesty's Government "have not as yet been informed in what respect the construction placed upon that instrument by the Government of the United States differs from their own." Had his Lordship perused more attentively my note to his predecessor in

office, Lord Rosebery, under date of the 2nd June, 1886, to which reference was made in my note to Lord Iddesleigh of the 11th September, 1886,[1] I think he could not have failed to apprehend distinctly the construction of that Treaty for which the United States' Government contends, and the reasons and arguments upon which it is founded. I have again respectfully to refer your Lordship to my note to Lord Rosebery of the 2nd June, 1886, for a very full, and I hope clear, exposition of the ground taken by the United States' Government on that point. It is unnecessary to repeat it, and I am unable to add to it.

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

It is true, beyond question, that when a private vessel is seized for an alleged infraction of the laws of the country in which the seizure takes place, and the fact of the infraction or the exact legal construction of the local Statute claimed to be transgressed is in dispute, and is in process of determination by the proper tribunal, the Government to which the vessel belongs will not usually interfere in advance of such determination, and before acquiring the information on which it depends. And especially when it is not yet

[1] *Vide ante*, p. 77.

informed whether the conduct of the officer making the seizure will not be repudiated by the Government under which he acts, so that interference will be unnecessary. This is all, in effect, that was said by Mr. Fish on that occasion. In language immediately following that quoted by Lord Iddesleigh, he remarks as follows (italics being mine):—

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

But in the present case, the facts constituting the alleged infraction by the vessel seized are not in dispute, except some circumstances of alleged aggravation not material to the validity of the seizure. The original ground of the seizure was the purchase by the master of the vessel of a small quantity of bait, from an inhabitant of Nova Scotia, to be used in lawful fishing. This purchase is not denied by the owners of the vessel. And the United States' Government insists, *first*, that such an act is not in violation of the Treaty of 1818; and, *second*, that no then existing Statute in Great Britain or Canada authorized any proceedings against the vessel for such an act, even if it could be regarded as in violation of the terms of the Treaty. And no such Statute has been as yet produced. In respect to the charge subsequently brought against the *Adams*, and upon which many other vessels have been seized, that of a technical violation of the Customs Act in omitting to report at the Custom-house, though having no business at the port

(and in some instances where the vessel seized was not within several miles of the landing), the United States' Government claim, while not admitting that the omission to report was even a technical transgression of the Act,—that even if it were, no harm having been done or intended, the proceedings against the vessels for an inadvertence of that kind were in a high degree harsh, unreasonable, and unfriendly. Especially as for many years no such effect has been given to the Act in respect to fishing-vessels, and no previous notice of a change in its construction had been promulgated.

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

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

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

the Courts of Nova Scotia must proceed in the pending litigation.

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

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

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

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

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

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

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

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

But what the United States' Government complain of in these cases, is that existing regulations have been construed with a technical strictness, and enforced with a severity, in cases of inadvertent and accidental violation where no harm was done, which is both unusual and unnecessary, whereby

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

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

Since the receipt of Lord Iddesleigh's note, the United States' Government has learned with grave regret that her Majesty's assent has been given to the Act of the Parliament of Canada, passed at its late Session, entitled, "An Act further to amend the Act respecting fishing by foreign vessels," which has been the subject of observation in the previous correspondence on the subject, between the Governments of the United States and of Great Britain. By the provisions of this Act, any foreign ship, vessel, or boat (whether engaged in fishing or not) found within any harbour in Canada, or within three marine miles of "any of the coasts, bays, or creeks of Canada," may be brought into port by any of the officers or persons mentioned in the Act, her cargo searched, and her master examined upon oath, touching the cargo and voyage, under a heavy penalty if the questions asked are not truly answered: and if such ship has entered such waters "*for any purpose* not permitted by

Treaty or Convention, or by law of the United Kingdom or of Canada for the time being in force, such ship, vessel. or boat, and the tackle, rigging, apparel, furniture, stores and cargo thereof shall be forfeited."

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

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

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

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

It is in the Act to which the one above referred to is an amendment that is found the provision to which I drew

attention in a note to Lord Iddesleigh of the 2nd December, 1886, by which it is enacted that in case a dispute arises as to whether any seizure has or has not been legally made, the burden of proving the illegality of the seizure shall be upon the owner or claimant.

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

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

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

It was with the earnest desire of obviating the impending difficulty, and of preventing collisions and dispute until such time as a permanent understanding between the two Governments could be reached, that I suggested on the part of the United States, in my note to Lord Iddesleigh of the 11th September, 1886, that an *ad interim* construction of the terms of the Treaty might be agreed on, to be carried

out by instructions to be given on both sides, without prejudice to the ultimate claims of either, and terminable at the pleasure of either. In an interview I had the honour to have with his Lordship, in which this suggestion was discussed, I derived the impression that he regarded it with favour. An outline of such an arrangement was therefore subsequently prepared by the United States' Government, which at the request of Lord Iddesleigh was submitted to him in my note of the 3rd December, 1886.

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

In view of the very grave questions that exist as to the extent of those rights, in respect to which the views of the United States' Government differ so widely from those insisted upon by her Majesty's Government, it does not seem to me an unreasonable proposal, that the two Governments, by a temporary and mutual concession without prejudice, should endeavour to reach some middle ground of *ad interim* construction by which existing friendly relations might be preserved until some permanent Treaty arrangements could be made.

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

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

I have, &c.

(Signed) E. J. Phelps.

No. 2 of 1887.

No. 1.

MR. PHELPS TO THE EARL OF IDDESLEIGH.

(Received December 4.)

Legation of the United States, London,
December 2, 1886.

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

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

brought forward in order to sustain proceedings commenced on a different charge and found untenable.

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

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

Conceiving that if the clause I have quoted from the Act of 1868 can have effect (if allowed any effect at all) only upon the charge on which the vessel was originally seized, and that seizure for one offence cannot be regarded as *primâ facie* evidence of guilt of another, the counsel for the owners of the vessel have applied to the prosecuting officers to be furnished with a copy of the Reports made to the Government of Canada in connection with the seizure of the vessel, either

by Captain Scott, the seizing officer, or by the Collector of Customs at Digby, in order that it might be known to the defendant, and be shown on trial, what the charges are on which the seizure was grounded, and which the defendant is required to disprove. This most reasonable request has been refused by the prosecuting officers.

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

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

No. 2.

MR. PHELPS TO THE EARL OF IDDESLEIGH.

(Received December 4.)

Legation of the United States, London,
December 3, 1886.

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

Meanwhile, I have the honour to transmit, in pursuance of the desire expressed by your Lordship in conversation on the 30th of November, a copy of an outline for a proposed *ad interim* arrangement[1] between the two Governments on

[1] This *ad interim* arrangement, not having been adopted, is omitted.

this subject, which has been prepared by the Secretary of State of the United States.

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

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

Inclosure 2 in No. 2.

MR. BAYARD TO MR. PHELPS.

Department of State, Washington,
November 15, 1886.

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

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

fishing by citizens of the United States was importantly injured.

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

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

To this end, and to insure to the inhabitants of the Dominion the efficient protection of the exclusive rights to their inshore fisheries, as provided by the Convention of 1818, as well as to prevent any abuse of the privileges reserved and guaranteed by that instrument for ever to the citizens of the United States engaged in fishing, and responding to the suggestion made to you by the Earl of Iddesleigh in the month of September last that a *modus vivendi* should be agreed upon between the two countries to prevent encroachment by American fishermen upon the Canadian inshore fisheries, and equally to secure them from all molestation when exercising only their just and ancient rights, I now inclose the draft of a Memorandum which you may propose to Lord Iddesleigh, and which, I trust, will be found to con-

tain a satisfactory basis for the solution of existing difficulties, and assist in securing an assured, just, honourable, and therefore mutually satisfactory settlement of the long-vexed question of the North Atlantic fisheries.

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

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

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

In proposing the adoption of a width of ten miles at the mouth as a proper definition of the bays in which, except on certain specified coasts, the fishermen of the United States are not to take fish, I have followed the example furnished by France and Great Britain in their Convention signed at Paris on the 2nd of August, 1839. This definition was referred to and approved by Mr. Bates, the Umpire of

the Commission under the Treaty of 1853, in the case of the United States' fishing-schooner *Washington*, and has since been notably approved and adopted in the Convention signed at the Hague in 1882, and subsequently ratified in relation to fishing in the North Sea between Germany, Belgium, Denmark, France, Great Britain, and the Netherlands.

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

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

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

put upon the lawful and regular business of open-sea fishing.

Arrangements now exist between the Governments of Great Britain and France and Great Britain and Germany for the submission in the first instance of all cases of seizure to the joint examination and decision of two discreet and able commanding officers of the navy of the respective countries whose vessels are to be sent on duty to cruise in the waters to be guarded against encroachment. Copies of these Agreements are herewith enclosed for reference. The additional feature of an Umpire, in case of a difference in opinion, is borrowed from the terms of Article I. of the Treaty of the 5th June, 1854, between the United States and Great Britain.

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

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

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

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

I am, &c.

(Signed) T. F. BAYARD.

THE CANADIAN CASE.

No. 1 *of* 1887.

Inclosure 3 in No. 37.

REPORT OF A COMMITTEE OF THE HONOURABLE THE PRIVY COUNCIL FOR CANADA, APPROVED BY HIS EXCELLENCY THE GOVERNOR-GENERAL IN COUNCIL ON THE 6TH APRIL, 1886.

THE Committee of the Privy Council have had under consideration a despatch, dated the 29th March, 1886, from her Majesty's Minister at Washington, informing your Excellency that the United States' Consul-General at Halifax was reported to have argued that there is nothing in the Convention of 1818 to prevent Americans, having caught fish in deep water and cured them, from landing them in a marketable condition at any Canadian port and transhipping them in bond to the United States either by rail or vessel, and that any refusal to permit such transhipment would be a violation of the general bonding arrangement between the two countries.

The Sub-Committee to whom the despatch in question was referred report that if the contention of the United States' Consul at Halifax is made in relation to American fishing-vessels, it is inconsistent with the Convention of 1818.

That they are of opinion, from the language of that Convention—"Provided, however, that the American fishermen shall be permitted to enter such bays or harbours for the purposes of shelter and of repairing damages therein, of purchasing wood, and of obtaining water, and for no other purpose whatever"—that, under the terms of the Convention, United States' fishermen may properly be precluded from entering any harbour of the Dominion for the purpose of transhipping cargoes, and that it is not material to the question that such fishermen may have been engaged in fishing outside of the "three-mile limit" exclusively, or that the fish which they may desire to have transhipped have been taken outside of such limit.

That to deny the right of transhipment would not be a violation of the general bonding arrangement between the two countries.

That no bonding arrangement has been made which, to any extent, limits the operation of the Convention of 1818, and, inasmuch as the right to have access to the ports of what is now the Dominion of Canada for all other purposes than those named, is explicitly renounced by the Convention, it cannot with propriety be contended that the enforcement of the stipulation above cited is contrary to the general provisions upon which intercourse is conducted between the two countries.

Such exclusion could not, of course, be enforced against United States' vessels not engaged in fishing.

The Sub-Committee in stating this opinion are not unmindful of the fact, that the responsibility of determining what is the true interpretation of a Treaty or Convention made by her Majesty must remain with her Majesty's Government, but in view of the necessity of protecting to the fullest extent the inshore fisheries of the Dominion according to the strict terms of the Convention of 1818, and in view of the failure

of the United States' Government to accede to any arrangements for the mutual use of the inshore fisheries, the Sub-Committee recommend that the claim which is reported to have been set up by the United States' Consul-General at Halifax be resisted.

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

(Signed) JOHN J. McGEE,
Clerk, Privy Council for Canada.

No. 38.

SIR L. WEST TO THE EARL OF ROSEBERY.
(Received April 26.)

Washington, April 14, 1886.

MY LORD,—I have the honour to inclose to your Lordship herewith the report of the debate in the Senate on the Resolution against the appointment of a Commission for the settlement of the Fisheries question as recommended by the President in his Message to Congress. The Resolution was adopted by a vote of 35 to 10.

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

No. 39.

MR. BRAMSTON TO SIR P. CURRIE.
(Received April 30.)

Downing Street, April 30, 1886.

SIR,—With reference to previous correspondence respecting the North American Fisheries question, I am directed by

Earl Granville to transmit to you, to be laid before the Ear of Rosebery, a copy of a further despatch, with its inclosures, from the Governor-General of Canada on the subject.

I am, &c.

(Signed) JOHN BRAMSTON.

Inclosure 1 in No. 39.

THE MARQUIS OF LANSDOWNE TO EARL GRANVILLE.

Government House, Ottawa,
April 6, 1886.

MY LORD,—I have the honour to inclose herewith a copy of an approved Report of a Committee of the Privy Council upon a despatch which I received on the 2nd instant from her Majesty's Minister at Washington (and of which a copy is herewith inclosed), informing me that the United States' Consul-General at Halifax was reported to have argued that, under the Convention of 1818, it was open to American fishermen to land—cured and in a marketable condition—fish which had been caught outside the three-mile limit at any Canadian port, and to tranship the same in bond to the United States by rail or vessel, and that any refusal to permit such transhipment would be a violation of the general bonding arrangement between the two countries. It does not appear from Sir Lionel West's despatch that this statement was made officially, or that it has been supported by the Government of the United States. As, however, the matter is one to which further reference may be made, it is desirable that the views of my Government in regard to it should be placed on record.

2. The Report of the Privy Council contains an explanation of the reasons for which it is believed that, under the

terms of the Convention, American fishermen are absolutely excluded from admission to Canadian bays or harbours, except for the purposes of shelter and repairing damages therein, or of purchasing wood and obtaining water. The arrangements in force between the two countries for the transhipment of goods in bond—arrangements which depend in the main upon the Customs Laws of the two countries—cannot, therefore, be regarded as in any sense restricting the operation of the Convention. It should, moreover, be remembered that these bonding arrangements are the same as those which obtained between the two countries after the expiration of the Reciprocity Treaty of 1854, and I am not aware that between that date and the date of the Treaty of 1871 any claims such as those now made by the Consul-General at Halifax were preferred on the part of the United States' Government.

3. Your Lordship will, however, clearly understand that, although it is thought necessary to enforce strictly against American fishing-vessels a restriction which was framed with the express purpose of affording protection to the fisheries of the British Colonies, that restrictiom would not be applicable to vessels not themselves engaged in fishing, but visiting Canadian ports in the ordinary course of trade.

I have, &c.

(Signed) LANSDOWNE.

No. 52.

MR. PHELPS TO THE EARL OF ROSEBERY.

(Received June 1.)

Legation of the United States, London,
June 1, 1886.

MY LORD,—I have the honour to inclose, for your perusal,

a copy of the translation of a cypher telegram which I have just received from the Secretary of State of the United States, and respectfully to ask your early attention to the subject it refers to.

I shall have the honour to submit to your Lordship in writing, in behalf of my Government, within two or three days, some observations on the questions involved.

I have, &c.

(Signed) E. J. PHELPS.

Inclosure in No. 52.

MR. BAYARD TO MR. PHELPS.

(Telegraphic.) May 30, 1886.

CALL attention of Lord Rosebery immediately to Bill No. 136 now pending in the Parliament of Canada, assuming to execute Treaty of 1818; also Circular No. 371, by Johnson, Commissioner of Customs, ordering seizure of vessels for violation of Treaty. Both are arbitrary and unwarranted assumptions of power against which you are instructed earnestly to protest, and state that the United States will hold Government of Great Britain responsible for all losses which may be sustained by American citizens in the dispossession of their property growing out of the search, seizure, detention, or sale of their vessels lawfully within territorial waters of British North America.

No. 54.

THE EARL OF ROSEBERY TO SIR L. WEST.

Foreign Office, June 2, 1886.

SIR,—The American Minister informed me to-day, in the

course of conversation, that he was at this moment preparing a Statement of the American contention with regard to the recent seizures under the terms of the Convention of 1818. He entered into a long argument to show that seizure was not provided for by law as a penalty for the infraction of this clause; that what was provided for was a punishment for American vessels fishing within the forbidden limits. He said that his Government could not admit the interpretation which apparently was accepted by the Canadian Government, and he mentioned the fact that in any case the American fishermen had no notice of the action that was going to be taken. As to the latter point, I replied that that was not the fault of her Majesty's Government. On the 18th March I had telegraphed to you to ask you to request the Secretary of State to issue a Notice such as we were about to issue to Canadian fishermen, and he had declined to do so. Mr. Phelps was not aware of this. I went on to say that the view of the American Government appeared to be this: "You are to accept our interpretation of the Treaty, whether it be yours or not, and in any case we will not negotiate with you." I said that that was not a tenable proposition. Mr. Phelps said that it was quite true that his Government, owing to circumstances of which I was aware, had not been able to negotiate, but, as regarded the Treaty, he felt sure that he would be able to convince me that the American interpretation was correct. I said that, as regards the circumstances to which he had alluded, we had only to look to the United States' Government, and could not look beyond it. He would remember that at almost our first interview on my accession to office I had proposed to him to endeavour to procure the continuation of the recent arrangement for a year, although that arrangement was disadvantageous to Canada in that it gave the United States all it wanted, and gave Canada nothing in return. We had also pressed on the

United States' Government the issue of a Joint Commission to investigate the matter, and that had also been refused Further, on the 24th May, I made a proposal, personally indeed, but with all the weight which my official character could give, that Canadian action should be suspended, and negotiations should commence, and to this I had received no reply. In these circumstances, I could not feel that her Majesty's Government had been wanting in methods of conciliation, and I begged him to send me his Statement of his case as quickly as possible, for in the meantime there was such unanimity among our Legal Advisers as to the interpretation of the Treaty of 1818 that I had nothing to submit to them. As regards the cases themselves, I had as yet no details, nor was I in possession of the Bill or of the Circular to which Mr. Bayard's recent telegram referred.

I am, &c.

(Signed) ROSEBERY.

No. 55.

MR. BRAMSTON TO SIR J. PAUNCEFOTE.

(Received June 2.)

(Extract.) Downing Street, June 2, 1886.

WITH reference to previous correspondence respecting the North American Fisheries question, I am directed by Earl Granville to transmit to you, to be laid before the Earl of Rosebery, a copy of a despatch from the Governor-General of Canada, forwarding a copy of a Bill recently introduced into the Dominion House of Commons for the purpose of amending the Act 31 Viet., cap. 61, respecting fishing by foreign vessels in the territorial waters of the Dominion.

No. 78.

THE EARL OF ROSEBERY TO SIR L. WEST.

Foreign Office, July 23, 1886.

SIR,—I have received your despatch of the 11th May last, inclosing a copy of a note addressed to you by Mr. Bayard, in which, whilst expressly referring to the seizure by the Canadian authorities of the American fishing-vessels *Joseph Story* and *David J. Adams*, he discusses at length the present position of the North American Fisheries question.

I have also received a communication upon the same subject from the United States' Minister at this Court, dated the 2nd June last, which, although advancing arguments of a somewhat different character, is substantially addressed to the consideration of the same question.

I think it therefore desirable to reply to these two communications together in the present despatch, of which I shall hand a copy to Mr. Phelps.

The matter is one involving the gravest interests of Canada; and upon receipt of the communications above mentioned, I lost no time in requesting the Secretary of State for the Colonies to obtain from the Government of the Dominion an expression of their views thereon. I now inclose a copy of an approved Report of the Canadian Privy Council, in which the case of Canada is so fully set forth that I think it would be desirable, as a preliminary step to the further discussion of the questions involved in this controversy, to communicate a copy of it to Mr. Bayard, as representing the views of the Dominion Government; and I have to request that, in so doing, you will state that her Majesty's Government will be glad to be favoured with any observations which Mr. Bayard may desire to make thereon.

In regard to those portions of Mr. Phelps' note of the 2nd June, in which he calls in question the competence of the Canadian authorities under existing Statutes, whether Imperial or Colonial, to effect seizures of United States' fishing-vessels under circumstances such as those which appear to have led to the capture of the *David J. Adams*, I have to observe that her Majesty's Government do not feel themselves at present in a position to discuss that question, which is now occupying the attention of the Courts of Law in the Dominion, and which may possibly form the subject of an appeal to the Judicial Committee of her Majesty's Privy Council in England.

It is believed that the Courts in Canada will deliver Judgment in the above cases very shortly; and until the legal proceedings now pending have been brought to a conclusion, her Majesty's Government do not feel justified in expressing an opinion upon them, either as to the facts or the legality of the action taken by the Colonial authorities.

I do not, therefore, conceive it to be at present necessary to make any specific reply to Mr. Bayard's further notes of the 11th and 12th May and 1st, 2nd, and 7th June last. But with regard to his note of the 20th May relative to the seizure of the United States' fishing-vessel *Jennie and Julia*, I inclose, for communication to Mr. Bayard, a copy of a Report from the Canadian Minister of Marine and Fisheries, dealing with this case.

I cannot, however, close this despatch without adding that her Majesty's Government entirely concur in that passage of the Report of the Canadian Privy Council, in which it is observed that "if the provisions of the Convention of 1818 have become inconvenient to either Contracting Party, the utmost that good-will and fair dealing can suggest is that the terms shall be reconsidered."

It is assuredly from no fault on the part of her Majesty's Government that the question has now been relegated to the terms of the Convention of 1818. They have not ceased to express their anxiety to commence negotiations, and they are now prepared to enter upon a frank and friendly consideration of the whole question with the most earnest desire to arrive at a settlement consonant alike with the rights and interests of Canada and of the United States.

Where, as in the present case, conflicting interests are brought into antagonism by Treaty stipulations the strict interpretation of which has scarcely been called in question, the matter appears to her Majesty's Government to be pre-eminently one for friendly negotiation.

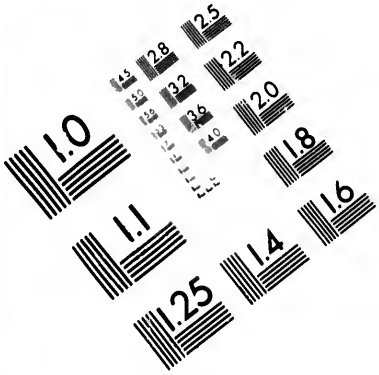
I am, &c.
(Signed) ROSEBERY.

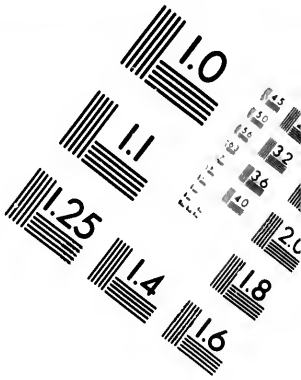
Inclosure 1 in No. 78.

REPORT OF A COMMITTEE OF THE HONOURABLE THE PRIVY COUNCIL FOR CANADA, APPROVED BY HIS EXCELLENCY THE GOVERNOR-GENERAL ON THE 14TH JUNE, 1886.

THE Committee of the Privy Council have had under consideration a Report from the Minister of Marine and Fisheries upon the communications dated 10th and 20th May last from the Hon. Mr. Bayard, Secretary of State of the United States, to her Majesty's Minister at Washington, in reference to the seizure of the American fishing-vessel *David J. Adams.*

The Committee concur in the annexed Report, and they advise that your Excellency be moved to transmit a copy thereof to the Right Hon. the Secretary of State for the Colonies.





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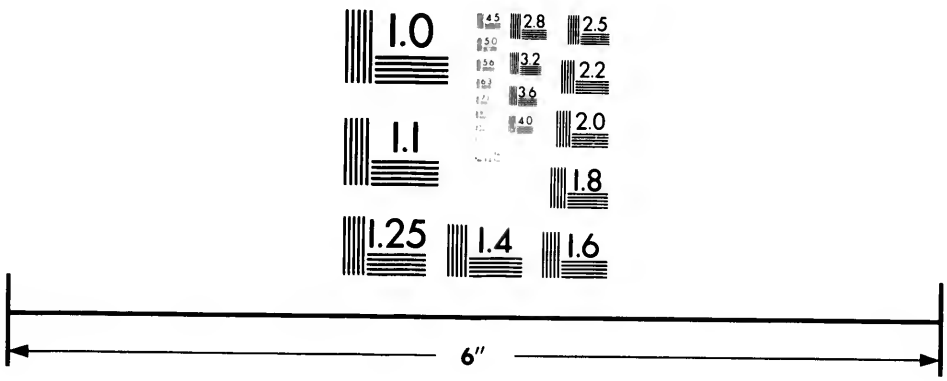

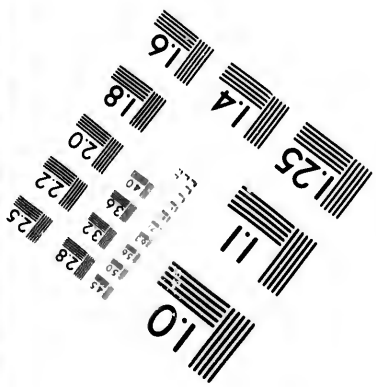

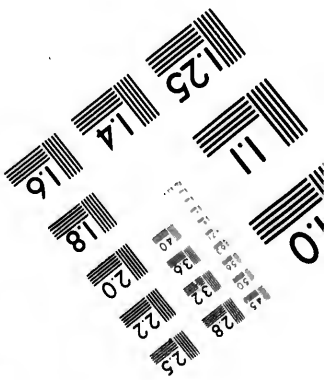

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All of which is respectfully submitted for your Excellency's approval.

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

The undersigned having had his attention called by your Excellency to a communication from Mr. Bayard, Secretary of State of the United States, dated the 10th May, and addressed to her Majesty's Minister at Washington, and to a further communication from Mr. Bayard, dated the 20th May instant, in reference to the seizure of the American fishing-vessel *David J. Adams*, begs leave to submit the following observations thereon :—

Your Excellency's Government fully appreciates and reciprocates Mr. Bayard's desire that the Administration of the laws regulating the commercial interests and the mercantile marine of the two countries might be such as to promote good feeling and mutual advantage.

Canada has given many indisputable proofs of an earnest desire to cultivate and extend her commercial relations with the United States, and it may not be without advantage to recapitulate some of those proofs.

For many years before 1854 the Maritime Provinces of British North America had complained to her Majesty's Government of the continuous invasion of their inshore fisheries (sometimes accompanied, it was alleged, with violence) by American fishermen and fishing-vessels.

Much irritation naturally ensued, and it was felt to be expedient by both Governments to put an end to this unseemly state of things by Treaty, and at the same time to arrange for enlarged trade relations between the United States and the British North American Colonies. The Reciprocity Treaty of 1854 was the result, by which were

not only our inshore fisheries opened to the Americans, but provision was made for the free interchange of the principal natural products of both countries, including those of the sea. Peace was preserved on our waters, and the volume of international trade steadily increased during the existence of this Treaty, and until it was terminated in 1866, not by Great Britain, but by the United States.

In the following year Canada (then become a Dominion and united to Nova Scotia and New Brunswick) was thrown back on the Convention of 1818, and obliged to fit out a Marine Police to enforce the laws and defend her rights, still desiring, however, to cultivate friendly relations with her great neighbour, and not too suddenly to deprive the American fishermen of their accustomed fishing-grounds and means of livelihood. She readily acquiesced in the proposal of her Majesty's Government for the temporary issue of annual licences to fish, on payment of a moderate fee. Your Excellency is aware of the failure of that scheme. A few licences were issued at first, but the applications for them soon ceased, and the American fishermen persisted in forcing themselves into our waters, "without leave or licence."

Then came the recurrence, in an aggravated form, of all the troubles which had occurred anterior to the Reciprocity Treaty. There were invasions of our waters, personal conflicts between our fishermen and American crews, the destruction of nets, the seizure and condemnation of vessels, and intense consequent irritation on both sides.

This was happily put an end to by the Washington Treaty of 1871. In the interval between the termination of the first Treaty and the ratification of that by which it was eventually replaced, Canada on several occasions pressed, without success, through the British Minister at Washington, for a renewal of the Reciprocity Treaty, or for the negotiation of another on a still wider basis.

When in 1874 Sir Edward Thornton, then British Minister at Washington, and the late Hon. George Brown, of Toronto, were appointed joint Plenipotentiaries for the purpose of negotiating and concluding a Treaty relating to fisheries, commerce, and navigation, a Provisional Treaty was arranged by them with the United States' Government, but the Senate decided that it was not expedient to ratify it, and the negotiation fell to the ground.

The Treaty of Washington, while it failed to restore the provisions of the Treaty of 1854, for reciprocal free trade (except in fish), at least kept the peace, and there was tranquillity along our shores until July 1885, when it was terminated again by the United States' Government and not by Great Britain.

With a desire to show that she wished to be a good neighbour, and in order to prevent loss and disappointment on the part of the United States' fishermen by their sudden exclusion from her waters in the middle of the fishing season, Canada continued to allow them for six months all the advantages which the rescinded Fishery Clauses had previously given them, although her people received from the United States none of the corresponding advantages which the Treaty of 1871 had declared to be an equivalent for the benefits secured thereby to the American fishermen.

The President, in return for this courtesy, promised to recommend to Congress the appointment of a Joint Commission by the two Governments of the United Kingdom and the United States to consider the Fishery question, with permission also to consider the whole state of the trade relations between the United States and Canada.

This promise was fulfilled by the President, but the Senate rejected his recommendation and refused to sanction the Commission.

Under these circumstances Canada, having exhausted every effort to procure an amicable arrangement, has been

driven again to fall back upon the Convention of 1818, the provisions of which she is now enforcing and will enforce, in no punitive or hostile spirit as Mr. Bayard supposes, but solely in protection of her fisheries, and in vindication of the right secured to her by Treaty.

Mr. Bayard suggests that "the Treaty of 1818 was between two nations, the United States of America and Great Britain, who, as the Contracting Parties, can alone apply authoritative interpretation thereto, and enforce its provisions by appropriate legislation."

As it may be inferred from this statement that the right of the Parliament of Canada to make enactments for the protection of the fisheries of the Dominion, and the power of the Canadian officers to protect those fisheries, are questioned, it may be well to state at the outset the grounds upon which it is conceived by the Undersigned that the jurisdiction in question is clear beyond a doubt.

1. In the first place the Undersigned would ask it to be remembered that the extent of the jurisdiction of the Parliament of Canada is not limited (nor was that of the provinces before the Union) to the sea coast, but extends for three marine miles from the shore as to all matters over which any legislative authority can in any country be exercised within that space. The legislation which has been adopted on this subject by the Parliament of Canada (and previously to confederation by the provinces) does not reach beyond that limit. It may be assumed that, in the absence of any Treaty stipulation to the contrary, this right is so well recognized and established by both British and American law that the grounds on which it is supported need not be stated here at large; the Undersigned will merely add, therefore, to this statement of the position, that so far from the right being limited by the Convention of 1818, that Convention expressly recognizes it.

After renouncing the liberty to "take, cure, or dry fish on

or within three marine miles of any of the coasts, bays, creeks, or harbours of his Majesty's dominions in America," there is a stipulation that while American fishing-vessels shall be admitted to enter such bays, &c., "for the purpose of shelter and of repairing damages therein, of purchasing wood, and of obtaining water, they shall be under such restrictions as may be necessary to prevent their taking, curing, or drying fish therein, or in any other manner whatever abusing the privileges reserved to them."

2. Appropriate legislation on this subject was, in the first instance, adopted by the Parliament of the United Kingdom. The Imperial Statute 59 Geo. III., cap. 38, was enacted in the year following the Convention, in order to give that Convention force and effect. That Statute declared that, except for the purposes before specified, it should "not be lawful for any person or persons, not being a natural born subject of his Majesty, in any foreign ship, vessel, or boat, nor for any person in any ship. vessel, or boat, other than such as shall be navigated according to the laws of the United Kingdom of Great Britain and Ireland, to fish for, or to take, dry, or cure any fish of any kind whatever, within three marine miles of any coasts, bays, creeks, or harbours whatever, in any part of his Majesty's dominions in America not included within the limits specified and described in the 1st Article of the said Convention, and that if such foreign ship, vessel, or boat, or any person or persons on board thereof shall be found fishing, or to have been fishing, or preparing to fish within such distance of such coasts, bays, creeks, or harbours within such part of his Majesty's dominions in America, out of the said limits as aforesaid, all such ships, vessels, and boats, together with their cargoes, and all guns, ammunition, tackle, apparel, furniture, and stores, shall be forfeited, and shall and may be seized, taken, sued for, prosecuted, recovered, and condemned by such and the like ways, means, and methods, and in the same Courts as

ships, vessels, or boats may be forfeited, seized, prosecuted, and condemned for any offence against any laws relating to the Revenue of Customs, or the laws of trade and navigation, under any Act or Acts of the Parliament of Great Britain or the United Kingdom of Great Britain and Ireland, provided that nothing contained in this Act shall apply or be construed to apply to the ships or subjects of any Prince, Power, or State in amity with his Majesty who are entitled by Treaty with his Majesty to any privileges of taking, drying, or curing fish on the coasts, bays, creeks, or harbours, or within the limits in this Act described. Provided always, that it shall and may be lawful for any fishermen of the said United States to enter into such bays or harbours of his Britannic Majesty's dominions in America as are last mentioned, for the purpose of shelter and repairing damages therein, of purchasing wood, and of obtaining water, and for no other purpose whatever, subject nevertheless to such restrictions as may be necessary to prevent such fishermen of the said United States from taking, drying, or curing fish in the said bays or harbours, or in any other manner whatever, abusing the said privileges by the said Treaty, and this Act reserved to them, and as shall, for that purpose, be imposed by any order or orders to be from time to time made by his Majesty in Council under the authority of this Act, and by any Regulations which shall be issued by the Governor or person exercising the office of Governor in any such parts of his Majesty's dominions in America, under or in pursuance of any such order in Council as aforesaid.

And that if any person or persons upon requisition made by the Governor of Newfoundland, or the person exercising the office of Governor, or by any Governor in person exercising the office of Governor in any other parts of his Majesty's dominions in America, as aforesaid, or by any officer or officers acting under such Governor or person exercising the

office of Governor, in the execution of any orders or instructions from his Majesty in Council, shall refuse to depart from such bays or harbours, or if any person or persons shall refuse, or neglect to conform to any Regulations or directions which shall be made or given for the execution of any of the purposes of this Act, every such person so refusing or otherwise offending against this Act shall forfeit the sum of two hundred pounds, to be recovered in the Superior Court of Judicature of the Island of Newfoundland, or in the Superior Court of Judicature of the Colony or Settlement within or near to which such offence shall be committed, or by bill, plaint, or information in any of his Majesty's Courts of Record at Westminster, one moiety of such penalty to belong to his Majesty, his heirs, and successors, and the other moiety to such person or persons as shall sue or prosecute for the same."

The Acts passed by the provinces now forming Canada, and also by the Parliament of Canada (now noted in the margin) [1] are to the same effect, and may be said to be merely declaratory of the law as established by the Imperial Statute.

3. The authority of the Legislatures of the provinces, and after confederation the authority of the Parliament of Canada, to make enactments to enforce the provisions of the Convention, as well as the authority of Canadian officers to enforce those Acts, rests on well-known Constitutional principles.

Those Legislatures existed, and the Parliament of Canada now exists, by the authority of the Parliament of the United Kingdom of Great Britain and Ireland, which is one of the nations referred to by Mr. Bayard as the "Contracting

1 Dominion Acts, 31 Vict., cap. 6; 33 Vict., cap. 16. now incorporated in Revised Statutes of 1886, cap. 90. Nova Scotia Acts, Revised Statutes, 3rd series, cap. 94, 29 Vict. (1866), cap. 35. New Brunswick Acts, 16 Vict. (1853), cap. 69. Prince Edward Island Act, 6 Vict. (1843), cap. 14.

Parties." The Colonial Statutes have received the sanction of the British Sovereign, who, and not the nation, is actually the party with whom the United States made the Convention. The officers who are engaged in enforcing the Acts of Canada or the laws of the Empire, are her Majesty's officers, whether their authority emanates directly from the Queen, or from her Representative, the Governor-General. The jurisdiction thus exercised cannot therefore be properly described in the language used by Mr. Bayard as a supposed and therefore questionable delegation of jurisdiction by the Imperial Government of Great Britain. Her Majesty governs in Canada as well as in Great Britain; the officers of Canada are her officers; the Statutes of Canada are her Statutes, passed on the advice of her Parliament sitting in Canada.

It is, therefore, an error to conceive that because the United States and Great Britain were, in the first instance, the Contracting Parties to the Treaty of 1818, no question arising under that Treaty can be "responsibly dealt with," either by the Parliament, or by the authorities of the Dominion.

The raising of this objection now is the more remarkable, as the Government of the United States has long been aware of the necessity of reference to the Colonial Legislatures in matters affecting their interests.

The Treaties of 1854 and 1871 expressly provide that, so far as they concerned the fisheries or trade relations with the provinces, they should be subject to ratification by their several Legislatures; and seizures of American vessels and goods, followed by condemnation for breach of the Provincial Customs Laws, have been made for forty years without protest or objection on the part of the United States' Government.

The Undersigned, with regard to this contention of Mr. Bayard, has further to observe that in the proceedings which have recently been taken for the protection of the fisheries,

no attempt has been made to put any special or novel interpretation on the Convention of 1818. The seizures of the fishing-vessels have been made in order to enforce the explicit provisions of that Treaty, the clear and long-established provisions of the Imperial Statute and of the Statutes of Canada expressed in almost the same language.

The proceedings which have been taken to carry out the law of the Empire in the present case are the same as those which have been taken from time to time during the period in which the Convention has been in force, and the seizures of vessels have been made under process of the Imperial Court of Vice-Admiralty established in the provinces of Canada.

Mr. Bayard further observes that since the Treaty of 1818, "a series of Laws and Regulations affecting the trade between the North American provinces and the United States have been respectively adopted by the two countries, and have led to amicable and mutually beneficial relations between their respective inhabitants," and that "the independent and yet concurrent action of the two Governments has effected a gradual extension from time to time of the provisions of Article I. of the Convention of the 3rd July, 1815, providing for reciprocal liberty of commerce between the United States and the territories of Great Britain in Europe, so as gradually to include the colonial possessions of Great Britain in North America and the West Indies within the limits of that Treaty."

The Undersigned has not been able to discover, in the instances given by Mr. Bayard, any evidence that the Laws and Regulations affecting the trade between the British North American provinces and the United States, or that "the independent and yet concurrent action of the two Governments" have either extended or restricted the terms of the Convention of 1818, or affected in any way the right

to enforce its provisions according to the plain meaning of the Articles of the Treaty; on the contrary, a reference to the XVIIIth Article of the Washington Treaty will show that the Contracting Parties made the Convention the basis of the further privileges granted by the Treaty, and it does not allege that its provisions are in any way extended or affected by subsequent legislation or Acts of Administration.

Mr. Bayard has referred to the Proclamation of President Jackson in 1830, creating "reciprocal commercial intercourse on terms of perfect equality of flag" between the United States and the British American dependencies, and has suggested that these "commercial privileges have since received a large extension, and that in some cases 'favours' have been granted by the United States without equivalent 'concession,' such as the exemption granted by the Shipping Act of the 26th June, 1884, amounting to one-half of the regular tonnage dues on all vessels from British North America and West Indies entering ports of the United States."

He has also mentioned under this head "the arrangement for the transit of goods, and the remission by Proclamation as to certain British ports and places of the remainder of the tonnage tax on evidence of equal treatment being shown" to United States' vessels.

The Proclamation of President Jackson in 1830 had no relation to the subject of the fisheries, and merely had the effect of opening United States' ports to British vessels on terms similar to those which had already been granted in British ports to vessels of the United States. The object of these "Laws and Regulations" mentioned by Mr. Bayard was purely of a commercial character, while the sole purpose of the Convention of 1818 was to establish and define the rights of the citizens of the two countries in relation to the fisheries on the British North American coast.

Bearing this distinction in mind however, it may be con-

ceded that substantial assistance has been given to the development of commercial intercourse between the two countries.

But legislation in that direction has not been confined to the Government of the United States, as indeed Mr. Bayard has admitted in referring to the case of the Imperial Shipping and Navigation Act of 1849.

For upwards of forty years, as has already been stated, Canada has continued to evince her desire for a free exchange of the chief products of the two countries. She has repeatedly urged the desirability of the fuller reciprocity of trade which was established during the period in which the Treaty of 1854 was in force.

The laws of Canada with regard to the registry of vessels, tonnage dues, and shipping generally, are more liberal than those of the United States. The ports of Canada in inland waters are free to vessels of the United States, which are admitted to the use of her canals on equal terms with Canadian vessels.

Canada allows free registry to ships built in the United States and purchased by British citizens, charges no tonnage or light-dues on United States' shipping, and extends a standing invitation for a large measure of reciprocity in trade by her tariff legislation.

Whatever relevancy, therefore, the argument may have to the subject under consideration, the Undersigned submits that the concessions which Mr. Bayard refers to as "favours" granted by the United States can hardly be said not to have been met by equivalent concessions on the part of the Dominion, and inasmuch as the disposition of Canada continues to be the same, as was evinced in the friendly legislation just referred to, it would seem that Mr. Bayard's charges of showing "hostility to commerce under the guise of protection to inshore fisheries," or of interrupting ordinary commercial

intercourse by harsh measures and unfriendly administration, is hardly justified.

The questions which were in controversy between Great Britain and the United States prior to 1818 related not to shipping and commerce, but to the claims of United States' fishermen to fish in waters adjacent to the British North American provinces.

Those questions were definitely settled by the Convention of that year, and although the terms of that Convention have since been twice suspended, first by the Treaty of 1854, and subsequently by that of 1871, after the lapse of each of these two Treaties the provision made in 1818 came again into operation, and were carried out by the Imperial and colonial authorities without the slightest doubt being raised as to their being in full force and vigour.

Mr. Bayard's contention that the effect of the legislation which has taken place under the Convention of 1818, and of Executive action thereunder, would be "to expand the restrictions and renunciations of that Treaty which related solely to the inshore fishing within the three-mile limit, so as to affect the deep-sea fisheries," and "to diminish and practically destroy the privileges expressly secured to American fishing-vessels to visit these inshore waters for the objects of shelter and repair of damages, and purchasing wood and obtaining water," appears to the Undersigned to be unfounded. The legislation referred to in no way affects those privileges, nor has the Government of Canada taken any action towards their restriction. In the cases of the recent seizures, which are the immediate subject of Mr. Bayard's letter, the vessels seized had not resorted to Canadian waters for any one of the purposes specified in the Convention of 1818 as lawful. They were United States' fishing-vessels, and, against the plain terms of the Convention, had entered Canadian harbours. In doing so the *David J. Adams* was not even

possessed of a permit "to touch and trade," even if such a document could be supposed to divest her of the character of a fishing-vessel.

The Undersigned is of opinion that while, for the reasons which he has advanced, there is no evidence to show that the Government of Canada has sought to expand the scope of the Convention of 1818 or to increase the extent of its restrictions, it would not be difficult to prove that the construction which the United States seeks to place on that Convention would have the effect of extending very largely the privileges which their citizens enjoy under its terms. The contention that the changes which may from time to time occur in the habits of the fish taken off our coasts, or in the methods of taking them, should be regarded as justifying a periodical revision of the terms of the Treaty, or a new interpretation of its provisions, cannot be acceded to. Such changes may from time to time render the conditions of the contract inconvenient to one party or the other, but the validity of the agreement can hardly be said to depend on the convenience or inconvenience which it imposes from time to time on one or other of the Contracting Parties. When the operation of its provisions can be shown to have become manifestly inequitable, the utmost that good-will and fair dealing can suggest is that the terms should be reconsidered and a new arrangement entered into; but this the Government of the United States does not appear to have considered desirable.

It is not, however, the case that the Convention of 1818 affected only the inshore fisheries of the British provinces; it was framed with the object of affording a complete and exclusive definition of the rights and liberties which the fishermen of the United States were thenceforward to enjoy in following their vocation, so far as those rights could be affected by facilities for access to the shores or waters of the

British provinces, or for intercourse with their people. It is therefore no undue expansion of the scope of that Convention to interpret strictly those of its provisions by which such access is denied, except to vessels requiring it for the purposes specifically described.

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

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

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

Mr. Bayard suggests that the possession by a fishing-vessel of a permit to "touch and trade" should give her a right to enter Canadian ports for other than the purposes named in the Treaty, or, in other words, should give her

perfect immunity from its provisions. This would amount to a practical repeal of the Treaty, because it would enable a United States' Collector of Customs, by issuing a licence, originally only intended for purposes of domestic Customs regulation, to give exemption from the Treaty to every United States' fishing-vessel. The observation that similar vessels under the British flag have the right to enter the ports of the United States for the purchase of supplies loses its force when it is remembered that the Convention of 1818 contained no restrictions on British vessels, and no renunciation of any privileges in regard to them.

Mr. Bayard states that in the proceedings prior to the Treaty of 1818 the British Commissioners proposed that United States' fishing-vessels should be excluded "from carrying also merchandise," but that this proposition, "being resisted by the American negotiators, was abandoned," and goes on to say, "this fact would seem clearly to indicate that the business of fishing did not then, and does not now, disqualify vessels from also trading in the regular ports of entry." A reference to the proceedings alluded to will show that the proposition mentioned related only to United States' vessels visiting those portions of the coast of Labrador and Newfoundland on which the United States' fishermen had been granted the right to fish, and to land for drying and curing fish, and the rejection of the proposal can, at the utmost, be supposed only to indicate that the liberty to carry merchandise might exist without objection in relation to those coasts, and is no ground for supposing that the right extends to the regular ports of entry, against the express words of the Treaty.

The proposition of the British negotiators was to append to Article I. the following words: "It is, therefore, well understood that the liberty of taking, drying, and curing fish, granted in the preceding part of this Article, shall not

be construed to extend to any privilege of carrying on trade with any of his Britannic Majesty's subjects residing within the limits hereinbefore assigned for the use of the fishermen of the United States."

It was also proposed to limit them to having on board such goods as might "be necessary for the prosecution of the fishery or the support of the fishermen while engaged therein, or in the prosecution of their voyages to and from the fishing-grounds."

To this the American negotiators objected on the ground that the search for contraband goods, and the liability to seizure for having them in possession, would expose the fishermen to endless vexation, and, in consequence, the proposal was abandoned. It is apparent, therefore, that this proviso in no way referred to the bays or harbours outside of the limits assigned to the American fishermen, from which bays and harbours it was agreed, both before and after this proposition was discussed, that United States' fishing-vessels were to be excluded for all purposes other than for shelter and repairs, and purchasing wood and obtaining water.

If, however, weight is to be given to Mr. Bayard's argument that the rejection of a proposition advanced by either side during the course of the negotiations should be held to necessitate an interpretation adverse to the tenor of such proposition, that argument may certainly be used to prove that American fishing-vessels were not intended to have the right to enter Canadian waters for bait to be used even in the prosecution of the deep-sea fisheries. The United States' negotiators in 1818 made the proposition that the words "and bait" be added to the enumeration of the objects for which these fishermen might be allowed to enter, and the proviso as first submitted had read "provided, however, that American fishermen shall be permitted to

enter such bays and harbours for the purpose only of obtaining shelter, wood, water, and bait." The addition of the two last words was, however, resisted by the British Plenipotentiaries, and their omission acquiesced in by their American colleagues. It is, moreover, to be observed that this proposition could only have had reference to the deep-sea fishing, because the inshore fisheries had already been specifically renounced by the Representatives of the United States.

In addition to this evidence, it must be remembered that the United States' Government admitted, in the case submitted by them before the Halifax Commission in 1877, that neither the Convention of 1818 nor the Treaty of Washington conferred any right or privilege of trading on American fishermen. The British case claimed compensation for the privilege which had been given since the ratification of the latter Treaty to United States' fishing-vessels "to transfer cargoes, to outfit vessels, buy supplies, obtain ice, engage sailors, procure bait, and traffic generally in British ports and harbours."

This claim was, however, successfully resisted, and in the United States' case it is maintained "that the various incidental and reciprocal advantages of the Treaty, such as the privileges of traffic, purchasing bait and other supplies, are not the subject of compensation, because the Treaty of Washington confers no such rights on the inhabitants of the United States, who now enjoy them merely by sufferance, and who can at any time be deprived of them by the enforcement of existing laws or the re-enactment of former oppressive Statutes. Moreover, the Treaty does not provide for any possible compensation for such privileges."

Now, the existing laws referred to in this extract are the various Statutes passed by the Imperial and Colonial Legislatures to give effect to the Treaty of 1818, which, it is admitted in the said case, could at any time have

been enforced (even during the existence of the Washington Treaty), if the Canadian authorities had chosen to do so.

Mr. Bayard on more than one occasion intimates that the interpretation of the Treaty and its enforcement are dictated by local and hostile feelings, and that the main question is being "obscured by partizan advocacy and distorted by the heat of local interests," and, in conclusion, expresses a hope that "ordinary commercial intercourse shall not be interrupted by harsh measures and unfriendly administration."

The Undersigned desires emphatically to state that it is not the wish of the Government or the people of Canada to interrupt for a moment the most friendly and free commercial intercourse with the neighbouring Republic.

The mercantile vessels and the commerce of the United States have at present exactly the same freedom that they have for years past enjoyed in Canada, and the disposition of the Canadian Government is to extend reciprocal trade with the United States beyond its present limits, nor can it be admitted that the charge of local prejudice or hostile feeling is justified by the calm enforcement, through the legal tribunals of the country, of the plain terms of a Treaty between Great Britain and the United States, and of the Statutes which have been in operation for nearly seventy years, excepting in intervals during which (until put an end to by the United States' Government) special and more liberal provisions existed in relation to the commerce and fisheries of the two countries.

The Undersigned has further to call attention to the letter of Mr. Bayard of the 20th May, relating also to the seizure of the *David J. Adams* in the Port of Digby, Nova Scotia.

That vessel was seized, as has been explained on a previous occasion, by the Commander of the Canadian steamer *Lansdowne* under the following circumstances :—

She was a United States' fishing-vessel, and entered the

harbour of Digby for purposes other than those for which entry is permitted by the Treaty and by the Imperial and Canadian Statutes.

As soon as practicable, legal process was obtained from the Vice-Admiralty Court at Halifax, and the vessel was delivered to the Officer of that Court. The paper referred to in Mr. Bayard's letter as having been nailed to her mast, was doubtless a copy of the warrant which commanded the Marshal or his deputy to make the arrest.

The Undersigned is informed that there was no intention whatever of so adjusting the paper that its contents could not be read, but it is doubtless correct that the officer of the Court in charge declined to allow the document to be removed. Both the United States' Consul-General and the Captain of the *David J. Adams* were made acquainted with the reasons for the seizure, and the only ground for the statement that a respectful application to ascertain the nature of the complaint was fruitless, was, that the Commander of the *Lansdowne*, after the nature of the complaint had been stated to those concerned and was published, and had become notorious to the people of both countries, declined to give the United States' Consul-General a specific and precise statement of the charges upon which the vessel would be proceeded against, but referred him to his superior.

Such conduct on the part of the officer of the *Lansdowne* can hardly be said to have been extraordinary under the present circumstances.

The legal proceedings had at that time been commenced in the Court of Vice-Admiralty at Halifax, where the United States' Consul-General resides, and the officer at Digby could not have stated with precision, as he was called upon to do, the grounds on which the intervention of the Court had been claimed in the proceedings therein.

There was not, in this instance, the slightest difficulty in

the United States' Consul-General and those interested in the vessel obtaining the fullest information, and no information which could have been given by those to whom they applied was withheld.

Apart from the general knowledge of the offences which it was claimed the master had committed, and which was furnished at the time of the seizure, the most technical and precise details were readily obtainable at the Registry of the Court, and from the Solicitors of the Crown, and would have been furnished immediately on application to the authority to whom the Commander of the *Lansdowne* requested the United States' Consul-General to apply. No such information could have been obtained from the paper attached to the vessel's mast.

Instructions have, however, been given to the Commander of the *Lansdowne*, and other officers of the Marine Police, that, in the event of any further seizures, a statement in writing shall be given to the master of the seized vessel of the offences for which the vessel may be detained, and that a copy thereof shall be sent to the United States' Consul-General at Halifax, and to the nearest United States' Consular Agent, and there can be no objection to the Solicitor for the Crown being instructed likewise to furnish the Consul-General with a copy of the legal process in each case, if it can be supposed that any fuller information will thereby be given.

Mr. Bayard is correct in his statement of the reasons for which the *David J. Adams* was seized and is now held. It is claimed that that vessel violated the Treaty of 1818, and, consequently, the Statutes which exist for the enforcement of that Treaty, and it is also claimed that she violated the Customs Laws of Canada of 1883.

The Undersigned recommends that copies of those Statutes be furnished for the information of Mr. Bayard.

Mr. Bayard has, in the same despatch, recalled the attention of her Majesty's Minister to the correspondence and action which took place in the year 1870, when the Fishery question was under consideration, and especially to the instructions from the Lords of the Admiralty to Vice-Admiral Wellesley, in which that officer was directed to observe great caution in the arrest of American fishermen, and to confine his action to one class of offences against the Treaty. Mr. Bayard, however, appears to have attached unwarranted importance to the correspondence and instructions of 1870, when he refers to them as implying "an understanding between the two Governments," an understanding which should, in his opinion, at other times, and under other circumstances, govern the conduct of the authorities, whether Imperial or Colonial, to whom under the laws of the Empire is committed the duty of enforcing the Treaty in question.

When, therefore, Mr. Bayard points out the "absolute and instant necessity that now exists for a restriction of the seizure of American vessels charged with violations of the Treaty of 1818" to the conditions specified under those instructions, it is necessary to recall the fact that in the year 1870 the principal cause of complaint on the part of Canadian fishermen was that the American vessels were trespassing on the inshore fishing-grounds and interfering with the catch of mackerel in Canadian waters, the purchase of bait being then a matter of secondary importance.

It is probable, too, that the action of the Imperial Government was influenced very largely by the prospect which then existed of an arrangement such as was accomplished in the following year by the Treaty of Washington, and that it may be inferred, in view of this disposition made apparent on both sides to arrive at such an understanding, that the Imperial authorities, without any surrender of Imperial or Colonial rights, and without acquiescing in any

limited construction of the Treaty, instructed the Vice-Admiral to confine his seizures to the more open and injurious class of offences which were especially likely to be brought within the cognizance of the naval officers of the Imperial Service.

The Canadian Government, as has been already stated, for six months left its fishing-grounds open to American fishermen, without any corresponding advantage in return, in order to prevent loss to those fishermen, and to afford time for the action of Congress, on the President's recommendation that a Joint Commission should be appointed to consider the whole question relating to the fisheries.

That recommendation has been rejected by Congress. Canadian fish is by prohibitory duties excluded from the United States' market The American fishermen clamour against the removal of those duties, and, in order to maintain a monopoly of the trade, continue against all law to force themselves into our waters and harbours, and make our shores their base for supplies, especially for bait, which is necessary to the successful prosecution of their business.

They hope by this course to supply the demand for their home market, and thus to make Canada indirectly the means of injuring her own trade.

It is surely, therefore, not unreasonable that Canada should insist on the rights secured to her by Treaty. She is simply acting on the defensive, and no trouble can arise between the two countries if American fishermen will only recognize the provisions of the Convention of 1818 as obligatory upon them, and until a new arrangement is made. abstain both from fishing in her waters and from visiting her bays and harbours for any purposes save those specified in the Treaty.

In conclusion, the Undersigned would express the hope that the discussion which has arisen on this question may

lead to renewed negotiations between Great Britain and the United States, and may have the result of establishing extended trade relations between the Republic and Canada, and of removing all sources of irritation between the two countries.

(Signed) GEORGE E. FOSTER,
Minister of Marine and Fisheries.

Inclosure 2 in No. 78,

REPORT.

WITH reference to a despatch from the British Minister at Washington, to his Excellency the Governor-General, dated the 21st May last, and inclosing a letter from Mr. Secretary Bayard, regarding the refusal of the Collector of Customs at Digby, Nova Scotia, to allow the United States' schooner *Jennie and Julia* the right of exercising commercial privileges at the said port, the Undersigned has the honour to make the following observations :—

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

The Treaty of 1818 is explicit in its terms, and

by it United States' fishing-vessels are allowed to enter Canadian ports for shelter, repairs, wood, and water, and "for no other purpose whatever."

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

It appears to the Undersigned that the question as to whether a vessel is a fishing-vessel or a legitimate trader or merchant-vessel, is one of fact and to be decided by the character of the vessel and the nature of her outfit, and that the class to which she belongs is not to be determined by the simple declaration of her master that he is not at any given time acting in the character of a fisherman.

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

The whole respectfully submitted,

(Signed) GEORGE E. FOSTER,
Minister of Marine and Fisheries.

Ottawa, June 5, 1886.

No. 79.

THE EARL OF ROSEBERY TO SIR L. WEST.

Foreign Office, July 23, 1886.

SIR,—I have to acknowledge the receipt of your despatch of the 30th May last, inclosing a copy of a note from Mr. Bayard, in which he protests against the provisions of a Bill recently introduced into the Canadian Parliament for the purpose of regulating fishing operations by foreign vessels in Canadian waters.

In reply I inclose an extract of a despatch from the Governor-General of Canada, containing observations on the subject.

I have to add that her Majesty's Government entirely concur in the views expressed by the Marquis of Lansdowne in this extract, of which you will communicate a copy to Mr. Bayard, together with a copy of the present despatch.

With regard to Mr. Bayard's observations in the same note respecting a Customs Circular and a Warning issued by the Canadian authorities, and dated respectively the 7th May and the 5th March last, I have to acquaint you that these documents have now been amended so as to bring them into exact accordance with Treaty stipulations; and I inclose for communication to the United States' Government, printed copies of these documents as amended.

I am, &c.

(Signed) ROSEBERY.

Inclosure 1 in No. 79.

THE MARQUIS OF LANSDOWNE TO EARL GRANVILLE.

(Extract.)

Citadel, Quebec, June, 1886.

HER Majesty's Minister at Washington has been good

enough to communicate to me, for my information, copy of a note received by him from the Secretary of State of the United States, in which the Bill is criticized, not so much on account of its policy, or because its introduction is regarded as inopportune and inconvenient, as upon the ground that any legislation by the Parliament of the Dominion for the purpose of interpreting and giving effect to a contract entered into by the Imperial Government is beyond the competence of that Parliament, and "an assumption of jurisdiction entirely unwarranted," and therefore "wholly denied by the United States."

Your Lordship is no doubt aware that legislation of this kind has been frequently resorted to by the Parliament of the Dominion, for the purpose of enforcing Treaties or Conventions entered into by the Imperial Government. In the present case the legislation proposed was introduced, not with the objet of making a change in the terms of the Convention of 1818, nor with the intention of representing as breaches of the Convention any acts which are not now punishable as breaches of it. What the framers of the Bill sought was merely to amend the procedure by which the Convention is enforced, and to do this by attaching a particular penalty to a particular breach of the Convention after that breach had been proved before a competent tribunal. It must be remembered that the Convention itself is silent as to the procedure to be taken in enforcing it, and that effect has accordingly been given to its provisions at different times, both through the means of Acts passed, on the one side, by Congress, and on the other, by the Imperial Parliament, as well as by the Legislatures of the British North American provinces previous to confederation, and since confederation by the Parliament of the Dominion. The right of the Dominion Parliament to legislate for these purposes, and the validity of such legislation as against the citizens of a

foreign country has, as far as I am aware, not been seriously called in question. Such legislation, unless it is disallowed by the Imperial Government, becomes part of the law of the Empire.

The Government of the United States has long been aware of the necessity of reference to the Dominion Parliament in matters affecting Canadian interests, and has, I believe, never raised any objection to such reference. The Treaties of 1854 and 1871, so far as they related to the fisheries or to the commercial relations of the Dominion, were made subject to ratification by her Legislature. In the same way the Treaty under which fugitive criminals from the United States into Canada are surrendered, is carried into effect by means of a Canadian Statute. If a foreigner commits a murder in Canada he is tried, convicted, and executed by virtue of a Canadian, and not of an Imperial Act of Parliament. Seizures of goods and vessels for breaches of the local Customs law have in like manner been made for many years past without any protest, on the ground that such laws involved an usurpation of power by the colony.

Mr. Bayard's statement that the Dominion Government is seeking by its action in this matter to "invade and destroy the commercial rights and privileges secured to citizens of the United States under and by virtue of Treaty stipulations with Great Britain," is not warranted by the facts of the case. No attempt has been made either by the authorities intrusted with the enforcement of the existing law, or by the Parliament of the Dominion to interfere with vessels engaged in *bonâ fide* commercial transactions upon the coast of the Dominion. The two vessels which have been seized are both of them, beyond all question, fishing-vessels and not traders, and therefore liable, subject to the finding of the Courts, to any penalties imposed by law for the enforcement

of the Convention of 1818 on parties violating the terms of that Convention.

When, therefore, Mr. Bayard protests against all such proceedings as being "flagrantly violative of reciprocal commercial privileges to which citizens of the United States are lawfully entitled under Statutes of Great Britain, and the well defined and publicly proclaimed authority of both countries," and when he denies the competence of the Fishery Department to issue, under the Convention of 1818, such a paper as the "Warning," dated the 5th March, 1886, of which a copy has been supplied to your Lordship, he is in effect denying to the Dominion the right of taking any steps for the protection of its own rights secured under the Convention referred to.

Inclosure 2 in No. 79.

WARNING.

To all whom it may concern.

The Government of the United States having by notice terminated Articles XVIII. to XXV., both inclusive, and Article XXX., known as the Fishery Articles of the Washington Treaty, attention is called to the following provision of the Convention between the United States and Great Britain, signed at London on the 20th October, 1818:—

"Article I. Whereas differences have arisen respecting the liberty claimed by the United States, for the inhabitants thereof, to take, dry, and cure fish, on certain coasts, bays, harbours, and creeks of his Britannic Majesty's dominions in America, it is agreed between the High Contracting Parties, that the inhabitants of the said United States shall have for ever, in common with the subjects of his Britannic Majesty, the liberty to take fish of every kind on that part of the southern coast of Newfoundland which extends from Cape

Ray to the Rameau Islands, on the western and northern coast of Newfoundland, from the said Cape Ray to the Quirpon Islands, on the shores of the Magdalen Islands, and also on the coasts, bays, harbours, and creeks from Mount Joly, on the southern coast of Labrador, to and through the Straits of Belle Isle, and thence northwardly indefinitely along the coast, without prejudice, however, to any of the exclusive rights of the Hudson's Bay Company; and that the American fishermen shall also have liberty for ever to dry and cure fish in any of the unsettled bays, harbours, and creeks of the southern part of the coast of Newfoundland hereabove described, and of the coast of Labrador; but so soon as the same, or any portion thereof, shall be settled, it shall not be lawful for the said fishermen to dry or cure fish at such portion so settled, without previous agreement, for such purpose, with the inhabitants, proprietors, or possessors of the ground.

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

Attention is called to the following provisions of the Act of Parliament of Canada, cap. 61 of the Acts of 1868, intituled "An Act respecting fishing by foreign vessels."

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

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

"4. All goods, ships, vessels, and boats, and the tackle rigging, apparel, furniture, stores and cargo liable to forfeiture under this Act, may be seized and secured by any officers or persons mentioned in the 2nd section of this Act; and every person opposing any officer or person in the execution of his duty under this Act, or aiding or abetting any other person in any opposition, shall forfeit 800 dollars, and shall be guilty of a misdemeanour, and, upon conviction, be liable to imprisonment for a term not exceeding two years."

Of all of which you will take notice, and govern yourself accordingly.

(Signed) GEORGE E. FOSTER.
Minister of Marine and Fisheries.

Department of Fisheries,
Ottawa, March 5, 1886.

Inclosure 3 in No. 79.

Circular No. 371.

Customs Department, Ottawa,
May 7, 1886.

SIR,—The Government of the United States having by notice terminated Articles XVIII. to XXV., both inclusive, and Article XXX., known as the Fishery Articles of the Washington Treaty, attention is called to the following provision of the Convention between the United States and Great Britain, signed at London on the 20th October, 1818 :—

"Article I. Whereas differences have arisen respecting the liberty claimed by the United States for the inhabitants thereof to take, dry, and cure fish on certain coasts, bays, harbours and creeks of his Britannic Majesty's dominions in

America, it is agreed between the High Contracting Parties that the inhabitants of the said United States shall have for ever, in common with the subjects of his Britannic Majesty, the liberty to take fish of every kind on that part of the southern coast of Newfoundland which extends from Cape Ray to Rameau Islands, on the western and northern coast of Newfoundland, from the said Cape Ray to the Quirpon Islands, on the shores of the Magdalen Islands, and also on the coasts, bays, harbours, and creeks from Mount Joly, on the southern coast of Labrador, to and through the Straits of Belleisle, and thence northwardly indefinitely along the coast, without prejudice, however, to any of the exclusive rights of the Hudson's Bay Company; and that the American fishermen shall also have liberty, for ever, to dry and cure fish in any of the unsettled bays, harbours, and creeks of the southern part of the coast of Newfoundland, hereabove described, and of the coast of Labrador; but so soon as the same or any portion thereof shall be settled, it shall not be lawful for the said fishermen to dry or cure fish at such portion so settled without previous agreement for such purpose, with the inhabitants, proprietors, or possessors of the ground.

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

"Attention is also called to the following provisions of the Act of the Parliament of Canada, cap. 61, of the Acts of 1868, intituled, 'An Act respecting fishing by foreign vessels.'

"II. Any commissioned officer of her Majesty's navy, serving on board of any vessel of her Majesty's navy, cruising and being in the waters of Canada for purpose of affording protection to her Majesty's subjects engaged in the fisheries, or any commisioned officer of her Majesty's navy, Fishery Officer, or Stipendiary Magistrate, on board of any vessel belonging to or in the service of the Government of Canada, and employed in the service of protecting the fisheries, or any officer of the Customs of Canada, Sheriff, Magistrate, or other person duly commissioned for that purpose, may go on board of any ship, vessel, or boat, within any harbour in Canada, or hovering (in British waters) within three marine miles of any of the coasts, bays, creeks, or harbours in Canada, and stay on board so long as she may remain within such place or distance.

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

after the expiration of the period named in the last licence granted to such ship, vessel, or boat under the 1st section of this Act, such ship, vessel, or boat, and the tackle, rigging, apparel, furniture, stores, and cargo thereof shall be forfeited.

"IV. All goods, ships, vessels, and boats, and the tackle, rigging, apparel, furniture, stores, and cargo liable to forfeiture under this Act, may be seized and secured by any officers or persons mentioned in the 2nd section of this Act; and every person opposing any officer or person in the execution of his duty under this Act, or aiding or abetting any other person in any opposition, shall forfeit 800 dollars, and shall be guilty of a misdemeanour, and upon conviction be liable to imprisonment for a term not exceeding two years."

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

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

(Signed) J. Johnson, Commissioner of Customs.

To the Collector of Customs

at .

No. 80.

The Earl of Rosebery to Sir L. West.

Foreign Office, July 23, 1886.

Sir,—I have received your despatch of the 15th ultimo, in

which you inclose a copy of a note from Mr. Bayard, protesting against a warning alleged to have been given to United States' fishing-vessels by a Canadian Customs official, with the view to prevent them from fishing within lines drawn from headland to headland from Cape Canso to St. Esprit, and from North Cape to East Point of Prince Edward Island.

In reply, I have to request you to acquaint Mr. Bayard that her Majesty's Government have ascertained that no instructions to this effect have been issued by the Canadian Government, but that a further Report is expected upon the subject.

It appears that the Collector at Canso, in conversation with the master of a fishing-vessel, expressed the opinion that the headland line ran from Cranberry Island to St. Esprit, but this was wholly unauthorized.

I am, &c.

(Signed) ROSEBERY.

No. 81.

THE EARL OF ROSEBERY TO MR. PHELPS.

Foreign Office, July 23, 1886.

SIR,—I have the honour to acknowledge the receipt of your note of the 16th instant, inclosing a copy of a telegram from Mr. Bayard, in which he calls upon her Majesty's Government to put a stop to the action of Canadian authorities towards United States' fishermen, which he characterizes as unjust, arbitrary, and vexatious.

Mr. Bayard further states that the readiness of the United States' Government to endeavour to come to a just and fair joint interpretation of Treaty rights and commercial privileges is ill met by persistent and unfriendly action of the Canadian authorities, which is rapidly producing a most injurious and exasperating effect.

I cannot help regretting that the tone of this communication should not have more corresponded with the conciliatory disposition of her Majesty's Government, for the expressions which I have cited can hardly tend to facilitate a settlement of the difficult questions involved.

I beg, however, to state that the views of the Canadian Government upon the whole matter will very shortly be communicated to the United States' Government in a despatch which I have addressed to her Majesty's Minister at Washington, in reply to the various communications which he has received from Mr. Bayard. I shall have the honour to place a copy of the despatch in question in your hands.

As regards the disposition expressed by Mr. Bayard to come to a just and fair joint interpretation of Treaty rights, her Majesty's Government have already displayed their full readiness to negotiate on more than one occasion, and their view of Treaty rights has been explained both in my conversations with yourself and in despatches.

I trust, therefore, that this expression of the wishes of your Government, corresponding as it does so entirely with our own desire, indicates the willingness of the United States to enter as speedily as possible into definite arrangements which may lead to negotiations on a practical basis for the settlement of this question.

I have, &c.
(Signed) ROSEBERY.

No. 82.

THE EARL OF ROSEBERY TO MR. PHELPS.

Foreign Office, July 23, 1886.

SIR,—In reply to your note of the 2nd ultimo relative to the North American Fisheries question, I have the honour

to transmit to you a copy of a despatch, with inclosures, which I have addressed to her Majesty's Minister at Washington, and which contains a full statement of the views entertained by the Canadian Government on this matter.

The points dealt with in the several communications recently received by Sir L. West from Mr. Bayard are practically the same as those discussed in your note, and I have therefore thought that the most convenient mode of replying to it would be to communicate to you a copy of the despatch which I have addressed to her Majesty's Minister at Washington.

I need not reiterate the regret that her Majesty's Government feel at being forced back by circumstances on the provisions of the Treaty of 1818, for I have earnestly and frequently expressed it in conversation with you. Nor need I repeat how anxious her Majesty's Government are that by formal and friendly negotiation the questions between the two Governments with regard to Canadian fisheries should be put on a mutually satisfactory footing.

I have, &c.

(Signed) ROSEBERY.

No. 83.

MR. BRAMSTON TO SIR J. PAUNCEFOTE.

(Received July 27.)

Downing Street, July 26, 1886.

SIR,—With reference to your letter of the 17th instant, I am directed by Earl Granville to transmit to you, to be laid before the Earl of Rosebery, a copy of a telegraphic correspondence with the Governor-General of Canada

relative to the detention by the Dominion authorities of the American schooner *City Point*.

I am, &c.

(Signed) JOHN BRAMSTON.

Inclosure 1 in No. 109.

LORD A. RUSSELL TO MR. STANHOPE.

Halifax, Nova Scotia, August 21, 1886.

SIR,—With reference to Earl Granville's despatch of the 15th July last, addressed to the Marquis of Lansdowne, requesting a Report from my Government on the subject of an inclosed note from the Secretary of State of the United States to her Majesty's Minister at Washington, relating to certain warnings alleged to have been given to United States' fishing-vessels by the Collector of Customs at Canso, I have the honour to forward herewith a copy of an approved Report of a Committee of the Privy Council, embodying a Report by my Minister of Marine and Fisheries on the subject.

I have, &c.

(Signed) A. G. RUSSELL, *General*.

Inclosure 2 in No. 109.

REPORT OF A COMMITTEE OF THE HONOURABLE THE PRIVY COUNCIL, APPROVED BY HIS EXCELLENCY THE ADMINISTRATOR OF THE GOVERNMENT IN COUNCIL ON THE 16TH AUGUST, 1886.

THE Committee of the Privy Council have had under consideration a despatch dated the 15th July, 1886, from the

Secretary of State for the Colonies, in which he asks for a Report from the Canadian Government on the subject of an inclosed note from Mr. Secretary Bayard to the British Minister at Washington, relating to certain warnings alleged to have been given to United States' fishing-vessels by the Sub-Collector of Customs at Canso.

Mr. Bayard states:—

"1. That the masters of the four American fishing-vessels of Gloucester, Mass., *Martha C. Bradley, Rattler, Eliza Boynton,* and *Pioneer,* have severally reported to the Consul-General at Halifax that the Sub-Collector of Customs at Canso had warned them to keep outside an imaginary line drawn from a point three miles outside Canso Head to a point three miles outside St. Esprit, on the Cape Breton coast.

"2. That the same masters also report that they were warned against going inside an imaginary line drawn from a point three miles outside North Cape in Prince Edward Island to a point three miles outside East Point on the same island.

"3. That the same authority informed the masters of the vessels referred to that they would not be permitted to enter Bay Chaleur."

The Minister of Marine and Fisheries, to whom the despatch and inclosures were referred, observes that the instructions issued to Collectors of Customs authorized them, in certain cases, to furnish United States' fishing-vessels with a copy of the Circular hereto attached, and which constitutes the only official "warning" Collectors of Customs are empowered to give. It was to be presumed that the Sub-Collector of Customs at Canso, as all other Collectors, would carefully follow out the instructions as received, and that therefore no case such as that alleged by Mr. Secretary Bayard would be likely to arise.

The Minister states, however, so soon as the despatch above referred to was received he sent to the Sub-Collector at Canso a copy of the allegations, and requested an immediate reply thereto.

The Sub-Collector, in answer, emphatically denies that he has ordered any American vessel out of any harbour in his district or elsewhere, or that he did anything in the way of warning except to deliver copies of the official Circular above alluded to, and states that he boarded no United States' vessel other than the *Annie Jordan* and the *Hereward,* and that neither the *Martha C. Bradley, Rattler,* or *Pioneer* of Gloucester have, during the season, reported at his port of entry.

He with equal clearness denies that he has warned any United States' fishing-vessels to keep outside the line from Cape North to East Point, alluded to by Mr. Secretary Bayard, or that they would not be permitted to enter Bay des Chaleurs.

The Minister has every reason to believe the statements made by the Sub-Collector at Canso, and, taking into consideration all the circumstances of the case, is of the opinion that the information which has reached the Secretary of State does not rest upon a trustworthy basis.

With reference to the concluding portion of Mr Bayard's note, which is as follows:—

"Such warnings are, as you must be well aware, wholly unwarranted pretensions of extra-territorial authority, and usurpations of jurisdiction by the provincial officials.

"It becomes my duty, in bringing this information to your notice, to request that if any such orders for interference with the unquestionable rights of the American fishermen to pursue their business without molestation at any point not within three marine miles of the shores, and within the defined limits, as to which renunciation of the liberty to fish

was expressed in the Treaty of 1818, may have been issued, the same may at once be revoked as violative of the rights of citizens of the United States under Convention with Great Britain.

"I will ask you to bring this subject to the immediate attention of her Britannic Majesty's Government, to the end that proper remedial orders may be forthwith issued.

"It seems most unfortunate and regrettable that questions which have been long since settled between the United States and Great Britain should now be sought to be revived."

The Minister further observes that, in his opinion, the occasion of the present despatch, which has to deal mainly with questions of fact, does not render it necessary for him to enter upon any lengthened discussion of the question of headland limits.

He cannot, however, do otherwise than place upon record the earnest expression of his entire dissent from the interpretation therein sought to be placed upon the Treaty of 1818 by the United States' Secretary of State.

The Committee concur in the foregoing Report of the Minister of Marine and Fisheries, and advise that your Excellency be moved to transmit a copy thereof to her Majesty's Secretary of State for the Colonies.

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

Inclosure 2 in No. 110.

REPORT OF A COMMITTEE OF THE HONOURABLE THE PRIVY COUNCIL FOR CANADA, APPROVED BY HIS EXCELLENCY THE ADMINISTRATOR OF THE GOVERNMENT IN COUNCIL, ON THE 20TH AUGUST, 1886.

THE Committee of the Privy Council have had under

consideration the despatch, dated the 29th July last, from her Majesty's Secretary of State for the Colonies, inclosing two notes from Mr. Secretary Bayard to the British Minister at Washington, and asking that her Majesty's Government be furnished with a Report upon the cases therein referred to.

The Committee respectfully submit the annexed Report from the Minister of Marine and Fisheries, to whom the said despatch and its inclosures were submitted, and they advise that your Excellency be moved to transmit a copy thereof, if approved, to her Majesty's Principal Secretary of State for the Colonies.

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

Inclosure 3 in No. 110.

REPORT.

Department of Fisheries, Ottawa,
August 14, 1886.

THE Undersigned has the honour to submit the following in answer to a despatch from Lord Granville to the Governor-General under date of the 29th July last, inclosing two notes from Mr. Secretary Bayard to the British Minister at Washington, and asking that her Majesty's Government be furnished with a Report upon the cases therein referred to.

In his first communication, dated the 10th July, Mr. Bayard says:—

"I have the honour to inform you that I am in receipt of a Report from the Consul-General of the United States at Halifax, accompanied by sworn testimony stating that the

Novelty, a duly registered merchant steam-vessel of the United States, has been denied the right to take in steam coal, or purchase ice or tranship fish in bond to the United States at Pictou, Nova Scotia.

"It appears that having reached that port on the 1st instant, and finding the Customs-Office closed on account of a holiday, the master of the *Novelty* telegraphed to the Minister of Marine and Fisheries at Ottawa, asking if he would be permitted to do any of the three things mentioned above; that he received in reply a telegram reciting with certain inaccurate and extended application and language of Article I. of the Treaty of 1818 the limitations upon the significance of which are in pending discussion between the Government of the United States and that of her Britannic Majesty; that on entering and clearing the *Novelty* on the following day at the Customs-house, the Collector stated that his instructions were contained in the telegram the master had received, and that the privilege of coaling being denied, the *Novelty* was compelled to leave Pictou without being allowed to obtain fuel necessary for her lawful voyage and a dangerous coast.

"Against this treatment I make instant and formal protest as an unwarranted interpretation and application of the Treaty by the officers of the Dominion of Canada and the Province of Nova Scotia, as an infraction of the laws of commercial and maritime intercourse existing between the two countries, and as a violation of hospitality, and for any loss or injury resulting therefrom, the Government of her Britannic Majesty would be held liable."

With reference to this the Undersigned begs to observe that Mr. Bayard's statement appears to need modification in several important particulars.

In the first place, the *Novelty* was not a vessel regularly trading between certain ports in the United States and

Canada, but was a fishing-vessel, whose purpose was to carry on the mackerel seining business in the waters of the Gulf of St. Lawrence, around the coast of Prince Edward Island and Nova Scotia; that she had on board a full equipment of seines and fishing apparatus, and men; that she was a steam-vessel and needed coal not for purposes of cooking or warming, but to produce motive power for the vessel, and that she wished to pursue her business of fishing in the above-named waters, and to send her fares home over Canadian territory to the end that she might the more uninterruptedly and profitably carry on her business of fishing. That she was a fishing-vessel and not a merchant-vessel is proved, not only by the facts above mentioned, but also from a telegram over the signature of H. B. Joyce, the captain of the vessel, a copy of which is appended. In his telegram, Captain Joyce indicates the character of his vessel by using the words "American fishing-steamer," and he signs himself "H. B. Joyce, master of fishing-steamer *Novelty*."

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

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

To Mr. Bayard's statement that, in reply to Captain Joyce's inquiry of the Minister of Marine and Fisheries, "he received, in reply, a telegram reciting certain inaccurate and extended application of the language of Article I. of the

Treaty of 1818," the Undersigned considers it a sufficient answer to adduce the telegrams themselves.

1. Inquiry by the captain of the *Novelty*:—

"From Pictou, Nova Scotia.

"Ottawa, July 1, 1886.

"Will the American fishing-steamer now at Pictou be permitted to purchase coal or ice, or to tranship fresh fish in bond to United States' markets? Please answer.

(Signed) "H. B. Joyce,
"Master of fishing-steamer *Novelty*.

"Hon. Geo. E. Foster,
"Minister of Marine and Fisheries."

2. Reply of the Minister of Marine and Fisheries thereto:—

"Ottawa, July 1, 1886.

"By terms of Treaty 1818, United States' fishing-vessels are permitted to enter Canadian ports for shelter, repairs, wood, and water, and for no other purpose whatever. That Treaty is now in force.

(Signed) "Geo. E. Foster,
"Minister of Marine and Fisheries.

"To H. B. Joyce,
"Master American steamer *Novelty*, Pictou, N.S."

The Undersigned fails to observe wherein any "inaccurate or extended application" of the language of the Treaty can be found in the above answer, inasmuch as it consists of a *de facto* citation from the Treaty itself, with the added statement, for the information of the captain, that said Treaty was at that time in force. As to the "unwarranted interpretation and application of the Treaty," of which Mr. Bayard speaks, the Undersigned has already discussed that phase of the question in his Memorandum of the 14th June,

which was adopted by Council, and has been forwarded to her Majesty's Government.

Mr. Bayard's second note is as follows:—

"On the 2nd June last I had the honour to inform you that despatches from Eastport, in Maine, had been received, reporting threats by the Customs officials of the Dominion to seize American boats coming into those waters to purchase herring from the Canadian weirs, for the purpose of canning the same as sardines, which would be a manifest infraction of the right of purchase and sale of herring caught and sold by Canadians in their own waters in the pursuance of legitimate trade."

"To this note I have not had the honour of a reply."

To-day Mr. C. A. Boutelle, M C., from Maine, informs me that "American boats visiting St. Andrew's, New Brunswick, for the purpose of there purchasing herring from the Canadian weirs for canning, had been driven away by the Dominion cruiser *Middleton.*

"Such inhibition of usual and legitimate commercial contracts and intercourse is assuredly without warrant of law, and I draw your attention to it in order that the commercial rights of the citizens of the United States may not be thus invaded and subjected to unfriendly discrimination."

With reference to the above, the Undersigned observes that, so far as his information goes, no Collectors of Customs or captains of cruisers have threatened to "seize American boats coming into Canadian waters to purchase herring from her Canadian weirs, for the purpose of canning them as sardines."

Collectors of Customs have, however, in pursuance of their duties under the Customs Law of Canada, compelled American vessels coming to purchase herring to enter and clear in conformity to Customs Law.

With reference to the action of the Dominion cruiser *Middleton*, the Undersigned cannot do better than quote from the official Report of the Captain of that vessel as to the facts of the case referred to. In his report, of date the 9th July, 1886, Captain McLean, of the *General Middleton*, says:—

"At 9 a.m. made sail, and drifted with the tide towards the bay. Seeing a large number of boats of various sizes hovering around the fishing weirs, I ordered the boat in waiting, and sent Officer Kent in charge, giving him instructions to row among the boats and see if there were any Americans purchasing fish. On the return of the boat, Chief Officer Kent reported the boats mentioned were Americans, there for the purpose of getting herring. I immediately directed the Chief Officer to return, and order the American boats to at once report themselves to the Collector of the Port and get permits to load fish, or leave without further delay. One of the boatmen complied with the request, and obtained a permit to load fish for Eastport; the others were very much disturbed on receiving the above instructions, and sailed away towards the American side of the river and commenced blowing their fog-horns, showing their contempt. Other boats at a greater distance, seeing our boat approaching, did not wait her arrival, but up sail and left for the American shore."

The above extract from the Report of the Chief Officer of the *General Middleton* goes to show that it was not his object to prevent American boats from trading in sardines, but rather to prevent them from trading without having first conformed to the Customs Law of Canada.

The whole respectfully submitted.

(Signed) GEORGE E. FOSTER,
Minister of Marine and Fisheries.

Inclosure 1 in No. 123.

ADMINISTRATOR LORD A. G. RUSSELL TO MR. STANHOPE.

Halifax, Nova Scotia, September 21, 1886,

SIR,—I have the honour to enclose herewith a certified copy of a Minute of my Privy Council, embodying a Report of the Minister of Customs for the Dominion, in relation to the alleged improper treatment of the United States' fishing-schooner *Rattler* in being required to report to the Collector of Customs at Shelburne, Nova Scotia, when seeking that harbour for shelter.

2. The reply of the Collector to the inquiries addressed to him in respect to this matter is appended to the Minister's Report, and in it the facts of the case as set forth in my telegram of the 14th instant are given.

3. I have communicated your despatch of the 1st instant, forwarding Mr. Bayard's protest concerning this case, to my Ministers, and requested to be furnished with a Report thereon, which I shall forward, for your information, as soon as it has been received.

I have, &c.

(Signed) A. G. RUSSELL, *General.*

Inclosure 2 in No. 123.

REPORT OF A COMMITTEE OF THE HONOURABLE THE PRIVY COUNCIL FOR CANADA, APPROVED BY HIS EXCELLENCY THE ADMINISTRATOR OF THE GOVERNMENT IN COUNCIL ON THE 16th SEPTEMBER, 1886.

THE Committee of Council have had before them a cablegram from the Right Honourable the Secretary of State for the Colonies, dated the 1st September, 1886, as follows:—

"Report should be made as to treatment United States' fishing-boat *Rattler* alleged compelled report Customs when seeking Shelburne Harbour. Despatch follows by mail."

The Minister of Customs, to whom the cablegram was referred for immediate report, caused a telegram to be forwarded to the Collector of Customs at Shelburne, to the effect that it was "stated that United States' fishing-boat *Rattler* compelled report Customs when seeking Shelburne Harbour: what were circumstances? Answer by telegram, and report in full by mail;" and he submits the report, dated the 6th September instant, from Mr. Attwood, the Collector of Customs at Shelburne.

The Committee advise that your Excellency be moved to cable a copy of the Report above mentioned, for the information of the Right Honourable the Secretary of State for the Colonies.

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

Inclosure 3 in No. 123.

MR. ATTWOOD TO THE COMMISSIONER OF CUSTOMS, OTTAWA.

Custom-house, Shelburne,
September 6th, 1886.

SIR,—I have to acknowledge receipt of your telegram of the 4th instant relative to schooner *Rattler*, and I wired an answer this morning as requested.

On the morning of the 4th ultimo Chief Officer of *Terror*, accompanied by Captain A. F. Cunningham, called at this office. Captain Cunningham reported his vessel inwards as follows, viz.:—

"Schooner *Rattler*, of Gloucester, ninety-three tons register, sixteen men from fishing-bank, with 465 barrels mackerel, came in for shelter."

I was afterwards informed by the officer of cutter that they found the schooner the evening before at anchor off Sandy Point, five miles down the harbour. Two men from cutter were put on board, and the master required to report at Customs in the morning.

I was also informed that the master, Captain Cunningham, made an attempt to put to sea in the night by hoisting sails, weighing anchor, &c., but was stopped by officers from cutter.

I am, &c.

(Signed) W. W. ATTWOOD, *Collector.*

No 124.

MR. BRAMSTON TO SIR J. PAUNCEFOTE.

(Received October 20.)

Downing Street, October 19, 1886.

SIR,—I am directed by Mr. Secretary Stanhope to transmit to you, for the information of the Earl of Iddesleigh, a copy of a despatch from the Officer administrating the Government of Canada, forwarding a copy of a Customs Circular in relation to the coasting-trade of the Dominion.

I am &c.

(Signed) JOHN BRAMSTON.

Inclosure 2 in No. 124.

CIRCULAR.

Customs Department, Ottawa,
August 14, 1886.

SIR,—Numerous seizures have been recently made by

officers of the Special Agent's Branch of this Department, which, with other evidence in the possession of the Department, goes to show that great laxity exists on the part of Collectors and other Customs officers in connection with traffic going on in small open boats and fishing-vessels between Canadian and foreign ports.

I am directed by the Honourable the Minister of Customs to call your attention to certain requirements of the Customs Law and Regulations bearing upon this subject, and to enjoin upon you the necessity for greater vigilance, and a stricter enforcing of the law than you have apparently been in the habit of insisting upon.

Section 38 of the Customs Act declares that it shall not be lawful, unless otherwise authorized by the Governor in Council, to import goods, wares, or merchandize from any port or place out of Canada in any vessel which has not been duly registered and has not a certificate of registry on board.

Sections 141 to 150, relating to the exportation of goods, require that any vessel outward-bound shall deliver to the Collector a proper entry and report of all goods on board, and prohibits officers giving clearances until such report and entry has been made, and fixes penalties for non-observance of these requirements.

Section 37 gives authority to the Governor in Council to make regulations respecting coasting voyages. These regulations you will find embodied in an Order in Council bearing date the 17th April, 1883 : they declare what shall be considered a coasting trade, and what vessels only can be allowed to conduct such trade, viz., only British registered vessels and boats wholly owned by British subjects, and such other boats and vessels as may be owned by the subjects of countries included in any Treaty with Great Britain, by which the coasting trade is mutually conceded.

As there is no reciprocal coasting trade existing between

Great Britain and the United States, United States' vessels cannot be allowed to in any manner participate in such trade.

Coasters are not permitted to go on a foreign voyage without reporting in the same manner as would be required from all vessels not coasters.

Foreign vessels or boats must not be allowed to go from place to place in Canadian waters for the purpose of making up or seeking a cargo, as such a course would be in violation of the Coasting Regulations.

The Collector of a port may assign to such vessels a landing berth at any one place within the limits of his jurisdiction, but must not allow vessels to go from place to place in order to fill up or take in her cargo.

No permits are to be given under any circumstances by Customs officers, under cover of which, or under pretext of which, any law or regulation can be evaded.

Stringent means must be taken to confine all small or unregistered vessels within the strict limits allowed by law and regulations.

Vessels or boats of any kind or class, although of Canadian build, or owned by Canadians, which have been entered as personal property or otherwise, and on which duty has been paid in any foreign port, must be considered strictly as foreign boats, and exeluded from any rights that might attach to them had they not been so entered, as such entry changes their nationality, as much so as if they had been formally registered.

In order to insure the better protection of the revenue, it is absolutely necessary that these instructions receive your closest attention, and that all vessels, irrespective of their nationality, be required to observe the same.

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

Collector of Customs, Port of .

No. 127.

MR. BRAMSTON TO SIR J. PAUNCEFOTE.
(Received October 26.)

Downing Street, October 25, 1886.

SIR,—With reference to your letter of the 2nd August last, inclosing copy of a despatch from her Majesty's Chargé d'Affaires at Washington, with a note from Mr. Bayard, protesting against the alleged action of Captain Kent, of the Dominion cruiser *General Middleton*, in refusing Stephen A. Balkam permission to buy fish from Canadians, I am directed by Mr. Secretary Stanhope to transmit to you, to be laid before the Earl of Iddesleigh, a copy of a despatch from the Officer administering the Government of Canada, with its inclosure upon the subject.

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

Inclosure 2 in No. 127.

REPORT OF A COMMITTEE OF THE HONOURABLE THE PRIVY COUNCIL FOR CANADA, APPROVED BY HIS EXCELLENCY THE ADMINISTRATOR OF THE GOVERNMENT IN COUNCIL ON THE 21ST SEPTEMBER, 1886.

THE Committee of the Privy Council have had under their consideration a despatch dated the 5th August, 1886, from the Right Honourable the Secretary of State for the Colonies, transmitting a copy of a letter from the Foreign Office with a copy of a note from Mr. Bayard, and protesting against the action of Captain Kent, of the Dominion cruiser *General Middleton*, in refusing Stephen A. Balkam permission to buy fish from Canadians.

The Minister of Marine and Fisheries, to whom the despatch

and inclosures were referred, submits the following Report from the first officer of the *General Middleton*:—

"Halifax, August 25, 1886.

"I have the honour to state that when boarding several boats in St. Andrew's Bay I asked Stephen R. Balkam if the boat he was in was American? He replied that he thought she was. I informed him that if she was American he could not take fish from the weirs on the English side without a permit from the Collector of Customs at St. Andrew's or West Isles.

"He asked permission to take the fish from the weirs in Kelly's Cove without a permit. I declined to accede to his request.

"Mr. Balkam went around the point in his boat, and after accosting several others, I met him again evidently trying to evade my instructions. I told him that he must not take the fish without permission from the Customs. He left for the American shore, and I returned to the *Middleton*.

"Mr. Stephen R. Balkam I have known for some years. He formerly belonged to St. Andrew's, but is now living in Eastport. His business is to carry sardines from the English side to Eastport for canning purposes."

The Minister is of opinion, in view of the above, that in warning Mr. Balkam that if his boat belonged to the United States he could not take herring from the weirs without first having reported at the custom-house, Mr. Kent acted within the scope of the law and his instructions.

The Committee respectfully advise that your Excellency be moved to transmit a copy of this Minute to the Right Honourable the Secretary of State for the Colonies, as requested in his despatch of the 5th August last.

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

No. 146.

THE EARL OF IDDESLEIGH TO MR. PHELPS.

Foreign Office, Nov. 30th, 1886.

SIR,—I have given my careful consideration of the contents of the note of the 11th September last, which you were good enough to address to me in reply to mine of the 1st of the same month on the subject of the North American Fisheries.

The question, as you are aware, has for some time past engaged the serious attention of her Majesty's Government, and the notes which have been addressed to you in relation to it both by my predecessor and by myself have amply evinced the earnest desire of her Majesty's Government to arrive at some equitable settlement of the controversy. It is, therefore, with feelings of disappointment that they do not find in your note under reply, any indication of a wish on the part of your Government to enter upon negotiations based on the principle of mutual concessions, but rather a suggestion that some *ad interim* construction of the terms of the existing Treaty should, if possible, be reached, which might for the present remove the chance of disputes; in fact, that her Majesty's Government, in order to allay the differences which have arisen, should temporarily abandon the exercise of the Treaty rights which they claim, and which they conceive to be indisputable. For her Majesty's Government are unable to perceive any ambiguity in the terms of Article I. of the Convention of 1818; nor have they as yet been informed in what respects the construction placed upon that instrument by the Government of the United States differs from their own.

They would, therefore, be glad to learn, in the first place, whether the Government of the United States contest that, by Article I. of the Convention, United States' fishermen are prohibited from entering British North American bays or harbours on those parts of the coast

referred to in the second part of the Article in question for any purposes save those of *shelter*, *repairing damages*, *purchasing wood*, and *obtaining water*.

Before proceeding to make some observations upon the other points dealt with in your note, I have the honour to state that I do not propose in the present communication to refer to the cases of the schooners *Thomas F. Bayard* and *Mascotte*, to which you allude.

The privileges manifestly secured to United States' fishermen by the Convention of 1818 in Newfoundland, Labrador, and the Magdalen Islands are not contested by her Majesty's Government, who, whilst determined to uphold the rights of her Majesty's North American subjects as defined in the Convention are no less anxious and resolved to maintain in their full integrity the facilities for prosecuting the fishing industry on certain limited portions of the coast which are expressly granted to citizens of the United States. The communications on the subject of these two schooners which I have requested her Majesty's Minister at Washington to address to Mr. Bayard cannot, I think, have failed to afford to your Government satisfactory assurances in this respect.

Reverting now to your note under reply, I beg to offer the following observations on its contents.

In the first place, you take exception to my predecessor having declined to discuss the case of the *David J. Adams*, on the ground that it was still *sub judice*, and you state that your Government are unable to accede to the proposition contained in my note of the 1st September last, to the effect that "it is clearly right, according to practice and precedent, that such diplomatic action should be suspended pending the completion of the judicial inquiry."

In regard to this point, it is to be remembered that there are three questions calling for investigation in the case of the *David J. Adams*:—

1. What were the acts committed which led to the seizure of the vessel?

2. Was her seizure for such acts warranted by any existing laws?

3. If so, are those laws in derogation of the Treaty rights of the United States?

It is evident that the first two questions must be the subject of inquiry before the third can be profitably discussed, and that those two questions can only be satisfactorily disposed of by a judicial inquiry. Far from claiming that the United States' Government would be bound by the construction which the British tribunals might place on the Treaty, I stated in my note of the 1st September that if that decision should be adverse to the views of your Government, it would not preclude further discussion between the two Governments and the adjustment of the question by diplomatic action.

I may further remark that the very proposition advanced in my note of the 1st September last, and to which exception is taken in your reply, has, on a previous occasion, been distinctly asserted by the Government of the United States under precisely similar circumstances, that is to say, in 1870, in relation to the seizure of American fishing-vessels in Canadian waters, for alleged violation of the Convention of 1818.

In a despatch of the 29th October, 1870, to Mr. W. A. Dart, United States' Consul-General at Montreal, (which is printed at p. 431 of the volume for that year of the Foreign Relations of the United States, and which form part of the correspondence referred to by Mr. Bayard in his note to Sir L. West of the 20th May last), Mr. Fish expressed himself as follows:—

"It is the duty of the owners of the vessels to defend their interests before the Courts at their own expense, and with-

out special assistance from the Government at this stage of affairs. It is for those Tribunals to construe the Statutes under which they act. If the construction they adopt shall appear to be in contravention of our Treaties with Great Britain, or to be (which cannot be anticipated) plainly erroneous in a case admitting of no reasonable doubt, it will then become the duty of the Government—a duty which it will not be slow to discharge—to avail itself of all necessary means for obtaining redress."

Her Majesty's Government, therefore, still adhere to their view, that any diplomatic discussion as to the legality of the seizure of the *David J. Adams* would be premature until the case has been judicially decided.

It is further stated in your note that "the absence of any Statute authorizing proceedings or providing a penalty against American fishing-vessels for purchasing bait or supplies in a Canadian port to be used in lawful fishing" affords "the most satisfactory evidence that up to the time of the present controversy no such construction has been given to the Treaty by the British or by the Colonial Parliament as is now sought to be maintained."

Her Majesty's Government are quite unable to accede to this view, and I must express my regret that no reply has yet been received from your Government to the arguments on this and all the other points in controversy which are contained in the able and elaborate Report (as you courteously describe it) of the Canadian Minister of Marine and Fisheries, of which my predecessor communicated to you a copy.

In that Report reference is made to the argument of Mr. Bayard, drawn from the fact that the proposal of the British negotiators of the Convention of 1818, to the effect that American fishing-vessels should carry no merchandise, was rejected by the American negotiators; and it is shown that

the above proposal had no application to American vessels resorting to the Canadian coasts, but only to those exercising the right of inshore fishing and of landing for the drying and curing of fish on parts of the coasts of Newfoundland and Labrador. The Report, on the other hand, shows that the United States' negotiators proposed that the right of "procuring bait" should be added to the enumeration of the four objects for which the United States' fishing-vessels might be allowed to enter Canadian waters; and that such proposal was rejected by the British negotiators, thus showing that there could be no doubt in the minds of either party at the time that the "procuring of bait" was prohibited by the terms of the Article.

The Report, moreover, recalls the important fact that the United States' Government admitted, in the case submitted by them before the Halifax Commission in 1877, that neither the Convention of 1818 nor the Treaty of Washington conferred any right or privilege of trading on American fishermen; that the "various incidental and reciprocal advantages of the Treaty, such as the privileges of traffic, purchasing bait, and other supplies are not the subject of compensation, because the Treaty of Washington confers no such rights on the inhabitants of the United States, who now enjoy them merely by sufferance, and who can at any time be deprived of them."

This view was confirmed by the ruling of the Commissioners.

Whilst I have felt myself bound to place the preceding observations before you, in reply to the arguments contained in your note, I beg leave to say that her Majesty's Government would willingly have left such points of technical detail and construction for the consideration of a Commission properly constituted to examine them, as well as to suggest a means for either modifying their application, or substituting

for them some new arrangement of a mutually satisfactory nature.

I gather, however, from your note that, in the opinion of your Government, although a revision of Treaty stipulations on the basis of mutual concessions was desired by the United States before the present disputes arose, yet the present time is inopportune for various reasons, among which you mention the irritation created in the United States by the belief that the action of the Canadian Government has had for its object to force a new Treaty on your Government.

Her Majesty's Government learn with much regret that such an impression should prevail, for every effort has been made by the Canadian Government to promote a friendly negotiation, and to obviate the differences which have now arisen. Indeed, it is hardly necessary to remind you that, for six months following the denunciation by your Government of the Fishery Articles of the Treaty of Washington, the North American fisheries were thrown open to citizens of the United States without any equivalent, in the expectation that the American Government would show their willingness to treat the question in a similar spirit of amity and good-will.

Her Majesty's Government cannot but express a hope that the whole correspondence may be laid immediately before Congress, as they believe that its perusal would influence public opinion in the United States in favour of negotiating, before the commencement of the next fishing season, an arrangement based on mutual concessions, and which would therefore (to use the language of your note) "consist with the dignity, the interests, and the friendly relations of the two countries."

Her Majesty's Government cannot conceive that negotiations commenced with such an object and in such a spirit could fail to be successful; and they trust, therefore, that

your Government will endeavour to obtain from Congress, which is about to assemble, the necessary powers to enable them to make to her Majesty's Government some definite proposals for the negotiation of a mutually advantageous arrangement.

I have, &c.

(Signed) IDDESLEIGH.

Inclosure 2 in No. 148.

REPORT OF A COMMITTEE OF THE HONOURABLE THE PRIVY COUNCIL FOR CANADA, APPROVED BY HIS EXCELLENCY THE ADMINISTRATOR OF THE GOVERNMENT IN COUNCIL ON THE 2ND NOVEMBER, 1886.

THE Committee of the Privy Council have had under consideration a despatch dated 24th June, 1886, from the Right Honourable the Secretary of State for the Colonies, respecting the Fisheries question, and inclosing copies of letters on the subject from the Foreign Office to the Colonial Office, and of one from Mr. Phelps to the Secretary of State for Foreign Affairs.

The Minister of Justice, to whom the despatch and inclosures were referred, submits a Report thereon herewith.

The Committee concur in the said Report, and advise that your Excellency be moved to transmit a copy thereof, if approved, to the Right Honourable the Secretary of State for the Colonies.

All which is submitted for your Excellency's approval.

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

Inclosure 3 in No. 148.

REPORT.

To his Excellency the Administrator of the Government in Council.

Department of Justice, Ottawa,
July 22, 1886.

With reference to the despatch of the 24th June last from the Secretary of State for the Colonies to your Excellency respecting the Fisheries question, and inclosing copies of letters on the subject from the Foreign Office to the Colonial Office, and of one from Mr. Phelps to the Secretary of State for Foreign Affairs, the Undersigned has the honour to report as follows:—

The letter of Mr. Phelps seems designed to present to Earl Rosebery the case of the *David J. Adams*, the fishing-vessel seized a short time ago near Digby, in the Province of Nova Scotia.

Mr. Phelps intimates that he has received from his Government a copy of the Report of the Consul-General of the United States at Halifax, giving full details and depositions relating to the seizure, and that that Report and the evidence annexed to it appear fully to sustain the points which he had submitted to Earl Rosebery at an interview which he had had a short time before the date of his letter.

The Report of the Consul-General, and the depositions referred to, seem not to have been presented to Earl Rosebery, and their contents can only be inferred from the statements made in Mr. Phelps' letter.

These statements appear to be based on the assertions made by the persons interested in the vessel by way of defence against the complaint under which she was seized, but cannot be regarded as presenting a full or accurate representation

of the case. The Undersigned submits the facts in regard to this vessel as they are alleged by those on whose testimony the Government of Canada can rely to sustain the seizure and detention.

The Offence (*as to the Treaty and Fishery Laws*).

The *David J. Adams* was a United States' fishing-vessel. Whether, as alleged in her behalf, her occupation was deep-sea fishing or not, and whether, as suggested, she had not been engaged, nor was intended to be engaged, in fishing in any limit prescribed by the Treaty of 1818 or not, are questions which do not, in the opinion of the Undersigned, affect the validity of the seizure and of the proceedings subsequent thereto, for reasons which will be hereafter stated; but in so far as they may be deemed material to the defence they are questions of fact, which remain to be proved in the Vice-Admiralty Court at Halifax, in which the proceedings for the vessel's condemnation are pending, and in respect of which proof is now being taken; and inasmuch as the trial has not been concluded (much less a decision reached), it is perhaps premature for Mr. Phelps to claim the restoration of the vessel, and to assert a right to damages for her detention, on the assumption of the supposed facts before referred to.

It is alleged in the evidence on behalf of the prosecution that the *David J. Adams,* being a United States' fishing-vessel, on the morning of the 5th May, 1886, was in what is called the "Annapolis Basin," which is a harbour on the north-west coast of Nova Scotia. She was several miles within the Basin, and the excuse suggested (that the captain and crew may have been there through a misapprehension as to the locality) by the words of Mr. Phelps' letter, "Digby is a small fishing settlement, and its harbour not defined," is unworthy of much consideration.

Digby is not a fishing settlement, although some of the people on the neighbouring shores engage in fishing. It is a town with a population of about 2000 persons. Its harbour is formed by the Annapolis Basin, which is a large inlet of the Bay of Fundy, and the entrance to it consists of a narrow strait marked by conspicuous headlands, which are a little more than a mile apart. The entrance is called "Digby Gut," and for all purposes connected with this inquiry the harbour is one of the best defined in America.

The *David J. Adams* was, on the morning of the 5th day of May, 1886, as has already been stated, several miles within the Gut. She was not there for the purpose of "shelter," or "repairs," nor to "purchase wood," nor to "obtain water." She remained there during the 5th and 6th May, 1886; she was lying at anchor about half-a-mile from the shore, at a locality called "Clement's West."

On the morning of the 6th May, 1886, the captain made application to the owners of a fishing-weir near where he was lying for bait, and purchased four and a-half barrels of that article. He also purchased and took on board about two tons of ice. While waiting at anchor for these purposes the name of the vessel's "hailing-place" was kept covered by canvas, and this concealment continued while she afterwards sailed down past Digby.

One of the crew represented to the persons attending the weir that the vessel belonged to the neighbouring province of New Brunswick. The captain told the owner of the weir, when the Treaty was spoken of by the latter, that the vessel was under British register. The captain said he would wait until the next morning to get more bait from the catch in the weir which was expected that day. At daybreak, however, on the morning of the 7th May, 1886, the Government steamer *Lansdowne* arrived off Digby, and

the *David J. Adams* got under way, without waiting to take in the additional supply of bait, and sailed down the Basin towards the Gut.

Before she had passed Digby she was boarded by the first officer of the *Lansdowne*, and to him the captain made the following statement: that he had come to that place to see his people, as he had formerly belonged there, that he had no fresh bait on board, and that he was from the "Banks" and bound for Eastport, Maine.

The officer of the *Lansdowne* told him he had no business there, and asked him if he knew the law. His reply was "Yes."

A few hours afterwards, and while the *David J. Adams* was still inside the Gut, the officer of the *Lansdowne*, ascertaining that the statements of the captain were untrue, and that bait had been purchased by him within the harbour on the previous day, returned to the *David J. Adams*, charged the captain with the offence, and received for his reply the assertion that the charge was false, and that the person who gave the information was a "liar."

The officer looked into the hold of the vessel, and found the herring which had been purchased the day before, and which, of course, was perfectly fresh, but the captain declared that this "bait" was ten days old.

The officer of the *Lansdowne* returned to his ship, reported the facts, and went again to the *Adams*, accompanied by another officer, who also looked at the bait. Both returned to the *Lansdowne*, and then conveyed to the *Adams* the direction that she should come to Digby and anchor near the *Lansdowne*. This was, in fact, the seizure.

These are the circumstances by which the seizure was, in the opinion of Mr. Phelps, "much aggravated," and which make it seem very apparent to him that the seizure

"was not made for the purpose of enforcing any right or redressing any wrong,"

The fact that the seizure was preceded by visitations and searches was due to the statements of the master, and the reluctance of the officers of the *Lansdowne* to enforce the law until they had ascertained to a demonstration that the offence had been committed, and that the captain's statements were untrue.

The Offence (as to Customs Laws).

The *David J. Adams*, as already stated, was in harbour upwards of forty-eight hours, and when seized was proceeding to sea without having been reported at any custom-house. Her business was not such as to make it her interest to attract the attention of the Canadian authorities, and it is not difficult, therefore, to conjecture the reason why she was not so reported, or to see that the reason put forward, that Digby is but "a small fishing settlement, and its harbour not defined," is a disingenuous one. In going to the weir to purchase bait the vessel passed the custom-house at Digby almost within hailing distance. When at the weir she was within one or two miles of another custom-house (at Clementsport), and within about fifteen miles of another (at Annapolis). The master has not asserted that he did not know the law on this subject, as it is established that he knew the law in relation to the restriction on foreign fishing-vessels.

The provisions of the Customs Act of Canada on this subject are not essentially different from those of his own country. The captain and crew were ashore, during the 5th and 6th May, 1886. The following provisions of the Customs Act of Canada apply :—

"The master of every vessel coming from any port or place out of Canada, or coast-wise, and entering any port in Canada, whether laden or in ballast, shall go without delay, when

such vessel is anchored or moored, to the custom-house for the port or place of entry where he arrives, and there make a report in writing to the Collector or other proper officer of the arrival and voyage of such vessel, stating her name, country, and tonnage, the port of registry, the name of the master, the country of the owners, the number and names of the passengers, if any, the number of the crew, and whether the vessel is laden or in ballast, and, if laden, the marks and numbers of every package and parcel of goods on board, and where the same was laden, and the particulars of any goods stowed loose, and where and to whom consigned, and where any and what goods, if any, have been laden or unladen, or bulk has been broken, during the voyage, what part of the cargo, and the number and names of the passengers which are intended to be landed at that port, and what and whom at any other port in Canada, and what part of the cargo, if any, is intended to be exported in the same vessel, and what surplus stores remain on board as far as any of such particulars are or can be known to him."—46 Vict., cap. 12, sec. 25.

"The master shall at the time of making his Report, if required by the officer of Customs, produce to him the bills of lading of the cargo, or true copies thereof, and shall make and subscribe an affidavit referring to his Report, and declaring that all the statements made in the Report are true, and shall further answer all such questions concerning the vessel and cargo, and the crew, and the voyage as are demanded of him by such officer, and shall, if required, make the substance of any such answer part of his Report." —46 Vict., cap. 12, sec. 28.

"If any goods are unladen from any vessel before such Report is made, or if the master fails to make such Report, or makes an untrue Report, or does not truly answer the questions demanded of him, as provided in the next pre-

ceding section, he shall incur a penalty of 400 dollars, and the vessel may be detained until such penalty is paid."—46 Viet., cap. 12, sec. 28.

Proceedings following the seizure.

These have been made the subject of complaint by Mr. Phelps, although the explanations which were given in the previous Memorandum of the Undersigned (in reference to the letters of Mr. Bayard to her Majesty's Minister at Washington), and in the Report on the same subject of the Minister of Marine and Fisheries laid before his Excellency the Governor-General on the 14th June ultimo, coupled with a disavowal by the Canadian Government of any intention that the proceedings in such cases should be unnecessarily harsh or pursued in a punitive spirit, might have been expected to be sufficient. After the seizure was made the Commander of the *Lansdowne* took the *David J. Adams* across the Bay of Fundy to St. John, a distance of about forty miles. He appears to have had the impression that, as his duties would not permit him to remain at Digby, the vessel would not be secure from rescue, which has in several cases occurred after the seizure of fishing-vessels. He believed she would be more secure in the harbour of St. John, and that the legal proceedings, which in due course would follow, could be taken there. He was immediately directed, however, to return with the vessel to Digby, as it seemed more in order, and more in compliance with the Statutes relating to the subject, that she should be detained in the place of seizure, and that the legal proceedings should be taken in the Vice-Admiralty Court of the Province where the offence was committed. It does not seem to be claimed by the United States' authorities that any damage to the vessel, or that any injury or inconvenience to any one concerned,

was occasioned by this removal to St. John, and by her return to Digby, occupying as they did but a few hours, and yet this circumstance seems to be relied on as "aggravating the seizure," and as depriving it of the character of a seizure made "to enforce a right or to redress a wrong."

Another ground for complaint is that in Digby, "the paper alleged to be the legal precept for the capture and detention of the vessel was nailed to her mast in such a manner as to prevent its contents being read," and that "the request of the captain and of the United States' Consul-General to be allowed to detach the writ from the mast, for the purpose of learning its contents, was positively refused by the Provincial official in charge, that the United States' Consul-General was not able to learn from the Commander of the *Lansdowne* the nature of the complaint against the vessel, and that his respectful application to that effect was fruitless."

1. As to the position of the paper on the mast, it is not a fact that it was nailed to the vessel's mast "in such a manner as to prevent its contents being read." It was nailed there for the purpose of being read, and could have been read.

2. As to the refusal to allow it to be detached, such refusal was not intended as a discourtesy, but was legitimate and proper. The paper purported to be, and was, a copy of the writ of summons and warrant, which were then in the Registry of the Vice-Admiralty Court at Halifax. It was attached to the mast by the officer of the Court, in accordance with the rules and procedure of that Court. The purposes for which it was so attached did not admit of any consent for its removal.

3. As to the desire of the captain and of the United States' Consul-General to ascertain the contents of the paper, the original was in the Registry of the Court, accessible to every person, and the Registry is within eighty yards of the

Consul-General's office; all the reasons for the seizure and detention were made, however, to the captain, days before the paper arrived to be placed on the mast, and, before the Consul-General arrived at Digby, these reasons were not only matters of public notoriety, but had been published in the newspapers of the province, and in hundreds of other newspapers circulating throughout Canada and the United States. The captain and the Consul-General did not need, therefore, to take the paper from the mast in order to learn the causes of the seizure and detention.

4. As to the application of the Consul-General having been fruitless, the fact has transpired that he had reported the seizure, and its causes, to his Government, before the application was made. It has been already explained in the previous Memorandum of the Undersigned, and in the Report of the Minister of Marine and Fisheries, that the application was for a specific statement of the charges, and that it was made to an officer who had neither the legal acquirements nor the authority to state them in a more specific form than that in which he had already stated them. The Commander of the *Lansdowne* requested the Consul-General to make his request to the Minister of Marine and Fisheries, and, if he had done so, the specific statement which he had desired could have been furnished in an hour. It is hoped that the explanation already made, and the precautions which have been taken against even the appearance of discourtesy in the future, will, on consideration, be found to be satisfactory.

Incidents of the Customs Seizure.

Mr. Phelps presents the following views with respect to the claim that the *David J. Adams*, besides violating the Treaty and the Statutes relating to "fishing by foreign vessels," is liable to be detained for the penalty under the Customs Law :—

1. That this claim indicates the consciousness that the vessel could not be forfeited for the offence against the Treaty and Fishing Laws. This supposition is groundless. It is by no means uncommon in legal proceedings, both in Canada and the United States, for such proceedings to be based on more than one charge, although any one of the charges would in itself, if sustained, be sufficient for the purpose of the complainant. The success of this litigation, like that of all litigation, must depend not merely on the rights of the parties, but on the proof which may be adduced as to a right having been infringed. In this instance it appears from Mr. Phelps' letter that the facts which are to be made the subject of proof are evidently in dispute, and the Government of Canada could, with propriety, assert both its claims, so that both of them should not be lost by any miscarriage of justice in regard to one of them. This was likewise the proper course to be taken, in view of the fact that an appeal might at any time be made to the Government by the owners of the *David J. Adams* for remission of the forfeiture incurred in respect of the Fishery Laws. The following is a section of the Canadian Statute relating to fishing by foreign vessels:—

"In cases of seizure under this Act, the Governor in Council may direct a stay of proceedings, and, in cases of condemnation, may relieve from the penalty in whole or in part, and on such terms as are deemed right."—31 Vict., cap. 61, sec. 19.

It seemed necessary and proper to make at once any claim founded on infraction of the Customs Laws, in view of the possible termination of the proceedings by executive interference under this enactment. It would surely not be expected that the Government of Canada should wait until the termination of the proceedings under the Fishery Acts before asserting its claim to the penalty under the Customs

Act. The owners of the offending vessel and all concerned were entitled to know as soon as they could be made aware what the claims of the Government were in relation to the vessel, and they might fairly urge that any which were not disclosed were waived.

2. Mr. Phelps remarks that this charge is "not the one on which the vessel was seized," and "was an afterthought." The vessel was seized by the Commander of the *Lansdowne* for a violation of the Fishery Laws before the Customs authorities had any knowledge that such a vessel had entered into the port, or had attempted to leave it, and the Commander was not aware at that time whether the *David J. Adams* had made proper entry or not. A few hours afterwards, however, the Collector of Customs at Digby ascertained the facts, and on the facts being made known to the Head of his Department at Ottawa, was immediately instructed to take such steps as might be necessary to assert the claim for the penalty which had been incurred. The Collector did so.

3. Mr. Phelps asserts that the charge of breach of the Customs Law is not the one which must now be principally relied on for condemnation. It is true that condemnation does not necessarily follow. The penalty prescribed is a forfeiture of 400 dollars, on payment of which the owners are entitled to the release of the vessel. If Mr. Phelps means by the expression just quoted that the Customs offence cannot be relied on in respect to the penalty claimed, and that the vessel cannot be detained until that penalty is paid, it can only be said that in this contention the Canadian Government does not concur. Section 39 of the Customs Act, before quoted, is explicit on that point.

4. It is also urged that the offence was, at most, "only an accidental and clearly technical breach of a Custom-house

Regulation, by which no harm was intended and from which no harm came, and would in ordinary cases be easily condoned by an apology and perhaps payment of costs." What has already been said under the heading "The Offence (as to Customs Laws)" presents the contention opposed to the offence being considered as "accidental." The master of the *David J. Adams* showed by his language and conduct that what he did he did with design, and with the knowledge that he was violating the laws of the country. He could not have complied with the Customs Law without frustrating the purposes for which he had gone into port.

As to the breach being a "technical" one, it must be remembered that with thousands of miles of coast indented, as the coasts of Canada are, by hundreds of harbours and inlets, it is impossible to enforce the Fishery Law without a strict enforcement of the Customs Laws. This difficulty was not unforeseen by the framers of the Treaty of 1818, who provided that the fishermen should be "under such restrictions as might be necessary to prevent their taking, drying, or curing fish . . . . or in any other manner whatever *abusing the privileges reserved to them.*" No naval force which could be equipped by the Dominion would of itself be sufficient for the enforcement of the Fishery Laws.

Foreign fishing-vessels are allowed by the Treaty to enter the harbours and inlets of Canada, but they are allowed to do so only for specified purposes. In order to confine them to those purposes it is necessary to insist on the observance of the Customs Laws, which are enforced by officers all along the coast. A strict enforcement of the Customs Laws, and one consistent with the Treaty, would require that, even when coming into port for the purposes for which such vessels are allowed to enter our waters, a Report should be made at the custom-house, but this has not been insisted on in all cases,

when the Customs Laws are enforced against those who enter for other than legitimate purposes, and who choose to violate both the Fishery Laws and Customs Laws, the Government is far within its right, and should not be asked to accept an apology and payment of costs. It may be observed here as affecting Mr. Phelps' demands for restoration and damages that the apology and costs have never been tendered, and that Mr. Phelps seems to be of opinion that they are not called for.

5. Mr. Phelps is informed by the Consul-General at Halifax that it is "conceded by the Customs authorities there that foreign fishing-vessels have for forty years been accustomed to go in and out of the bay at pleasure, and have never been required to send ashore and report when they had no business with the port and made no landing, and that no seizure had ever before been made or claim against them for so doing." Nothing of this kind is or could be conceded by the Customs authorities there or elsewhere in Canada.

The bay referred to, the Annapolis Basin, is like all the other harbours of Canada, except that it is unusually well defined, and land-locked and furnished with custom-houses. Neither there, nor anywhere else, have foreign fishing-vessels been accustomed to go in and out at pleasure without reporting. If they had been so permitted the Fishery Laws could not have been enforced, and there would have been no protection against illicit trading. While the Reciprocity Treaty of 1854 and the Fishery Clauses of the Washington Treaty were in force, the Convention of 1818 being, of course, suspended, considerable laxity was allowed to the United States' fishing-vessels, much greater than the terms of those Treaties entitled them to; but the Consul-General is greatly mistaken when he supposes that at other times the Customs Laws were not enforced, and that seizures of foreign fishing-vessels were not made for

omitting to report. Abundant evidence on this point can be had.

In 1839 Mr. Vail, the Acting Secretary of State (United States), reported that most of the seizures, which then were considered numerous, were for alleged violation of the Customs Laws (Papers relating to the Treaty of Washington, vol. vi, p. 283, Washington edition). From a letter of the United States' Consul at Charlottetown, dated 19th August, 1870, to the United States' Consul-General at Montreal, it appears that it was the practice of the United States' fishermen at that time to make regular entry at the port to which they resorted. The Consul said, "Here the fishermen enter and clear, and take out permits to land their mackerel from the Collector, and as their mackerel is a free article in this island, there can be no illicit trade."

In the year 1870 two United States' fishing-vessels, the *H. W. Lewis*, and the *Granada*, were seized on like charges in Canadian waters.

What Mr. Phelps styles "a Custom-house Regulation" is an Act of the Parliament of Canada, and has for many years been in force in all the provinces of the Dominion. It is one which the Government cannot at all alter or repeal, and which its officers are not at liberty to disregard.

6. It is suggested, though not asserted, in the letter of Mr. Phelps, that the penalty cannot reasonably be insisted on, because a new rule has been suddenly adopted, without notice. The rule, as before observed, is not a new one, nor is its enforcement a novelty. As the Government of the United States chooses to put an end to the arrangement under which the fishermen of that country were accustomed to frequent Canadian waters with so much freedom, the obligation of giving notice to those fishermen that their rights were thereafter, by the action of their own Government, to be greatly restricted, and that they must not infringe the Laws of

Canada, was surely a duty incumbent on the Government of the United States rather than on that of Canada. This point cannot be better expressed than in the language reported to have been recently used by Mr. Bayard, the United States' Secretary of State, in his reply to the owners of the *George Cushing*, a vessel recently seized on a similar charge: "You are well aware that questions are now pending between this Government and that of Great Britain in relation to the justification of the rights of American fishing-vessels in the territorial waters of British North America, and we shall relax no effort to arrive at a satisfactory solution of the difficulty. In the meantime, it is the duty and manifest interest of all American citizens entering Canadian jurisdiction to ascertain and obey the Laws and Regulations there in force. For all unlawful depredations of property or commercial rights this Government will expect to procure redress and compensation for the innocent sufferers."

Interpretation of the Treaty.

Mr. Phelps, after commenting in the language already quoted from his letter on the claim for the Customs penalty, treats, as the only question, whether the vessel is to be forfeited for purchasing bait to be used in lawful fishing. In following his argument on this point, it should be borne in mind, as already stated, that in so far as the fact of the bait having been intended to be used in lawful fishing is material to the case, that is a fact which is not admitted. It is one in respect of which the burden of proof is on the owners of the vessel, and it is one on which the owners of the vessel have not yet obtained an adjudication by the tribunal before which the case has gone.

Mr. Phelps admits "that if the language of the Treaty of 1818 is to be interpreted literally, rather than according to its spirit and plain intent, a vessel engaged in fishing would

be prohibited from entering a Canadian port for any purpose whatever, except to obtain wood or water, or to repair damages, or to seek shelter."

It is claimed on the part of the Government of Canada that this is not only the language of the Treaty of 1818, but "its spirit and plain intent." To establish this contention, it should be sufficient to point to the clear unambiguous words of the Treaty. To those clear and unambiguous words Mr. Phelps seeks to attach a hidden meaning by suggesting that certain "preposterous consequences" might ensue from giving them their ordinary construction. He says that with such a construction a vessel might be forfeited for entering a port to "post a letter, to send a telegram, to buy a newspaper, to obtain a physician in case of illness, or a surgeon in case of accident, to land or bring off a passenger, or even to lend assistance to the inhabitants, &c."

There are probably few Treaties or Statutes the literal enforcement of which might not, in certain circumstances, produce consequences worthy of being described as preposterous.

At most, this argument can only suggest that, in regard to this Treaty, as in regard to every enactment, its enforcement should not be insisted on where accidental hardships or "preposterous consequences" are likely to ensue. Equity, and a natural sense of justice, would doubtless lead the Government with which the Treaty was made to abstain from its rigid enforcement for inadvertent offences, although the right so to enforce it might be beyond question. It is for this reason that, inasmuch as the enforcement of this Treaty, to some extent, devolves on the Government of Canada, the Parliament of the Dominion has in one of the sections already quoted of the Statute relating to fishing by foreign vessels (31 Vict., cap. 61, sec. 19) intrusted the Executive with power to mitigate the severity of those provisions when an

appeal to executive interference can be justified. In relation to every law of a penal character the same power for the same purpose is vested in the Executive. Mr. Phelps will find it difficult, however, to discover any authority among the jurists of his own country or of Great Britain, or among the writers on international law, for the position that, against the plain words of a Treaty or Statute, an interpretation is to be sought which will obviate all chances of hardship and render unnecessary the exercise of the executive power before mentioned.

It might fairly be urged against his argument that the Convention of 1818 is less open to an attempt to change its plain meaning than even a statute would be. The latter is a declaration of its will by the supreme authority of the State, the former was a compact deliberately and solemnly made by two parties, each of whom expressed what he was willing to concede, and by what terms he was willing to be bound. If the purposes for which the United States desired that their fishing-vessels should have the right to enter British American waters included other than those expressed, their desire cannot avail them now, nor be a pretext for a special interpretation after they assented to the words, "and for no other purpose whatever." If it was "preposterous" that their fishermen should be precluded from entering provincial waters "to post a letter," or for any other of the purposes which Mr Phelps mentions, they would probably never have assented to a Treaty framed as this was. Having done so, they cannot now urge that their language was "preposterous," and that its effect must be destroyed by resort to "interpretation."

But that which Mr. Phelps calls "literal interpretation" is by no means so preposterous as he suggests, when the purpose and object of the Treaty come to be considered. While it was not desired to interfere with ordinary commer-

cial intercourse between the people of the two countries, the deliberate and declared purpose existed on the part of Great Britain, and the willingness existed on the part of the United States, to secure absolutely, and free from the possibility of encroachment, the fisheries of the British possessions in America to the people of those possessions, excepting as to certain localities, in respect of which special provisions were made. To effect this it was merely necessary that there should be a joint declaration of the right which was to be established, but that means should be taken to preserve that right. For this purpose a distinction was necessarily drawn between the United States' vessels engaged in commerce and those engaged in fishing. While the former had free access to our coasts, the latter were placed under a strict prohibition.

The purpose was to prevent the fisheries from being poached on, and to preserve them to "the subjects of his Britannic Majesty in North America, not only for the pursuit of fishing within the waters adjacent to the coast (which can under the law of nations be done by any country), but as a basis of supplies for the pursuit of fishing in the deep sea. For this purpose it was necessary to keep out foreign fishing-vessels, excepting in cases of dire necessity, no matter under what pretext they might desire to come in. The fisheries could not be preserved to our people if every one of the United States' fishing-vessels that were accustomed to swarm along our coasts could claim the right to enter our harbours "to post a letter, or send a telegram, or buy a newspaper, to obtain a physician in case of illness, or a surgeon in case of accident, to land or bring off a passenger, or even to lend assistance to the inhabitants in fire, flood, or pestilence," or to "buy medicine" or "to purchase a new rope." The slightest acquaintance with the negotiations which led to the Treaty of 1818, and with the state of the Fishery

question preceding it, induces the belief that if the United States' negotiators had suggested these as purposes for which their vessels should be allowed to enter our waters, the proposal would have been rejected as "preposterous," to quote Mr. Phelps' own words. But Mr. Phelps appears to have overlooked an important part of the case when he suggested that it is a "preposterous" construction of the Treaty, which would lead to the purchase of bait being prohibited. So far from such a construction being against "its spirit and plain intent," no other meaning would accord with that spirit and intent. If we adopt one of the methods contended for by Mr. Phelps of arriving at the true meaning of the Treaty, namely, having reference to the "attending circumstances," &c., we find that so far from its being considered by the framers of the Treaty that a prohibition of the right to obtain bait would be a "preposterous" and an extreme instance, a proposition was made by the United States' negotiators that the proviso should read thus: "Provided, however, that American fishermen shall be permitted to enter such bays and harbours for the purposes only of obtaining shelter, wood, water, *and bait*," and the insertion of the word "bait" was resisted by the British negotiators and struck out. After this, how can it be contended that any rule of interpretation would be sound which would give to United States' fishermen the very permission which was sought for on their behalf during the negotiations, successfully resisted by the British Representatives, and deliberately rejected by the framers of the Convention?

It is a well-known fact that the negotiations preceding the Treaty had reference very largely to the deep-sea fisheries, and that the right to purchase bait in the harbours of the British possessions for the deep-sea fishing was one which the United States' fishermen were intentionally excluded from. Referring to the difficulties which subse-

quently arose from an enforcement of the Treaty, an American author says:—

"It will be seen that most of those difficulties arose from a change in the character of the fisheries; cod being caught on the banks, were seldom pursued within the three-mile limit, and yet it was to cod, and perhaps halibut, that all the early negotiations had referred.

"The mackerel fishing had now sprung up in the Gulf of St. Lawrence, and had proved extremely profitable. This was at that time an inshore fishery." ("Schuyler's American Diplomacy," p. 411)

In further amplification of this argument, the Undersigned would refer to the views set forth in the Memorandum before mentioned in the letters of Mr. Bayard in May last, and to those presented in the Report of the Minister of Marine and Fisheries, approved on the 14th June ultimo.

While believing, however, that Mr. Phelps cannot, by resort to any such matters, successfully establish a different construction for the Treaty from that which its words present, the Undersigned submits that Mr. Phelps is mistaken as to the right to resort to any matters outside the Treaty itself to modify its plain words. Mr. Phelps expresses his contention thus:—

"It seems to me clear that the Treaty may be considered in accordance with those ordinary and well-settled rules applicable to all written instruments, which without such salutary assistance must constantly fail of their purpose. By these rules the letter often gives way to the intent, or rather is only used to ascertain the intent, and the whole document will be taken together, and will be considered in connection with the attending circumstances, the situation of the parties, and the object in view, and thus the literal meaning of an isolated clause is often shown not to be the meaning really understood or intended."

It may be readily admitted that such rules of interpretation exist, but when are they to be applied? Only when interpretation is necessary—when the words are plain in their ordinary meaning the task of interpretation does not begin. Vattel says in reference to the "Interpretation of Treaties:"—

"The first general maxim of interpretation is, *that it is not allowable to interpret what has no need of interpretation.* When the deed is worded in clear and precise terms, when its meaning is evident and leads to no absurd conclusion, there can be no reason for refusing to admit the meaning which such deed naturally presents. To go elsewhere in search of conjectures in order to restrict or extend it, is but an attempt to elude it.

"Those cavillers who dispute the sense of a clear and determined article are accustomed to seek their frivolous subterfuges in the pretended intentions and views which they attribute to its author. It would be very often dangerous to enter with them into the discussion of these supposed views that are pointed out in the piece itself. The following rule is better calculated to foil such cavillers, and will at once cut short all chicanery: *If he who could and ought to have explained himself clearly and fully has not done it, it is the worse for him;* he cannot be allowed to introduce subsequent restrictions which he has not expressed. This is a maxim of the Roman law: 'Pactionem obscuram iis nocere in quorum fuit potestate legem apertius conscribere.' The equity of this rule is glaringly obvious, and its necessity is not less evident." (Vattel's "Interpretation of Treaties," lib. ii., chap. 17.)

Sedgewick, the American writer on the "Construction of Statutes" (and Treaties are constructed by much the same rules as Statutes), says, at p. 194: "The rule is, as we shall constantly see, cardinal and universal, but if the Statute is

plain and unambiguous, there is no room for construction or interpretation. The Legislature has spoken; their interpretation is free from doubt, and their will must be obeyed." "It may be proper," it has been said in Kentucky, "in giving a construction to a Statute, to look to the effects and consequences when its provisions are ambiguous or the legislative intention is doubtful. But when the law is clear and explicit, and its provisions are susceptible of but one interpretation, evil can only be avoided by a change of the law itself, to be effected by legislative and not judicial action." "So too," it is said by the Supreme Court of the United States, "where a law is plain and unambiguous, whether it be expressed in general or limited terms, the Legislature should be intended to mean what they have plainly expressed, and consequently no room is left for construction."

At the Tribunal of Arbitration at Geneva, held under the Washington Treaty in 1872, a similar question arose. Counsel for her Majesty's Government presented a supplemental argument, in which the ordinary rules for the interpretation of Treaties were invoked. Mr. Evarts, one of the counsel for the United States, and afterwards Secretary of State, made a supplemental reply in which the following passage occurs: "At the close of the special argument we find a general presentation of canons for the construction of Treaties, and some general observations as to the light or the controlling reason under which these rules of the Treaty should be construed. These suggestions may be briefly dismissed. It certainly would be a very great reproach to these nations, which had deliberately fixed upon three propositions as expressive of the law of nations, in their judgment, for the purposes of this trial, that a resort to general instructions for the purpose of interpretation was necessary. Eleven canons of interpretation drawn from Vattel are presented in order, and then several of them, as the case suits,

are applied as valuable in elucidating this or that point of the rules. But the learned counsel has omitted to bring to your notice the first and most general rule of Vattel, which, being once understood, would, as we think, dispense with any consideration of these subordinate canons which Vattel has introduced to be used only in case his first general rule does not apply. This first proposition is that '*it is not allowable to interpret what has no need of interpretation.*'" (Washington Treaty Papers, vol. iii., pp. 446, 447.)

In a letter of Mr. Hamilton Fish to the United States' Minister in England on the same subject, dated the 16th April, 1872, the following view was set forth :—

"Further than this, it appears to me that the principles of English and American law (and they are substantially the same) regarding the construction of Statutes and Treaties, and of written instruments generally, would preclude the seeking of evidence of intent outside the instrument itself. It might be a painful trial on which to enter in seeking the opinions and recollections of parties, to bring into conflict the differing expectations of those who were engaged in the negotiation of an instrument." (Washington Treaty Papers, vol. ii., p. 473.)

But even at this barrier the difficulty in following Mr. Phelps' argument, by which he seeks to reach the interpretation he desires, does not end. After taking a view of the Treaty which all authorities thus forbid, he says, "Thus regarded, it appears to me clear that the words, 'for no other purpose whatever,' as employed in the Treaty, mean for no other purpose inconsistent with the provisions of the Treaty."

Taken in that sense, the words would have no meaning, for no other purpose would be consistent with the Treaty excepting those mentioned. He proceeds, "or prejudicial to the interests of the provinces or their inhabitants." If

the United States' authorities are the judges as to what is prejudicial to those interests, the Treaty will have very little value; if the provinces are to be the judges, it is most prejudicial to their interests that United States' fishermen should be permitted to come into their harbours on any pretext, and it is fatal to their fishery interests that these fishermen, with whom they have to compete at such a disadvantage in the markets of the United States, should be allowed to enter for supplies and bait, even for the pursuit of the deep-sea fisheries. Before concluding his remarks on this subject, the Undersigned would refer to a passage in the answer on behalf of the United States to the case of her Majesty's Government as presented to the Halifax Fisheries Commission in 1877: "The various incidental and reciprocal advantages of the Treaty, such as the privileges of traffic, purchasing bait and other supplies, are not the subject of compensation, because the Treaty of Washington confers no such rights on the inhabitants of the United States, *who now enjoy them merely by sufferance, and who can at any time be deprived of them by the enforcement of existing Laws, or the re-enactment of former oppressive Statutes.*"

Mr. Phelps has made a lengthy citation from the Imperial Act 59 Geo. III., cap. 38, for the purpose of establishing—

1. That the penalty of forfeiture was not incurred by any entry into British ports, unless accompanied by fishing, or preparing to fish, within the prohibited limits.

2. That it was not the intention of Parliament, or its understanding of the Treaty, that any other entry should be regarded as an infraction of the provisions of that Act.

As regards the latter point, it seems to be effectually disposed of by the quotation which Mr. Phelps has made. The Act permits fishermen of the United States to enter

the bays or harbours of his Britannic Majesty's dominions in America for the purposes named in the Treaty, "and for no other purpose whatever;" and, after enacting the penalty of forfeiture in regard to certain offences, provides a penalty of 200*l.* against any persons otherwise offending against the Act. It cannot, therefore, be successfully contended that Parliament intended to permit entry into the British American waters for the purchase of bait, or for any other than the purposes specified in the Treaty.

As to the first point, it is to be observed that the penalty of forfeiture was expressly pronounced as applicable to the offence of fishing or preparing fish. It may be that forfeiture is incurred by other illegal entry, contrary to the Treaty, and contrary to the Statute. It may also be contended that preparing, within the prohibited limits, to fish in any place is the offence at which the penalty is aimed, or it may be that the preparing within these waters to fish is evidence of preparing to fish within the prohibited waters, under the Imperial Statute, and especially under the Canadian Statute, which places the burden of proof on the defendant.

The Undersigned does not propose at this time to enter into any elaborate argument to show the grounds on which the penalty of forfeiture is available, because that question is one which is more suitable for determination by the Courts to whose decision it has been referred in the very case under consideration.

The decision in the case of the *David J. Adams* will be soon pronounced, and as the Government of Canada will be bound by the ultimate judgment of competent authority on this question, and cannot be expected to acquiesce in the view of the United States' Government without such a judgment, any argument of the case in diplomatic form would be premature and futile.

In order, however, to show that Mr. Phelps is in error

when he assumes that the practical construction hitherto given to the Treaty is in accordance with his views, it is as well to state that in the year 1815 the Commander of one of his Majesty's ships of war seized four United States fishing-vessels (see Sabine on Fisheries); and again, in 1817, the Imperial Government acted on the view that they had the right to seize foreign vessels encroaching on the fishing-grounds. Instructions were issued by Great Britain to seize foreign vessels fishing or at anchor in any of the harbours or creeks in the British North American possessions, or within their maritime jurisdiction, and send them to Halifax for adjudication. Several vessels were seized, and information was fully communicated to the Government of the United States. This, it will be remembered, was not only before the Treaty, but before the Imperial Act above referred to.

The following were the words of the Admiralty Instructions then issued: "On your meeting with any foreign vessels fishing or at anchor in any of the harbours or creeks in his Majesty's North American Provinces, or within our maritime jurisdiction, you will seize and send such vessel so trespassing to Halifax for adjudication, unless it should clearly appear that they have been obliged to put in there in consequence of distress, acquainting me with the cause of such seizure, and every other particular, to enable me to give all information to the Lords Commissioners of the Admiralty."

Under these instructions eleven or twelve American fishing-vessels were seized in Nova Scotia on the 8th June, 1817, in consequence of their frequenting some of the harbours of that province.

In 1818 the fishing-vessels *Mabby* and *Washington* were seized and condemned for entering and harbouring in British American waters.

In 1839 the *Jara*, *Independence*, *Magnolia*, and *Hart*

were seized and confiscated, the principal charge being that they were within British American waters without legal cause.

In 1840 the *Papineau* and *Mary* were seized and sold for purchasing bait.

In the spring of 1819 a United States' fishing-vessel named the *Charles* was seized and condemned in the Vice-Admiralty Court in New Brunswick for having resorted to a harbour of that province, after warning, and without necessity.

In the year 1871 the United States' fishing-vessel *J. H. Nickerson* was seized for having purchased bait within three marine miles of the Nova Scotian shore, and condemned by the Judgment of Sir William Young, Chief Justice of Nova Scotia, and Judge of the Court of Vice-Admiralty. The following is a passage from his Judgment:—

"The vessel went in, not to obtain water or men, as the allegation says, but to purchase or procure bait (which, as I take it, is a preparing to fish), and it was contended that they had a right to do so, and that no forfeiture accrued on such entering. The answer is, that if a privilege to enter our harbours for bait was to be conceded to American fishermen, it ought to have been in the Treaty, and it is too important a matter to have been accidentally overlooked. We knew, indeed, from the State Papers that it was not overlooked, that it was suggested, and declined. But the Court, as I have already intimated, does not insist upon that as a reason for its Judgment. What may be fairly and justly insisted on is, that beyond the four purposes specified in the Treaty—shelter, repairs, water, and wood – here is another purpose or claim not specified, while the Treaty itself declares that no such other purpose shall be received to justify an entry. It appears to me an inevitable conclusion that the *J. H. Nickerson*, in entering

the Bay of Ingonish for the purpose of procuring bait while there, became liable to forfeiture, and upon the true construction of the Treaty and Acts of Parliament was legally seized." (*Vide* Halifax Commission, vol. iii., pp. 3398, Washington edition.)

In view of these seizures and of this decision, it is difficult to understand the following passages in the letter of Mr. Phelps:—

"The practical construction given to the Treaty down to the present time has been in entire accord with the conclusions thus deduced from the Act of Parliament. The British Government has repeatedly refused to allow interference with American fishing-vessels, unless for illegal fishing, and has given explicit orders to the contrary."

"Judicial authority upon the question is to the same effect. That the purchase of bait by American fishermen in the provincial ports has been a common practice is well known, but in no case, so far as I can ascertain, has the seizure of an American vessel ever been enforced on the ground of the purchase of bait or of any other supplies. On the hearing before the Halifax Fishery Commission in 1877-78, this question was discussed, and no case could be produced of any such condemnation. Vessels shown to have been condemned were in all cases adjudged guilty either of fishing or preparing to fish within the prohibited limits."

Although Mr. Phelps is under the impression that "in the hearing before the Halifax Fishery Commission in 1877 this question was discussed, and no case could be produced of any such condemnation," the fact appears in the records of that Commission, as published by the Government of the United States, that on a discussion which there arose, the instances above mentioned were nearly all cited, and the Judgment of Sir William Young in the case of the *J. H. Nickerson* was presented in full, and it now appears among

the papers of that Commission (see vol. iii., Documents and Proceedings of Halifax Commission, p. 3398, Washington edition). The decision in the case of the *J. H. Nickerson* was subsequent to that in the case of the *White Fawn* mentioned, to the exclusion of all the other cases referred to by Mr. Phelps. Whether that decision should be reaffirmed or not is a question more suitable for judicial determination than for discussion here.

Right of the Dominion Parliament to make Fishery Enactments.

Mr. Phelps deems it unnecessary to point out that it is not in the power of the Canadian Parliament to alter or enlarge the provisions of the Act of the Imperial Parliament, or to give to the Treaty either a construction or a legal effect not warranted by that Act.

No attempt has ever been made by the Parliament of Canada, or by that of any of the Provinces, to give a "construction" to the Treaty, but the Undersigned submits that the right of the Parliament of Canada, with the Royal Assent given in the manner provided in the Constitution, to pass an Act on this subject to give that Treaty effect, or to protect the people of Canada from the infringement of the Treaty provisions, is clear beyond question. An Act of that Parliament duly passed, according to constitutional forms, has as much the force of law in Canada, and binds as fully offenders who may come within its jurisdiction, as any Act of the Imperial Parliament.

The efforts made on the part of the Government of the United States to deny and refute the validity of Colonial Statutes on this subject have been continued for many years, and in every instance have been set at nought by the Imperial authorities and by the Judicial Tribunals.

In May 1870 this vain contention was completely

abandoned; a Circular was issued by the Treasury Department at Washington, in which Circular the persons to whom it was sent were authorized and directed to inform all masters of fishing-vessels that the authorities of the Dominion of Canada had resolved to terminate the system of granting fishing licences to foreign vessels.

The Circular proceeds to state the terms of the Treaty of 1818, in order that United States' fishermen might be informed of the limitation thereby placed on their privileges. It proceeds further to set out at large the Canadian Act of 1868, relating to fishing by foreign vessels, which has been hereinbefore referred to.

The fishermen of the United States were by that Circular expressly warned of the nature of the Canadian Statute, which it is now once more pretended is without force, but no intimation was given to those fishermen that these provisions were nugatory and would be resisted by the United States' Government. Lest there should be any misapprehension on that subject, however, on the 9th June of the same year, less than a month after that Circular, another Circular was issued from the same Department, stating again the terms of the Treaty of 1818, and then containing the following paragraph: "Fishermen of the United States are bound to respect the British Laws for the regulation and preservation of the fisheries to the same extent to which they are applicable to British and Canadian fishermen." The same Circular, noticing the change made in the Canadian Fishery Act of 1868 by the amendment of 1870, makes this observation: "It will be observed that the warning formerly given is not required under the amended Act, but that vessels trespassing are liable to seizure without such warning."

The Canadian Statute of 1886.

Mr. Phelps is again under an erroneous impression with

regard to the Statute introduced at the last Session of the Dominion Parliament.

He is informed that "since the seizure" the Canadian authorities have pressed, or are pressing, through the Canadian Parliament, in much haste, an Act which is designed, for the first time in the history of the Legislature, under this Treaty, to make the facts upon which the American vessels have been seized illegal, and to authorize proceedings against them therefor.

The following observations are appropriate in relation to this passage of Mr Phelps' letter:—

1. The Act which he refers to was not passed with haste. It was passed through the two Houses in the usual manner, and with the observance of all the usual forms. Its passage occupied probably more time than was occupied in the passage through the Congress of the United States of a measure which possesses much the same character, and which will be referred to hereafter.

2. The Act has no bearing on the seizures referred to.

3. It does not make any act illegal which was legal before, but declares what penalty attaches to the offences which were already prohibited. It may be observed in reference to the charges of "undue haste," and of "legislating for the first time in the history of the legislation under the Treaty," that before the Statute referred to had become law the United States' Congress passed a Statute containing the following section:—

"That whenever any foreign country whose vessels have been placed on the same footing in the ports of the United States as American vessels (the coastwise trade excepted) shall deny to any vessels of the United States any of the commercial privileges accorded to national vessels in the harbours, ports, or waters of such foreign country, the President, on receiving satisfactory information of the continuance

of such discriminations against any vessels of the United States, is hereby authorized to issue his Proclamation, excluding, on and after such time as he may indicate, from the exercise of such commercial privileges in the ports of the United States as are denied to American vessels in the ports of such foreign country, all vessels of such foreign country of a similar character to the vessels of the United States thus discriminated against, and suspending such concessions previously granted to the vessels of such country; and on and after the date named in such Proclamation for it to take effect, if the master, officer, or agent of any vessel of such foreign country excluded by said Proclamation from the exercise of any commercial privileges shall do any act prohibited by said Proclamation in the ports, harbours, or waters of the United States for or on account of such vessel, such vessel and its rigging, tackle, furniture, and boats, and all the goods on board, shall be liable to seizure and to forfeiture to the United States; and any person opposing any officer of the United States in the enforcement of this Act, or aiding and abetting any other person in such opposition, shall forfeit 800 dollars, and shall be guilty of a misdemeanour, and, upon conviction, shall be liable to imprisonment for a term not exceeding two years."—Sec. 17 of Act No. 85 of Congress, 1886.

This enactment has all the features of hostility, which Mr. Phelps has stigmatized as "unprecedented in the history of legislation under the Treaty."

Enforcement of the Acts without Notice.

Mr. Phelps insists upon what he regards as "obvious grounds of reason and justice" and "upon common principles of comity, that previous notice should have been given of the new stringent restrictions" it was intended to enforce.

It has been already shown that no new restrictions have

been attempted. The case of the *David J. Adams* is proceeding under the Statutes which have been enforced during the whole time when the Treaty had operation.

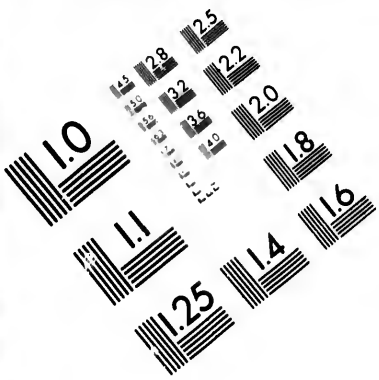
It is true that for a short time prior to the Treaty of Washington, and when expectations existed of such a Treaty being arrived at, the instructions of 1870, which are cited by Mr. Phelps, were issued by the Imperial authorities. It is likewise true that under these instructions the rights of her Majesty's subjects in Canada were not insisted on in their entirety. These instructions were obviously applicable to the particular time at which and the particular circumstances under which they were issued by her Majesty's Government.

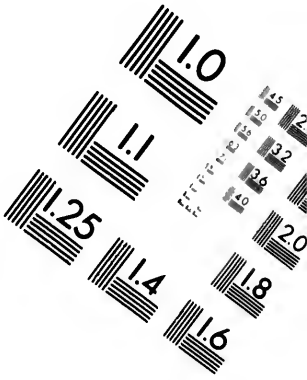
But it is obviously unfair to invoke them now under wholly different circumstances as establishing a "practical construction" of the Treaty, or as affording any ground for claiming that the indulgence which they extended should be perpetual.

The Fishery Clauses of the Treaty of Washington were annulled by a notice from the Government of the United States, and, as has already been urged, it would seem to have been the duty of that Government, rather than of the Government of Canada to have warned its own people of the consequences which must ensue. This was done in 1870, by the Circulars from the Treasury Department at Washington, and might well have been done at this time.

Mr. Phelps has been pleased to stigmatize "the action of the Canadian authority in seizing and still detaining the *David J. Adams* as not only unfriendly and discourteous, but altogether unwarrantable."

He proceeds to state that that vessel "had violated no existing law," although his letter cites the Statute which she had directly and plainly violated; and he states that she "had incurred no penalty that any known Statute





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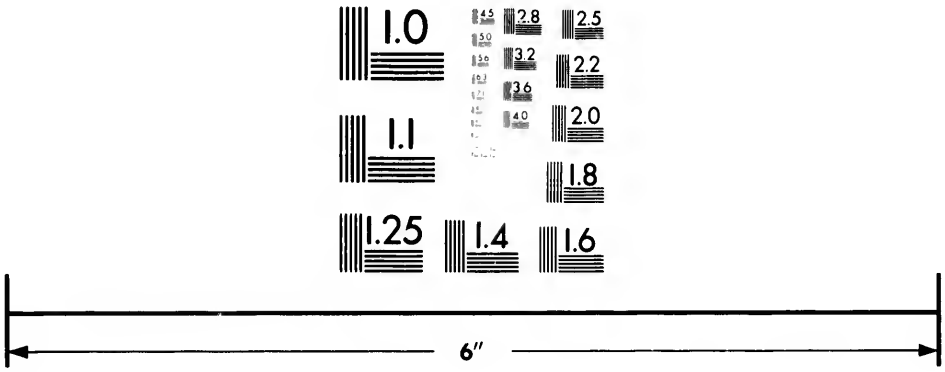

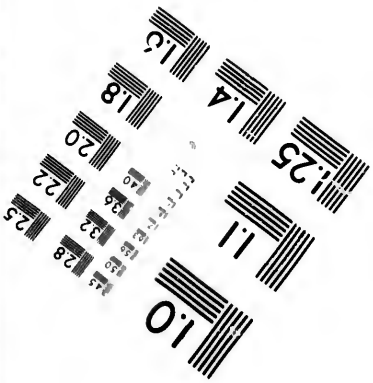

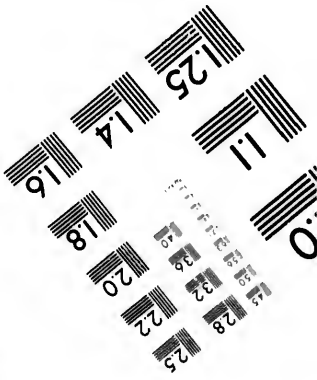

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imposed;" while he has directed at large the words which inflict a penalty for the violation of that Statute. He declares it seems impossible for him to escape the conclusion that "this and similar seizures were made by the Canadian authorities for the deliberate purpose of harassing and embarrassing the American fishing-vessels in the pursuit of their lawful employment," and that "the injury is very much aggravated by the motives which appear to have prompted it."

He professes to have found the real source of the difficulty in the "irritation that has taken place among a portion of the Canadian people on account of the termination by the United States' Government of the Washington Treaty," and in a desire to drive the United States, "by harassing and annoying their fishermen, into the adoption of a new Treaty, by which Canadian fish shall be admitted free," and he declares that "this scheme is likely to prove as mistaken in policy as it is unjustifiable in principle."

He might, perhaps, have more accurately stated the real source of the difficulty, had he suggested that the United States' authorities have long endeavoured, and are still endeavouring, to obtain that which by their solemn Treaty they deliberately renounced, and to deprive the Canadian people of that which by Treaty the Canadian people lawfully acquired.

The people of the British North American Provinces, ever since the year 1818 (with the exception of those periods in which the Reciprocity Treaty and the Fishery Clauses of the Washington Treaty prevailed), have, at enormous expense, and with great difficulty, been protecting their fisheries against encroachments by fishermen of the United States, carried on under every form and pretext, and aided by such denunciations as Mr. Phelps has thought proper to reproduce on this occasion. They value no less now than

they formerly did the rights which were secured to them by the Treaty, and they are still indisposed to yield those rights, either to individual aggression or official demands.

The course of the Canadian Government since the rescission of the Fishery Clauses of the Washington Treaty has been such as hardly to merit the aspersions which Mr. Phelps has used. In order to avoid irritation and to meet a desire which the Government represented by Mr. Phelps professed to entertain for the settlement of all questions which could re-awaken controversy, they renewed for six months after the expiration of those clauses all the benefits which the United States' fishermen had enjoyed under them, although, during that interval, the Government of the United States enforced against Canadian fishermen the Laws which those Fishery Clauses had suspended.

Mr. Bayard, the United States' Secretary of State, has made some recognition of these facts in a letter which he is reported to have written recently to the owners of the *David J. Adams*. He says :—

"More than one year ago I sought to protect our citizens engaged in fishing from results which might attend any possible misunderstanding between the Governments of Great Britain and the United States as to the measure of their mutual rights and privileges in the territorial waters of British North America. After the termination of the Fishery Articles of the Treaty of Washington, in June last, it seemed to me then, and it seems to me now, very hard that differences of opinion between the two Governments should cause loss to honest citizens, whose line of obedience might be thus rendered vague and uncertain, and their property be brought into jeopardy. Influenced by this feeling, I procured a temporary arrangement which secured our fishermen full enjoyment of all Canadian fisheries, free from molestation, during a period which would permit

discussion of a just international settlement of the whole Fishery question, but other counsels prevailed, and my efforts further to protect fishermen from such trouble as you now suffer were unavailing."

At the end of the interval of six months the United States' authorities concluded to refrain from any attempt to negotiate for larger fishery rights for their people, and they have continued to enforce their Customs Laws against the fishermen and people of Canada.

The least they could have been expected to do under these circumstances was to leave to the people of Canada the full and unquestioned enjoyment of the rights secured to them by Treaty. The Government of Canada has simply insisted upon those rights and has presented to the legal tribunals its claim to have them enforced.

The insinuations of ulterior motives, the imputations of unfriendly dispositions, and the singularly inaccurate representation of all the leading features of the questions under discussion, may, it has been assumed, be passed by with little more comment. They are hardly likely to induce her Majesty's Government to sacrifice the rights which they have heretofore helped our people to protect, and they are too familiar to awaken indignation or surprise.

The Undersigned respectfully recommends that the substance of this Memorandum, if approved, be forwarded to the Secretary of State for the Colonies, for the information of her Majesty's Government.

(Signed) JNO. S. D. THOMPSON,
Minister of Justice.

Ottawa, July 22, 1886.

No. 2 of 1887.

Inclosure 2 in No. 49.

REPORT OF A COMMITTEE OF THE HONOURABLE THE PRIVY COUNCIL FOR CANADA, APPROVED BY HIS EXCELLENCY THE GOVERNOR-GENERAL IN COUNCIL ON THE 1ST FEBRUARY, 1887.

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

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

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

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

The Minister has to observe again, what has frequently been stated in the negotiations on this subject, that nothing has been done on the part of the Canadian authorities since the termination of the Treaty of Washingtc in any such spirit as that which Mr. Bayard condemns, a d that

all that has been done with a view to the protection of the Canadian fisheries has been simply for the purpose of guarding the rights guaranteed to the people of Canada by the Convention of 1818, and to enforce the Statutes of Great Britain and of Canada in relation to the fisheries. It has been more than once pointed out in Reports already submitted by the Minister of Marine and Fisheries, that such Statutes are clearly within the powers of the respective Parliaments by which they were passed, and are in conformity with the Treaty of 1818, especially in view of the passage of the Treaty which provides that the American fishermen shall be under such restrictions as shall be necessary to prevent them from abusing the privileges thereby reserved to them.

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

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

The Minister observes, in relation to this paragraph, that the seizures of which Mr. Bayard complains have been made under circumstances which have from time to time been fully reported to your Excellency and communicated to her Majesty's Government, and upon grounds which have been distinctly and unequivocally stated in every case, that, although the nature of the charges has been invariably specified and duly announced, those charges have not in

any case been answered; that ample opportunity has in every case been afforded for a defence to be submitted to the Executive authorities, but that no defence has been offered beyond the mere denial of the right of the Canadian Government, that the Courts of the various provinces have been open to the parties said to have been aggrieved, but that not one of them has resorted to those Courts for redress. To this it must be added that the illegal acts, which are characterized by Mr. Bayard as "technical violations of alleged Commercial Regulations," involved breaches in most of the cases not denied by the persons who had committed them of established Commercial Regulations, which, far from being specially directed or enforced against citizens of the United States, are obligatory upon all vessels (including those of Canada herself) which resort to the harbours of the British North American coast.

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

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

In regard to this statement, it is to be remarked that Article 1 of the Memorandum, although no doubt to some extent resembling the Protocol submitted in 1866 by Mr. Adams to Lord Clarendon, contains several most important departures from the terms of that Protocol. These departures consist not only in such comparatively unimportant

alterations as the substitution in line 1 of the word "establish" for the word "define," without any apparent necessity for the change, and in other minor alterations of the text, but also in such grave changes as that which is involved in the interpolation in section 1 of the important passage in which it is stipulated "that the bays and harbours from which American vessels are in future to be excluded, save for the purposes for which entrance into bays and harbours is permitted by said Article, are hereby agreed to be taken to be such bays and harbours as are ten, or less than ten, miles in width, and the distance of three marine miles from such bays and harbours shall be measured from a straight line drawn across the bay or harbour in the part nearest the entrance at the first point where the width does not exceed ten miles.

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

The Convention with France in 1839, and similar Conventions with other European powers, although cited by Mr. Bayard as sufficient precedents for the adoption of a

ten-mile limit, do not, the Minister submits, carry out his reasoning. Those Conventions were doubtless passed with a view to the geographical peculiarities of the coasts to which they related. They had for their object the definition of boundary-lines, which, owing to the configuration of the coast, perhaps could not readily be settled by reference to the law of nations, and involve other conditions which are inapplicable to the territorial waters of Canada.

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

The Minister submits, however, that the rule laid down by Mr. Bates with regard to the Bay of Fundy should not be treated as establishing the respective rights of Canada and of the United States as to bays and harbours not included in the terms of the reference, and in relation to which there was no Agreement to abide by the decision of the Umpire and no decision by him. It may reasonably be contended that as one of the headlands of the Bay of Fundy is in the territory of the United States any rules of international law applicable to that bay are not, therefore, equally applicable to other bays, the headlands of which are both within the territory of the same Power.

As to the second paragraph of the 1st Article, the Minister suggests that before such an Article is acceded to, and even if the objections before stated should be removed, the Article should be so amended as to incorporate the exact language of the Convention of 1818, in which case several alterations should be made. Thus, the words, "and for no other purpose whatever" should be inserted after the mention of the purposes for which vessels may enter Canadian

waters, and after the words "as may be necessary to prevent" should be inserted "their taking, drying, or curing fish therein, or in any other manner abusing the privileges reserved, &c."

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

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

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

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

Customs' laws by any vessel asserting the character of a fishing-vessel of the United States.

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

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

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

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

It would be a disagreeable novelty to the people of her Majesty's Canadian dominions to find that any of their rights, or the rights of their country as a whole, were to be submitted to the adjudication of two naval officers, one of them belonging to a foreign country, who, if they should disagree and be unable to choose an Umpire, must refer the

final decision of the great interests which might be at stake to some person chosen by lot.

If a vessel charged with infraction of our fishing rights should, by this Extraordinary Tribunal, be thought worthy of being subjected to a "judicial examination," she would be sent to the Vice-Admiralty Court at Halifax, but there would be no redress, no appeal, and no reference to any tribunal if the naval officers should think proper to release her.

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

5. To this novel and unjustified interpretation of the Convention, Mr. Bayard proposes to give retrospective effect by the next Article of the proposal, in which it is assumed, without discussion, that all United States' fishing-vessels which have been seized since the expiration of the Treaty of Washington have been illegally seized, leaving as the only question still open for consideration, the amount of the

damages for which the Canadian authorities are liable. The Minister submits that the serious consideration of such a proposal would imply a disregard of justice as well as of the interests of Canada, and he is unwilling to believe that it will be entertained, either by your Excellency's advisers or by the Imperial Government.

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

It is not to be expected that, after having earnestly insisted upon the necessity of a strict maintenance of these Treaty rights, and upon the respect due by foreign vessels while in Canadian waters to the municipal legislation by which all vessels resorting to those waters are governed, in the absence, moreover, of any decision of a legal tribunal to show that there has been any straining of the law in those

cases in which it has been put in operation, the Canadian Government will suddenly, and without the justification supplied by any new facts or arguments, withdraw from a position taken up deliberately, and by doing so in effect plead guilty to the whole of the charges of oppression, inhumanity, and bad faith which, in language wholly unwarranted by the circumstances of the case, have been made against it by the public men of the United States.

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

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

The Minister cordially agrees with Mr. Bayard in believing that a determination of these limits would, whatever may be the future commercial relations between Canada and the United States, either in respect of the fishing industry or in regard to the interchange of other commodities, be extremely desirable, and he believes that your Excellency's Govern-

ment will be found ready to co-operate with that of the United States in effecting such a settlement.

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

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

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

Should a Commission instructed to deal with these subjects be appointed at an early date, the Minister is not without hope that the result of its investigations might be reported to the Governments affected without much loss of

time. Pending the termination of the questions which it would discuss, it will, in the opinion of the Minister, be indispensable that United States' fishing-vessels entering Canadian bays and harbours should govern themselves not only according to the terms of the Convention of 1818, but by the regulations to which they, in common with other vessels, are subject while within such waters.

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

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

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

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

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

Inclosure 1 in No. 56.

THE MARQUIS OF LANSDOWNE TO SIR H. HOLLAND.

Ottawa, January 31, 1887.

SIR,—With reference to Mr. Stanhope's despatch of the

22nd November last, transmitting copies of two letters from the Foreign Office, inclosing notes from the Secretary of State of the United States respecting the alleged proceedings of the Canadian authorities in the case of the United States' fishing-vessels *Pearl Nelson*, *Everitt Steele*, I have the honour to forward herewith a copy of an approved Report of a Committee of the Privy Council, embodying a Report of my Minister of Marine and Fisheries on the subject.

You will observe from the accompanying Minute of Council that in reply to a telegram from the Secretary of State for the Colonies, dated the 6th November last, copies of Orders in Council approved on the 18th of the same month, containing full statements of facts regarding the detention of the above-named vessels were inclosed in my despatches of the 29th November last.

I have, &c.,
(Signed) LANSDOWNE.

Inclosure 2 in No. 56.

REPORT OF A COMMITTEE OF THE HONOURABLE THE PRIVY COUNCIL FOR CANADA, APPROVED BY HIS EXCELLENCY THE GOVERNOR-GENERAL IN COUNCIL ON THE 15TH JANUARY, 1887.

THE Committee of the Privy Council have had under consideration a despatch, dated the 22nd November, 1886, from the Right Honourable the Secretary of State for the Colonies, inclosing letters from Mr. Secretary Bayard bearing date the 29th October, and referring to the cases of the schooners *Everitt Steele* and *Pearl Nelson*.

The Minister of Marine and Fisheries, to whom the despatch and inclosures were referred, reports that in reply to a telegram from the Secretary of State for the Colonies, an Order in Council passed on the 18th November last, containing a full statement of facts regarding the detention of the above-named vessels, was transmitted to Mr. Stanhope. It will not, therefore, be necessary to repeat this statement in the present Report.

The Minister observes, in the first place, that the two fishing-schooners *Everitt Steele* and *Pearl Nelson*, were not detained for any alleged contravention of the Treaty of 1818, or the Fishery Laws of Canada, but solely for violation of the Customs Law.

By this Law all vessels, of whatever character, are required to report to the Collector of Customs immediately upon entering port, and are not to break bulk or land crew or cargo before this is done.

The Minister states that the captain of the *Everitt Steele* had on a previous voyage entered the port of Shelburne on the 25th March, 1886, and after remaining for eight hours, had put to sea again without reporting to the Customs. For this previous offence he was, upon entering Shelburne Harbour on the 10th September last, detained, and the facts were reported to the Minister of Customs at Ottawa. With these facts was coupled the captain's statement that on the occasion of the previous offence he had been misled by the Deputy Harbour-master, from whom he understood that he would not be obliged to report unless he remained in harbour for twenty-four hours. The Minister accepted the statement in excuse as satisfactory, and the *Everitt Steele* was allowed to proceed on her voyage.

The Customs Law had been violated. The captain of the *Everitt Steele* had admitted the violation, and for this the usual penalty could have been legally enforced. It was,

however, not enforced, and no detention of the vessel occurred beyond the time necessary to report the facts to headquarters and obtain the decision of the Minister.

The Minister submits that he cannot discern in this transaction any attempt to interfere with the privileges of United States' fishing-vessels in Canadian waters or any sufficient cause for the protest of Mr. Bayard.

The Minister states that in the case of the *Pearl Nelson* no question was raised as to her being a fishing-vessel, or her enjoyment of any privileges guaranteed by the Treaty of 1818. Her captain was charged with a violation of the Customs Law, and of that alone, by having on that day, before reporting to the Collector of Customs at Arichat, landed ten of his crew.

This he admitted upon oath; when the facts were reported to the Minister of Customs he ordered that the vessel might proceed upon depositing 200 dollars pending a fuller examination. This was done, and the fuller examination resulted in establishing the violation of the Law, and in finding that the penalty was legally enforceable. The Minister, however, in consideration of the alleged ignorance of the captain as to what constituted an infraction of the Law, ordered the deposit to be returned.

In this case there was a clear violation of Canadian law. There was no lengthened detention of the vessel, the deposit was ultimately remitted, and the United States' Consul-General at Halifax expressed himself by letter to the Minister as highly pleased at the result.

The Minister observes that in this case he is at a loss to discover any well-founded grievance, or any attempted denial of, or interference with, any privileges guaranteed to United States' fishermen by the Treaty of 1818.

The Minister further observes that the whole argument and protest of Mr. Bayard appears to proceed upon the

assumption that these two vessels were subjected to unwarrantable interference, in that they were called upon to submit to the requirements of Canadian Customs Law, and that this interference was prompted by a desire to curtail or deny the privileges of resort to Canadian harbours for the purposes allowed by the Treaty of 1818.

It is needless to say that this assumption is entirely incorrect.

Canada has a very large extent of sea-coast, with numberless ports, into which foreign vessels are constantly entering for purposes of trade. It becomes necessary in the interests of legitimate commerce that stringent Regulations should be made, by compulsory conformity to which illicit traffic should be prevented. These Customs Regulations all vessels of all countries are obliged to obey, and these they do obey without in any way considering it a hardship. United States' fishing-vessels come directly from a foreign and not distant country, and it is not in the interests of legitimate Canadian commerce that they should be allowed access to our ports without the same strict supervision as is exercised over all other foreign vessels; otherwise there would be no guarantee against illicit traffic of large dimensions, to the injury of honest trade and the serious diminution of the Canadian revenue. United States' fishing-vessels are cheerfully accorded the right to enter Canadian ports for the purpose of obtaining shelter, repairs, and procuring wood and water; but in exercising this right they are not and cannot be independent of the Customs Laws.

They have the right to enter for the purposes set forth; but there is only one legal way in which to enter, and that is by conformity to the Customs Regulations.

When Mr. Bayard asserts that Captain Forbes had as much right to be in Shelburne Harbour seeking shelter and water "as he would have had on the high seas, carrying on,

under shelter of the flag of the United States, legitimate commerce," he is undoubtedly right; but when he declares, as he in reality does, that to compel Captain Forbes in Shelburne Harbour to conform to Canadian Customs Regulations, or to punish him for their violation, is a more unwarrantable stretch of power than "that of a seizure on the high seas of a ship unjustly suspected of being a slaver," he makes a statement which carries with it its own refutation. Customs Regulations are made by each country for the protection of its own trade and commerce, and are enforced entirely within its own territorial jurisdiction; while the seizure of a vessel upon the high seas, except under extraordinary and abnormal circumstances, is an unjustifiable interference with the free right of navigation common to all nations.

As to Mr. Bayard's observation that by treatment such as that experienced by the *Everitt Steele* "the door of shelter is shut to American fishermen as a class," the Minister expresses his belief that Mr. Bayard cannot have considered the scope of such an assertion, or the inferences which might reasonably be drawn from it.

If a United States' fishing-vessel enters a Canadian port for shelter, repairs, or for wood and water, her captain need have no difficulty in reporting her as having entered for one of these purposes, and the *Everitt Steele* would have suffered no detention had her captain on the 25th March simply reported his vessel to the Collector. As it was, the vessel was detained for no longer time than was necessary to obtain the decision of the Minister of Customs, and the penalty for which it was liable was not enforced. Surely Mr. Bayard does not wish to be understood as claiming for United States' fishing-vessels total immunity from all Customs Regulations, or as intimating that if they cannot exercise their privileges unlawfully they will not exercise them at all.

Mr. Bayard complains that the *Pearl Nelson*, although seeking to exercise no commercial privileges, was compelled to pay commercial fees such as are applicable to trading-vessels. In reply, the Minister observes that the fees spoken of are not "commercial fees," they are Harbour-master's dues which all vessels making use of legally constituted harbours are by law compelled to pay, and entirely irrespective of any trading that may be done by the vessel.

The Minister observes that no single case has yet been brought to his notice in which any United States' fishing-vessel has in any way been interfered with for exercising any rights guaranteed under the Treaty of 1818 to enter Canadian ports for shelter, repairs, wood, or water; that the Canadian Government would not countenance or permit any such interference, and that in all cases of this class when trouble has arisen it has been due to a violation of Canadian Customs Law which demands the simple legal entry of the vessel as soon as it comes into port.

The Committee, concurring in the above report, recommend that your Excellency be moved to transmit a copy thereof to the Right Honourable the Secretary of State for the Colonies.

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

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

RETALIATION.

No. 1 *of* 1887.

Inclosure in No. 55.

THE MARQUIS OF LANSDOWNE TO EARL GRANVILLE.

Government House, Ottawa, May 19, 1886.

MY LORD,—I have the honour to inclose herewith a copy of a Bill recently introduced in the Dominion House of Commons by my Minister of Marine and Fisheries, for the purpose of amending the Act 31 Vict., cap 61, respecting fishing by foreign vessels in the territorial waters of the Dominion.

That Act was, as your Lordship is aware, framed with the object of giving effect to the Convention of 1818, by rendering liable to certain penalties all foreign fishing-vessels entering the territorial waters of the Dominion for any purpose not authorized by that Convention. It is provided under the third section of the Act referred to, that the penalty of forfeiture shall attach to any foreign vessel which "has been found fishing or preparing to fish, or to have been fishing" without a licence within the three-mile limit. These words, which follow closely those of section 2 of the Imperial Act of 1819 (59 Geo. III., cap. 38), appear to my Government to be insufficient for the purpose of giving effect

to the intentions of the framers of the Convention of 1818, inasmuch as, while the penalty of forfeiture is attached to foreign vessels found fishing or preparing to fish, or having been fishing within the three-mile limit, it is not clear that under them the same penalty would attach to vessels entering the territorial waters in contravention of the stipulations of the Convention, for a purpose other than those of sheltering, repairing damages, purchasing wood, and obtaining water, for which purposes alone, under the terms of Article I. of the Convention, and of section 3 of the Imperial Act of 1819 above referred to, foreign fishing-vessels are permitted to enter the bays and harbours of the Dominion.

Your Lordship is no doubt aware that the decisions of the Canadian Courts leave it open to question whether the purchase of bait in Canadian waters does or does not constitute a preparation to fish within the meaning of the Imperial Act of 1819 and the Canadian Statute which it is now sought to amend. The decision of Chief Justice Sir William Young in the Vice-Admiralty Court of Nova Scotia, given in November, 1871, in the case of the fishing-schooner *Nickerson*, was to the effect that the purchasing of bait constituted such a preparation to fish within Canadian waters. The same point had, however, previously arisen in February, 1871, in the Vice-Admiralty Court at St. John, New Brunswick, in the case of the American fishing-vessel *White Fawn*, when Mr. Justice Hazen decided that the purchase of bait within the three-mile limit, was not of itself a proof that the vessel was preparing to fish illegally within that limit.

There being, therefore, some doubt whether the intention of the Convention of 1818 is effectually carried out either by the Imperial or the Canadian Acts referred to, it has been thought desirable by my Government to have recourse to legislation, removing all doubt as to the liability to for-

feiture of all foreign fishing-vessels resorting to Canadian waters for purposes not permitted by Law or by Treaty.

As the Law now stands, if it should prove that the purchase of bait is not held by the Courts to constitute a preparation to fish illegally, there would be no remedy against foreign fishing-vessels frequenting the waters of the Dominion for purposes not permitted by the Convention of 1818, except—

1. That provided by section 4 of the Act of 1819, namely, a penalty of 200*l.*, recoverable in the Superior Courts from the persons violating the provisions of the Act. This penalty, however, only attaches to a refusal to depart from the bay or harbour which the vessel has illegally entered, or to a refusal or neglect to conform to any regulations or directions made under the Act, and as the purpose for which the vessel has entered will in most cases have been accomplished before an order can have been given for her departure, it will be obvious that this penalty has very little practical utility.

2. The common law penalties attaching to a violation of the Imperial Statute above referred to, in respect of illegally entering the bays and harbours of the Dominion. If, however, it were sought to enforce these penalties, their enforcement personally against the master of the vessel would result in his having ultimately to take his trial for a misdemeanour, while he would, in the first instance, be required to find bail to a considerable amount, a result which would, in the opinion of my Government, be regarded as more oppressive than the detention of the offending vessel subject to the investigation of her case by the Vice-Admiralty Courts.

I have, &c.,

(Signed) LANSDOWNE.

AN ACT FURTHER TO AMEND THE ACT RESPECTING FISHING BY FOREIGN VESSELS.

Whereas it is expedient, for the more effectual protection of the inshore fisheries of Canada against intrusion by foreigners, to further amend the Act intituled "An Act respecting Fishing by Foreign Vessels," passed in the 31st year of her Majesty's reign, and chaptered 61 : therefore her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows :—

1. The section substituted by the 1st section of the Act 33 Vict., cap. 15, entitled "An Act to amend the Act respecting Fishing by Foreign Vessels," for the 3rd section of the hereinbefore-recited Act, is hereby repealed, and the following section substituted in lieu thereof :—

"3. Any one of the officers or persons hereinbefore mentioned may bring any ship, vessel, or boat, being within any harbour in Canada, or hovering in British waters within three marine miles of any of the coasts, bays, creeks, or harbours in Canada, into port, and search her cargo, and may also examine the master upon oath touching the cargo and voyage ; and if the master or person in command does not truly answer the questions put to him in such examination he shall incur a penalty of 400 dollars ; and if such ship, vessel, or boat is foreign, or not navigated according to the laws of the United Kingdom or of Canada, and (*a*) has been found fishing or preparing to fish, or to have been fishing in British waters within three marine miles of any of the coasts, bays, creeks, or harbours of Canada, not included within the above-mentioned limits, without a licence, or after the expiration of the term named in the last licence granted to such ship, vessel, or boat under the 1st section of this Act ; or (*b*) has entered such waters for any purpose not permitted by Treaty or Convention, or by any Law of the United Kingdom or of

Canada for the time being in force, such ship, vessel, or boat and the tackle, rigging, apparel, furniture, stores, and cargo thereof shall be forfeited." [1]

2. The Acts mentioned in the schedule hereto are hereby repealed.

3. This Act shall be construed as one with the said "Act respecting Fishing by Foreign Vessels" and the amendments thereto.

SCHEDULE.

Acts of the Legislature of the Province of Nova Scotia.

Year, Reign, and Chapter.	Title of Act.	Extent of Repeal.
Revised Statutes, 3rd Series, cap. 94.	Of the Coast and Deep-Sea Fisheries	The whole.
29 Vic. (1866), cap. 35.	An Act to amend Chapter 94 of the Revised Statutes, "Of the Coast and Deep-Sea Fisheries"	The whole.

Act of the Legislature of the Province of New Brunswick.

Year, Reign, and Chapter.	Title of Act.	Extent of Repeal.
16 Vic. (1853), cap 69.	An Act relating to the Coast Fisheries and for the Prevention of Illicit Trade	The whole.

SIR L. WEST TO THE EARL OF ROSEBERY.

(Received June 14.)

Washington, June 4, 1886.

MY LORD,—With reference to my despatch of the 11th May,

[1] Her Majesty's assent was declared to this Bill at Windsor on the 26th Nov., 1886.

I have the honour to inclose to your Lordship herewith the text of the Bill relating to American shipping which has passed Congress. Section 12 refers to reciprocity of tonnage dues, and section 17 is the retaliatory clause directed against Canada.

Official copies of the Act, when approved by the President, will be forwarded.[2]

I have, &c.
(Signed) L. S. Sackville West.

Inclosure in No. 66.

Extract from the Bill relating to American Shipping.

Section 12. That the President be, and hereby is, directed to cause the Governments of foreign countries which, at any of their ports, impose on American vessels a tonnage tax or lighthouse dues, or other equivalent tax or taxes, or any other fees, charges, or dues, to be informed of the provisions of the preceding section, and invited to co-operate with the Government of the United States in abolishing all lighthouse dues, tonnage taxes, or other equivalent tax or taxes on, and also all other fees, for official services to the vessels of the respective nations employed in the trade between the ports of such foreign country and the ports of the United States.

Sect. 17. That whenever any foreign country whose vessels have been placed on the same footing in the ports of the United States as American vessels (the coastwise trade excepted) shall deny to any vessels in the United States any of the commercial privileges accorded to national vessels in the harbours, ports, or waters of such foreign country, the

[2] The Act was approved June 19, 1886.

President, on receiving satisfactory information of the continuance of such discriminations against any vessels of the United States, is hereby authorized to issue his Proclamation excluding, on and after such time as he may indicate, from the exercise of such commercial privileges in the ports of the United States as are denied to American vessels in the ports of such foreign country, all vessels of such foreign country of a similar character to the vessels of the United States thus discriminated against, and suspending such concessions previously granted to the vessels of such country; and on and after the date named in such Proclamation for it to take effect, if the master, officer, or agent of any vessel of such foreign country excluded by said Proclamation from the exercise of any commercial privileges shall do any act prohibited by said Proclamation in the ports, harbours, or waters of the United States for or on account of such vessel, such vessel, and its rigging, tackle, furniture, and boats, and all the goods on board, shall be liable to seizure and forfeiture to the United States; and any person opposing any officer of the United States in the enforcement of this act, or aiding and abetting any other person in such opposition, shall forfeit 800 dollars, and shall be guilty of a misdemeanour, and, upon conviction, shall be liable to imprisonment for a term not exceeding two years.

No. 2 of 1887.

No. 59.

SIR L. WEST TO THE MARQUIS OF SALISBURY.

(Received March 10.)

Washington, February 24, 1887.

MY LORD,—I have the honour to inclose to your Lordship herewith copies of the retaliatory Bill as passed by

the House of Representatives yesterday by a vote of 252 to 1.

This Bill is a substitute for the Senate Bill, and authorizes the stopping of cars carrying goods in transit, provided for under Article XXIX. of the Treaty of 1871. This clause, it was objected, would be in violation of the Treaty, and was an evasion unworthy of a civilized country.

The Senate Bill, on the contrary, was retorsion—it was retaliation in kind—always the most efficient. The House, however, refused to adopt the argument, and adhered to the substitute Bill, which was unanimously carried.

I have the honour to inclose a précis which I have made of the debate.

I have, &c.

(Signed) L. S. Sackville West.

Inclosure 1 in No. 59.

Extract from the "Congressional Record" of February 25, 1887.

Strike out all after the enacting clause and insert:—

"That hereafter, whenever the President shall be satisfied that vessels of the United States are denied, in ports or territorial waters of the British dominions in North America, rights to which such vessels are entitled by Treaty or by the law of nations, or are denied the comity of treatment or the reasonable privileges usually accorded between neighbouring and friendly nations, he may, in his discretion, by Proclamation, prohibit from entering the ports of the United States, or from exercising such privileges therein as he may, in his discretion, by such Proclamation, define, vessels owned wholly or in part by a subject of her Britannic

Majesty, and coming or arriving from any port or place in the Dominion of Canada, or in the Island of Newfoundland, whether directly or having touched at any other port, excepting such vessel shall be in distress of navigation and of needed repairs or supplies therefor; and he may also forbid the entrance or importation, either by land or water, into the United States of any goods, wares, or merchandize from the aforesaid Dominion of Canada or Newfoundland, or any locomotive, car, or other vehicle with any goods that may be therein contained from the Dominion of Canada; and upon proof that the privileges secured by Article XXIX. of the Treaty concluded between the United States and Great Britain on the 8th day of May, 1871, are denied as to goods, wares, and merchandize arriving at the ports of British North America, the President may also, by Proclamation, forbid the exercise of the like privileges as to goods, wares, and merchandize arriving in any of the ports of the United States; and any person violating or attempting to violate the provisions of any Proclamation issued under this Act, and any person preventing or attempting to prevent any officer of the United States from enforcing such Proclamation shall be guilty of a misdemeanour, and upon conviction thereof shall be liable to a fine of not more than 1000 dollars, or imprisonment for a term not exceeding two years, or by both said punishments, in the discretion of the Court; and if, on and after the date at which such Proclamation takes effect, the master or other person in charge of any vessel thereby excluded from the ports of the United States, shall do, in the ports, harbours, or waters of the United States, for or on account of such vessel, any act forbidden by such Proclamation aforesaid, such vessel and its rigging, tackle, furniture, and boats, and all the goods on board shall be liable to seizure and forfeiture to the United States; and any goods, wares, or merchandize, and

any car, locomotive, or other vehicle coming into the United States in violation of any Proclamation as aforesaid shall be seized and forfeited to the United States.

"Sect 2. That whenever, after the issuance of a Proclamation under this Act, the President is satisfied that the denial of rights and privileges on which his Proclamation was based no longer exists, he may withdraw the Proclamation, or so much thereof as he may deem proper, and reissue the same thereafter when in his judgment the same shall be necessary."

Inclosure in No. 71.

CIRCULAR.

THE FISHERIES.

Treasury Department,
Bureau of Navigation,
Washington, D.C.,
March 16, 1887.

To Collectors of Customs and others,

The attention of officers of Customs and others is invited to the provisions of the recent Acts of Congress printed below, one relating "to the importing and landing of mackerel caught during the spawning season," and the other authorizing the "President of the United States to protect the rights of American fishing-vessels, American fishermen, American trading and other vessels, in certain cases," &c.

(Signed) C. B. MORTON, *Commissioner.*

Approved:

(Signed) C. S. FAIRCHILD, *Acting Secretary.*

AN ACT RELATING TO THE IMPORTING AND LANDING OF MACKEREL CAUGHT DURING THE SPAWNING SEASON.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that for the period of five years from and after the 1st day of March, 1888, no mackerel, other than what is known as Spanish mackerel, caught between the 1st day of March and the 1st day of June, inclusive, of each year, shall be imported into the United States or landed upon its shores; provided, however, that nothing in this Act shall be held to apply to mackerel caught with hook and line from boats, and landed in said boats, or in traps and weirs connected with the shore.

Sect. 2. That section 43,021 of the Revised Statutes is amended for the period of five years aforesaid, so as to read before the last sentence as follows: "This licence does not grant the right to fish for mackerel, other than for what is known as Spanish mackerel, between the 1st day of March and the 1st day of June, inclusive, of this year." Or in lieu of the foregoing there shall be inserted so much of said period of time as may remain unexpired under this Act.

Sect. 3. That the penalty for the violation or attempted violation of this Act shall be forfeiture of licence on the part of the vessel engaged in said violation, if a vessel of this country, and the forfeiture to the United States, according to law, of the mackerel imported or landed, or sought to be imported or landed.

Sect. 4. That all Laws in conflict with this Law are hereby repealed.

Approved, 28th February, 1887.

AN ACT TO AUTHORIZE THE PRESIDENT OF THE UNITED STATES TO PROTECT AND DEFEND THE RIGHTS OF AMERICAN FISHING-VESSELS, AMERICAN FISHERMEN, AMERICAN TRADING AND OTHER VESSELS, IN CERTAIN CASES, AND FOR OTHER PURPOSES.

BE it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that whenever the President of the United States shall be satisfied that American fishing-vessels or American fishermen, visiting, or being in the waters or at any ports or places of the British dominions of North America, are or then lately have been denied or abridged in the enjoyment of any rights secured to them by Treaty or Law, or are or then lately have [been] unjustly vexed or harassed in the enjoyment of such rights, or subjected to unreasonable restrictions, Regulations, or requirements in respect of such rights; or otherwise unjustly vexed or harassed in said waters, ports, or places; or whenever the President of the United States shall be satisfied that any such fishing-vessels or fishermen, having a permit under the Laws of the United States to touch and trade at any port or ports, place or places, in the British dominions of North America, are or then lately have been denied the privilege of entering such port or ports, place or places, in the same manner and under the same Regulations as may exist therein applicable to trading-vessels of the most favoured nation, or shall be unjustly vexed or harassed in respect thereof, or otherwise be unjustly vexed or harassed therein, or shall be prevented from purchasing such supplies as may there be lawfully sold to trading-vessels of the most favoured nation; or whenever the President of the United States shall be satisfied that any other vessels of the United

States, their masters or crews, so arriving at or being in such British waters or ports or places of the British dominions of North America, are or then lately have been denied any of the privileges therein accorded to the vessels, their masters or crews, of the most favoured nation, or unjustly vexed or harassed in respect of the same, or unjustly vexed or harassed therein by the authorities thereof, then, and in either or all of such cases, it shall be lawful, and it shall be the duty of the President of the United States, in his discretion, by Proclamation to that effect, to deny vessels, their masters and crews, of the British dominions of North America, any entrance into the waters, ports, or places of or within the United States (with such exceptions in regard to vessels in distress, stress of weather, or needing supplies as to the President shall seem proper), whether such vessels shall have come directly from said dominions on such destined voyage or by way of some port or place in such destined voyage elsewhere; and also to deny entry into any port or place of the United States of fresh fish or salt fish or any other product of said dominions, or other goods coming from said dominions to the United States. The President may, in his discretion, apply such Proclamation to any part or to all of the foregoing-named subjects, and may revoke, qualify, limit, and renew such Proclamation from time to time as he may deem necessary to the full and just execution of the purposes of this Act. Every violation of any such Proclamation, or any part thereof, is hereby declared illegal, and all vessels and goods so coming or being within the waters, ports, or places of the United States contrary to such Proclamation shall be forfeited to the United States; and such forfeiture shall be enforced and proceeded upon in the same manner and with the same effect as in the case of vessels or goods whose importation or coming to or being in the waters or ports of the United States contrary to law

may now be enforced and proceeded upon. Every person who shall violate any of the provisions of this Act, or such Proclamation of the President made in pursuance hereof, shall be deemed guilty of a misdemeanour, and on conviction thereof, shall be punished by a fine not exceeding 1000 dollars, or by imprisonment for a term not exceeding two years, or by both said punishments, in the discretion of the Court.

Approved, 3rd March, 1887.

FURTHER CORRESPONDENCE

RESPECTING NORTH AMERICAN FISHERIES, 1887-88: WITH DESPATCH INCLOSING TREATY SIGNED AT WASHINGTON, FEBRUARY 15, 1888.

No. 1.

THE MARQUIS OF SALISBURY TO HER MAJESTY'S PLENIPOTENTIARIES TO THE FISHERIES CONFERENCE.

Foreign Office, October 24, 1887.

GENTLEMEN,—The Queen has been graciously pleased to appoint you to be her Majesty's Plenipotentiaries to consider and adjust all or any questions relating to rights of fishery in the seas adjacent to British North America and Newfoundland, which are in dispute between the Government of her Britannic Majesty and that of the United States of America, and any other questions which may arise which the respective Plenipotentiaries may be authorized by their Governments to consider and adjust.

I transmit to you herewith her Majesty's full powers to that effect, and I have to give the following instructions for your guidance:—

The main question which you will be called upon to discuss arises in connection with the fisheries prosecuted by citizens of the United States on the Atlantic shores of British North America and Newfoundland. The correspond-

ence which has already been placed at your disposal will have made you familiar with the historical features of the case up to the conclusion of the Treaty of Washington, and it appears, therefore, needless at the present moment to recapitulate the various negotiations which have taken place on the subject of these fisheries previously to the year 1871.

I transmit to you herewith a copy of the Treaty of Washington of the 8th May, 1871,[1] from which you will perceive that by the Fishery Articles thereof (Articles XVIII. to XXV., XXX., XXXII., and XXXIII.), the Canadian and Newfoundland inshore fisheries on the Atlantic coast, and those of the United States north of the 39th parallel of north latitude, were thrown reciprocally open, and fish and fish-oil were reciprocally admitted duty free.

In accordance with the terms of these Articles the difference in value between the concessions therein made by Great Britain to the United States was assessed by the Halifax Commission at the sum of 5,500,000 dollars for a period of twelve years, the obligatory term for the duration of these Articles.

At the expiration of the stipulated period the United States' Government gave notice of termination of the Fishery Articles, which consequently ceased to have effect on the 1st July, 1885; but the Canadian Government, being loath to subject the American fishermen to the hardship of a change in the midst of a fishing season, consented to allow them gratuitously to continue to fish inshore and to obtain supplies without reference to any restrictions contained in the Convention of 1818[2] till the end of the year 1885, on the understanding that a Mixed Commission should be appointed to settle the Fisheries question, and to

[1] See Hertslet's Commercial Treaties, vol. xiii., p. 970.
[2] Ibid., vol. ii., p. 392.

negotiate for the development and extension of trade between the United States and British North America.

The proposed Commission not having been constituted, and no settlement having consequently been arrived at, the Convention of the 20th October, 1818, came into force again at the commencement of the year 1886.

Article I. of that Convention is as follows :—

"ARTICLE I.

"Whereas differences have arisen respecting the liberty claimed by the United States, for the inhabitants thereof to take, dry, and cure fish on certain coasts, bays, harbours, and creeks of his Majesty's dominions in America, it is agreed between the High Contracting Parties that the inhabitants of the said United States shall have for ever, in common with the subjects of his Britannic Majesty, the liberty to take fish of every kind on that part of the southern coast of Newfoundland which extends from Cape Ray to the Rameau Islands, on the western and northern coast of Newfoundland, from the said Cape Ray to the Quirpon Islands, on the shores of the Magdalen Islands, and also on the coasts, bays, harbours, and creeks from Mount Joly, on the southern coast of Labrador, to and through the Straits of Belleisle, and thence northwardly indefinitely along the coast, without prejudice, however, to any of the exclusive rights of the Hudson's Bay Company. And that the American fishermen shall also have liberty, for ever, to dry and cure fish in any of the unsettled bays, harbours, and creeks of the southern part of the coast of Newfoundland hereabove described, and of the coast of Labrador; but so soon as the same or any portion thereof shall be settled, it shall not be lawful for the said fishermen to dry or cure fish at such portion so settled, without previous agreement for

such purpose with the inhabitants, proprietors, or possessors of the ground. And the United States hereby renounce for ever any liberty heretofore enjoyed or claimed by the inhabitants thereof, to take, dry, or cure fish on or within three marine miles of any of the coasts, bays, creeks, or harbours of his Britannic Majesty's dominions in America, not included within the above-mentioned limits; provided, however, that the American fishermen shall be admitted to enter such bays or harbours for the purpose of shelter and of repairing damages therein, of purchasing wood and of obtaining water, and for no other purpose whatever. But they shall be under such restrictions as may be necessary to prevent their taking, drying, or curing fish therein, or in any other manner whatever abusing the privileges hereby reserved to them."

Under these circumstances numerous seizures of American fishing-vessels have subsequently been effected by the Canadian authorities for infraction of the terms of the Convention and of their Municipal Law and Customs Regulation.

The inclosed correspondence will place you in full possession of the various points which have consequently arisen in diplomatic correspondence between the two Governments, and I do not desire to enter upon them in detail in the present instructions, nor to prescribe any particular mode of treating them it being the wish of her Majesty's Government that a full and frank discussion of the issues involved may lead to an amicable settlement in such manner as may seem most expedient, and having due regard to the interests and wishes of the British Colonies concerned.

Her Majesty's Government feel confident that the discussions in this behalf will be conducted in the most friendly and conciliatory spirit, in the earnest endeavour to effect a mutually satisfactory arrangement and to remove any causes of complaint which may exist on either side.

Whilst I have judged it advisable thus, in the first place, to refer to the question of the fisheries of the Atlantic coast, it is not the wish of her Majesty's Government that the discussions of the Plenipotentiaries should necessarily be confined to that point alone, but full liberty is given to you to enter upon the consideration of any questions which may bear upon the issues involved, and to discuss and treat for any equivalents, whether by means of tariff concessions, or otherwise, which the United States' Plenipotentiaries may be authorized to consider as a means of settlement.

The question of the seal fisheries in the Behring Sea, the nature of which will be explained in a separate despatch, has not been specifically included in the terms of reference, but you will understand that if the United States' Plenipotentiaries should be authorized to discuss that subject, it would come within the terms of the reference, and that you have full power and authority to treat for a settlement of the points involved, in any manner which may seem advisable, whether by a direct discussion at the present Conference or by a reference to a subsequent Conference to adjust that particular question.

If the Government of Newfoundland depute an Agent to attend at Washington during the Conference, you will avail yourselves of his advice and assistance in any matters concerning Newfoundland which may arise in the course of the discussions.

I am, &c.

(Signed) SALISBURY.

Inclosure in No. 1.

FULL POWERS TO MR. CHAMBERLAIN, SIR L. WEST, AND SIR C. TUPPER TO NEGOTIATE WITH PLENIPOTENTIARIES OF THE UNITED STATES ON THE NORTH AMERICAN FISHERIES CONFERENCE, OCTOBER 24, 1887.

Victoria R. and I.,

Victoria, by the Grace of God of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith, Empress of India, &c., &c., &c. To all and singular to whom these presents shall come greeting.

WHEREAS for the purpose of considering and adjusting in a friendly spirit with Plenipotentiaries to be appointed on the part of our good friends the United States of America, all or any questions relating to rights of fishery in the seas, adjacent to British North America and Newfoundland which are in dispute between our Government and that of our said good friends, and any other questions which may arise which the respective Plenipotentiaries may be authorized by their Governments to consider and adjust, we have judged it expedient to invest fit persons with full power to conduct on our part the discussions in this behalf:

Know ye, therefore, that we, reposing especial trust and confidence in the wisdom, loyalty, diligence, and circumspection of our right trusty and well-beloved Councillor Joseph Chamberlain, a member of our most Honourable Privy Council, and a Member of Parliament, &c., &c.; of our trusty and well-beloved the Honourable Sir Lionel Sackville Sackville West, Knight Commander of our most distinguished Order of St. Michael and St. George, our Envoy Extraordinary and Minister Plenipotentiary to our said good friends the United States of America, &c., &c., and of our trusty and well-beloved Sir Charles Tupper,

Knight Grand Cross of our most distinguished Order of St. Michael and St. George, Companion of our most Honourable Order of the Bath, Minister of Finance of the Dominion of Canada, &c., &c.

Have named, made, constituted, and appointed, as we do by these presents, name, make, constitute, and appoint them our undoubted Plenipotentiaries, giving to them or to any two of them all manner of power and authority to treat, adjust, and conclude with such Plenipotentiaries as may be vested with similar power and authority on the part of our good friends the United States of America, any Treaties, Conventions, or Agreements that may tend to the attainment of the above-mentioned end, and to sign for us and in our name everything so agreed upon, and concluded, and to do and transact all such other matters as may appertain to the finishing of the aforesaid work in as ample manner and form, and with equal force and efficiency as we ourselves could do if personally present:

Engaging and promising upon our Royal word that whatever things shall be so transacted and concluded by our said Plenipotentiaries shall be agreed to, acknowledged, and accepted by us in the fullest manner, and that we will never suffer, either in the whole, or in part, any person whatsoever to infringe the same, or act contrary thereto, as far as it lies in our power.

In witness whereof we have caused the Great Seal of our United Kingdom of Great Britain and Ireland to be affixed to these presents, which we have signed with our Royal hand.

Given at our Court at Balmoral, the 24th day of October, 1887, and in the fifty-first year of our reign.

No. 2.

HER MAJESTY'S PLENIPOTENTIARIES TO THE FISHERIES CONFERENCE TO THE MARQUIS OF SALISBURY.

(Received February 27.)

Washington, February 15, 1888.

MY LORD,—We have the honour to transmit herewith a Treaty signed this day by the Plenipotentiaries of Great Britain and of the United States for the settlement of the Fishery question on the Atlantic coast of North America, together with two Protocols establishing a *modus vivendi* of a temporary character to prevent the occurrence of disputes pending the ratification of the Treaty.

We have, &c.

(Signed) J. CHAMBERLAIN.
L. S. SACKVILLE WEST.
CHARLES TUPPER.

Inclosure 1 in No. 2.

TREATY BETWEEN GREAT BRITAIN AND THE UNITED STATES FOR THE SETTLEMENT OF THE FISHERY QUESTION ON THE ATLANTIC COAST OF NORTH AMERICA. SIGNED AT WASHINGTON, FEBRUARY 15, 1888.

WHEREAS differences have arisen concerning the interpretation of Article I. of the Convention of the 20th October, 1818; her Majesty the Queen of the United Kingdom of Great Britain and Ireland and the United States of America, being mutually desirous of removing all causes of misunderstanding in relation thereto, and of promoting friendly intercourse and good neighbourhood between the United States and the possessions of her Majesty in North America, have resolved to conclude a Treaty to that end, and have named as their Plenipotentiaries, that is to say:

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, the Right Honourable Joseph Chamberlain, M.P.; the Honourable Sir Lionel Sackville Sackville West, K.C.M.G., her Britannic Majesty's Envoy Extraordinary and Minister Plenipotentiary to the United States of America; and Sir Charles Tupper, G.C.M.G., C.B., Minister of Finance of the Dominion of Canada:

And the President of the United States, Thomas F. Bayard, Secretary of State; William L. Putnam, of Maine, and James B. Angell, of Michigan:

Who, having communicated to each other their respective full powers, found in good and due form, have agreed upon the following Articles:—

ARTICLE I.

The High Contracting Parties agree to appoint a Mixed Commission to delimit, in the manner provided in this Treaty, the British waters, bays, creeks and harbours of the coasts of Canada and of Newfoundland, as to which the United States, by Article I. of the Convention of the 20th October, 1818, between Great Britain and the United States, renounced for ever any liberty to take, dry, or cure fish.

ARTICLE II.

The Commission shall consist of two Commissioners to be named by her Britannic Majesty, and of two Commissioners to be named by the President of the United States, without delay, after the exchange of ratifications of this Treaty.

The Commission shall meet and complete the delimitation as soon as possible thereafter.

In case of the death, absence, or incapacity of any Commissioner, or in the event of any Commissioner omitting or ceasing to act as such, the President of the United States

or her Britannic Majesty, respectively, shall forthwith name another person to act as Commissioner instead of the Commissioner originally named.

ARTICLE III.

The delimitation referred to in Article I. of this Treaty shall be marked upon British Admiralty charts by a series of lines regularly numbered and duly described. The charts, so marked shall, on the termination of the work of the Commission, be signed by the Commissioners in quadruplicate, three copies whereof shall be delivered to her Majesty's Government, and one copy to the Secretary of State of the United States. The delimitation shall be made in the following manner, and shall be accepted by both the High Contracting Parties as applicable for all purposes under Article I. of the Convention of the 20th October, 1818, between Great Britain and the United States.

The three marine miles mentioned in Article I. of the Convention of the 20th October, 1818, shall be measured seaward from low water mark; but at every bay, creek, or harbour, not otherwise specially provided for in this Treaty, such three marine miles shall be measured seaward from a straight line drawn across the bay, creek, or harbour, in the part nearest the entrance at the first point where the width does not exceed ten marine miles.

ARTICLE IV.

At or near the following bays the limits of exclusion under Article I. of the Convention of the 20th October, 1818, at points more than three marine miles from low water mark, shall be established by the following lines, namely:—

At the Baie des Chaleurs the line from the light at Birch Point on Miscou Island to Macquereau Point light; at the

Bay of Miramichi, the line from the light at Point Escuminac to the light on the eastern point of Tabisintac Gully; at Egmont Bay, in Prince Edward Island, the line from the light at Cape Egmont to the light at West Point; and off St. Ann's Bay, in the Province of Nova Scotia, the line from Cape Smoke to the light at Point Aconi.

At Fortune Bay, in Newfoundland, the line from Connaigre Head to the light on the south-easterly end of Brunet Island, thence to Fortune Head; at Sir Charles Hamilton Sound, the line from the south-east point of Cape Fogo to White Island, thence to the north end of Peckford Island, and from the south end of Peckford Island to the east headland of Ragged Harbour.

At or near the following bays the limits of exclusion shall be three marine miles seaward from the following lines, namely:—

At or near Barrington Bay, in Nova Scotia, the line from the light on Stoddard Island to the light on the south point of Cape Sable, thence to the light at Baccaro Point; at Chedabucto and St. Peter's Bays, the line from Cranberry Island light to Green Island light, thence to Point Rouge; at Mira Bay, the line from the light on the east point of Scatari Island to the north-easterly point of Cape Morien; and at Placentia Bay, in Newfoundland, the line from Latine Point, on th eastern mainland shore, to the most southerly point of Red Island, thence by the most southerly point of Merasheen Island to the mainland.

Long Island and Bryer Island, at St. Mary's Bay, in Nova Scotia, shall, for the purpose of delimitation, be taken as the coasts of such bay.

ARTICLE V.

Nothing in this Treaty shall be construed to include within the common waters any such interior portions of any bays, creeks, or harbours as cannot be reached from the sea with-

out passing within the three marine miles mentioned in Article I. of the Convention of 20th October, 1818.

ARTICLE VI.

The Commissioners shall from time to time report to each of the High Contracting Parties such lines as they may have agreed upon, numbered, described, and marked as herein provided, with quadruplicate charts thereof; which lines so reported shall forthwith from time to time be simultaneously proclaimed by the High Contracting Parties, and be binding after two months from such proclamation.

ARTICLE VII.

Any disagreement of the Commissioners shall forthwith be referred to an umpire selected by her Britannic Majesty's Minister at Washington and the Secretary of State of the United States; and his decision shall be final.

ARTICLE VIII.

Each of the High Contracting Parties shall pay its own Commissioners and officers. All other expenses jointly incurred, in connection with the performance of the work, including compensation to the umpire, shall be paid by the High Contracting Parties in equal moieties.

ARTICLE IX.

Nothing in this Treaty shall interrupt or affect the free navigation of the Strait of Canso by fishing-vessels of the United States.

ARTICLE X.

United States' fishing-vessels entering the bays or harbours referred to in Article I. of this Treaty shall conform to har-

bour regulations common to them and to fishing-vessels of Canada or of Newfoundland.

They need not report, enter, or clear, when putting into such bays or harbours for shelter or repairing damages, nor when putting into the same, outside the limits of established ports of entry, for the purpose of purchasing wood or of obtaining water; except that any such vessel remaining more than twenty-four hours, exclusive of Sundays and legal holidays, within any such port, or communicating with the shore therein, may be required to report, enter, or clear; and no vessel shall be excused hereby from giving due information to boarding officers.

They shall not be liable in such bays or harbours for compulsory pilotage; nor, when therein for the purpose of shelter, of repairing damages, of purchasing wood, or of obtaining water, shall they be liable for harbour dues, tonnage dues buoy dues, light dues, or other similar dues; but this enumeration shall not permit other charges inconsistent with the enjoyment of the liberties reserved or secured by the Convention of 20th October, 1818.

Article XI.

United States' fishing-vessels entering the ports, bays, and harbours of the eastern and north-eastern coasts of Canada or of the coasts of Newfoundland under stress of weather or other casualty may unload, reload, tranship, or sell, subject to customs laws and regulations, all fish on board, when such unloading, transhipment, or sale is made necessary as incidental to repairs, and may replenish outfits, provisions and supplies damaged or lost by disaster; and in case of death or sickness shall be allowed all needful facilities, including the shipping of crews.

Licences to purchase in established ports of entry of the aforesaid coasts of Canada or of Newfoundland, for the home-

ward voyage, such provisions and supplies as are ordinarily sold to trading vessels, shall be granted to United States' fishing-vessels in such ports, promptly upon application and without charge; and such vessels having obtained licences in the manner aforesaid, shall also be accorded upon all occasions such facilities for the purchase of casual or needful provisions and supplies as are ordinarily granted to trading vessels; but such provisions or supplies shall not be obtained by barter, nor purchased for resale or traffic.

Article XII.

Fishing-vessels of Canada and Newfoundland shall have on the Atlantic coasts of the United States all the privileges reserved and secured by this Treaty to United States' fishing-vessels in the aforesaid waters of Canada and Newfoundland.

Article XIII.

The Secretary of the Treasury of the United States shall make regulations providing for the conspicuous exhibition by every United States' fishing-vessel of its official number on each bow; and any such vessel, required by law to have an official number, and failing to comply with such regulations, shall not be entitled to the licences provided for in this Treaty.

Such regulations shall be communicated to her Majesty's Government previously to their taking effect.

Article XIV.

The penalties for unlawfully fishing in the waters, bays, creeks, and harbours, referred to in Article I. of this Treaty,

may extend to forfeiture of the boat or vessel and appurtenances, and also of the supplies and cargo aboard when the offence was committed ; and for preparing in such waters to unlawfully fish therein, penalties shall be fixed by the Court not to exceed those for unlawfully fishing ; and for any other violation of the laws of Great Britain, Canada, or Newfoundland relating to the right of fishery in such waters, bays, creeks, or harbours, penalties shall be fixed by the Court, not exceeding in all three dollars for every ton of the boat or vessel concerned. The boat or vessel may be holden for such penalties and forfeitures.

The proceedings shall be summary and as inexpensive as practicable. The trial (except on appeal) shall be at the place of detention, unless the Judge shall on request of the defence, order it to be held at some other place adjudged by him more convenient. Security for costs shall not be required of the defence, except when bail is offered. Reasonable bail shall be accepted. There shall be proper appeals available to the defence only, and the evidence at the trial may be used on appeal.

Judgments of forfeiture shall be reviewed by the Governor-General of Canada in Council, or the Governor in Council of Newfoundland, before the same are executed.

Article XV.

Whenever the United States shall remove the duty from fish-oil, whale-oil, seal-oil, and fish of all kinds (except fish preserved in oil, being the produce of fisheries carried on by the fishermen of Canada and of Newfoundland, including Labrador, as well as from the usual and necessary casks, barrels, kegs, cans, and other usual and necessary coverings containing the products above mentioned, the like products, being the produce of fisheries carried on by the fishermen of

the United States, as well as the usual and necessary coverings of the same, as above described, shall be admitted free of duty into the Dominion of Canada and Newfoundland.

And upon such removal of duties, and while the aforesaid articles are allowed to be brought into the United States by British subjects, without duty being reimposed thereon, the privilege of entering the ports, bays, and harbours of the aforesaid coasts of Canada and of Newfoundland shall be accorded to United States' fishing-vessels by annual licences, free of charge, for the following purposes, namely:—

1. The purchase of provisions, bait, ice, seines, lines, and all other supplies and outfits;

2. Transhipment of catch, for transport by any means of conveyance;

3. Shipping of crews.

Supplies shall not be obtained by barter, but bait may be so obtained.

The like privileges shall be continued or given to fishing-vessels of Canada and of Newfoundland on the Atlantic coasts of the United States.

Article XVI.

This Treaty shall be ratified by her Britannic Majesty, having received the assent of the Parliament of Canada and of the Legislature of Newfoundland; and by the President of the United States, by and with the advice and consent of the Senate; and the ratifications shall be exchanged at Washington as soon as possible.

In faith whereof, we, the respective Plenipotentiaries, have signed this Treaty, and have hereunto affixed our seals.

Done in duplicate at Washington, this 15th day of February, in the year of our Lord 1888.

Inclosure 2 in No. 2.

PROTOCOL, DATED FEBRUARY, 15, 1888.

THE Treaty having been signed, the British Plenipotentiaries desire to state that they have been considering the position which will be created by the immediate commencement of the fishing season before the Treaty can possibly be ratified by the Senate of the United States by the Parliament of Canada, and the Legislature of Newfoundland.

In the absence of such ratification the old conditions which have given rise to so much friction and irritation might be revived, and might interfere with the unprejudiced consideration of the Treaty by the Legislative bodies concerned:

Under these circumstances, and with the further object of affording evidence of their anxious desire to promote good feeling and to remove all possible subjects of controversy, the British Plenipotentiaries are ready to make the following temporary arrangement for a period not exceeding two years, in order to afford a *modus vivendi* pending the ratification of the Treaty.

1. For a period not exceeding two years from the present date, the privilege of entering the bays and harbours of the Atlantic coasts of Canada and of Newfoundland shall be granted to United States' fishing-vessels by annual licences at a fee of $1\frac{1}{2}$ dollars per ton—for the following purposes:

The purchase of bait, ice, seines, lines, and all other supplies and outfits.

Transhipment of catch and shipping of crews.

2. If, during the continuance of this arrangement, the United States should remove the duties on fish, fish-oil, whale and seal oil (and their coverings, packages, &c.), the said licences shall be issued free of charge.

3. United States' fishing-vessels entering the bays and harbours of the Atlantic coasts of Canada or of Newfoundland

for any of the four purposes mentioned in Article 1 of the Convention of the 20th October, 1818, and not remaining therein more than twenty-four hours, shall not be required to enter or clear at the custom-house, providing that they do not communicate with the shore.

4. Forfeiture to be exacted only for the offences of fishing or preparing to fish in territorial waters.

5. This arrangement to take effect as soon as the necessary measures can be completed by the Colonial authorities.

(Signed) J. CHAMBERLAIN.
L. S. SACKVILLE WEST.
CHARLES TUPPER.

Washington, February 15, 1888.

Inclosure 3 in No. 2.

PROTOCOL, DATED FEBRUARY 15, 1888.

THE American Plenipotentiaries having received the communication of the British Plenipotentiaries of this date conveying their plan for the administration to be observed by the Governments of Canada and Newfoundland in respect of the fisheries during the period which may be requisite for the consideration by the Senate of the Treaty this day signed, and the enactment of the legislation by the respective Governments therein proposed, desire to express their satisfaction with this manifestation of an intention on the part of the British Plenipotentiaries, by the means referred to, to maintain the relations of good neighbourhood between the British possessions in North America and the United States; and they will convey the communication of the British Plenipotentiaries to the President of the United States, with a recommendation that the same may be by

him made known to the Senate, for its information, together with the Treaty, when the latter is submitted to that body for ratification.

(Signed) T. F. Bayard.
William L. Putnam.
James B. Angell.

Washington, February 15, 1888.

No. 3.

Mr. J. Chamberlain, M.P., to the Marquis of Salisbury.
(Received February 27.)

Washington, February 16, 1888.

My Lord,—I have the honour to inform you that the lengthened deliberations of the Conference have at last terminated in an Agreement accepted by all the Plenipotentiaries as a just and honourable settlement of the difficult questions which have arisen in connection with the North Atlantic fisheries.

This satisfactory result is largely due to the conciliatory spirit manifested on both sides, and to the strong sense entertained by all the conferrees of the importance of removing all cause of irritation and of promoting good neighbourhood and friendly intercourse between the United States and Canada and Newfoundland.

The main issues involved in the discussion are familiar to your Lordship.

The successive abrogation by the United States of the Reciprocity Treaty of 1854, and recently of the fishery Articles of the Treaty of Washington, had subjected the relations between the two countries to the stipulations of the anterior Convention of 1818, by one of the clauses of which United States' fishermen were expressly precluded from entering the bays and harbours of Canada and New-

foundland, except on certain specified portions of the coast, for any other purposes whatever besides wood, water, shelter, and repairs. The Canadian Government have construed strictly this right of exclusion, with the express object of preventing United States' fishermen from fishing in Canadian waters, and also from making Canada a base of supplies for their operations in connection with the deep-sea fisheries.

They have, however, always been willing to share either or both these advantages with the fishermen of the United States, provided that a fair equivalent were conceded in the shape of a modification of the American tariff in favour of Canadian products.

The United States' Government have contended that while the Canadian Government were justified in preventing fishing in their territorial waters, the refusal of ordinary commercial facilities to American fishermen was contrary to the comity of nations, and tended to pervert a Treaty of Amity, relating solely to the fisheries, into an instrument of injury to commercial intercourse.

The United States' Government have on the present occasion repudiated any desire to share the inshore fisheries of Canada, and the point in dispute has therefore been limited to the question of commercial facilities.

In the course of the discussion, it became evident that there existed a substantial agreement on the main facts of the case, and that while on the one hand the United States were ready to recognize the right of Canada to guard the interests of her fishermen in competition with those of the United States, and to withhold any special advantages conferred by the proximity of her ports and harbours to the common fishery-grounds, and not expressly secured to the United States by Treaty, the Canadian Government, on the other hand, were ready to afford all possible convenience

and assistance which the claims of humanity or the courtesy of nations would justify, provided that these concessions were not abused or construed into the surrender of privileges essential, or, at the least, important to the successful prosecution of the fishing industry.

The Treaty now submitted gives expression to these views. It provides for the full concession of all commercial facilities to fishing-vessels of the United States, whenever and so long as the products of Canadian fisheries are admitted free into the United States.

In the absence of such an arrangement, the Treaty establishes the future position of the respective parties and defines their rights. It provides for the delimitation of the exclusive fishing waters of the British Colonies, substantially on the basis of the North Sea Fishery Convention. It establishes a prompt and economical procedure for dealing with breaches of the Treaty or of any laws and regulations affecting the fisheries; and while expressly excluding American fishermen from obtaining fishing supplies, it pledges the Governments of Canada and Newfoundland to afford to them every assistance and convenience that can be fairly asked for on grounds of humanity or international courtesy.

It also enlarges the conditions under which American fishermen have hitherto enjoyed the rights secured to them by the Convention of 1818.

Your Lordship will observe that the Plenipotentiaries have exchanged Protocols on the subject of a *modus vivendi* for a period of two years, in order to allow ample time for the consideration by the Senate of the United States and by the Legislatures of Canada and Newfoundland of the principal instrument.

By this arrangement, United States' fishermen will enjoy temporarily the advantages and commercial facilities con-

templated by the Treaty in consideration of a licence issued at a moderate fee by the Governments of Canada and Newfoundland.

It may be hoped that in this way all possibility of the recurrence of the irritating incidents which marked the fishery season of 1886, and in a less degree that of 1887, may be obviated. I venture to hope that these arrangements will be approved by her Majesty's Government, and that they may assist in confirming and extending the friendly and cordial relations between the United States and Great Britain.

I have great pleasure in saying that the relations between the British Plenipotentiaries have been of the most cordial and harmonious character throughout the whole of this protracted discussion. The desire felt by Sir Lionel West and myself to remove all just cause of irritation has been fully shared by Sir Charles Tupper, whose intimate knowledge of the subject of controversy has materially contributed to the successful issue of the negotiations. I have also to acknowledge the great advantage I have derived from the tact and large experience of Sir Lionel West.

Mr. Winter, Attorney-General of Newfoundland, was in Washington during the greater part of the proceedings, and was able to keep the British Plenipotentiaries fully informed of the views of his Government. At the request of the British Plenipotentiaries, Mr. Winter was invited to lay before the Conference the special case of Newfoundland, and presented a Memorandum dealing with the subject which has already been forwarded to your Lordship.

I desire to call your Lordship's attention to the services rendered to me by my Secretaries, Mr. Bergne and Mr. Maycock.

The staff of the Commission was, at my own desire, on a much smaller scale than has been usual in Missions of this

character. This has necessarily thrown on the two gentlemen who accompanied me a great amount of labour and responsibility which have been cheerfully borne by them, and I cannot over-estimate the value of the assistance they have given to me, and of the experience and knowledge of the subject which they have placed at my disposal.

I have, &c.

(Signed) J. CHAMBERLAIN.

THE END.

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