KINGDOM PAPERS. No. 13.

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(In order to draw attention to the purpose for which quotations are employed, italics, not appearing in the original, are sometimes made use of.)

In the preceding Paper, I made the assertion that the United Kingdom had not only never defended Canada, but, with the exception of the 1888 episode, she had never even effectively sympathized with her in her international difficulties. And I promised to give an illustration of what I meant, by narrating the facts connected with the seizure, by United States cruizers, of our sealing-ships in Behring Sea.

Behring Sea has an area of 873,128 square miles. It is 800 miles from north to south, and 1200 from east to west. In it, at about 57° north latitude, are the Pribyloff Islands, of which an enormous seal-herd make annual use as a breeding-ground. During the rest of the year, the animals spread themselves in the Pacific, going as far south as California. The United States own the islands, and they lease to a company the right to kill seals there. The process is very simple—a blow on the head with a club. The industry produces large profits, and the United States receive comfortable annual rents.

For some time prior to 1886, Canada had been capturing some of the seals in the open sea. That too was profitable; the industry prospered, and the number of ships employed rapidly increased, although the hunting process was much more difficult than the club-method.

Naturally enough, neither the United States nor the company approved the interference of the Canadians. They pretended that pelagic operations would exterminate the seal species. Canada said that it might reduce the number; but that extermination could

(*a*) The documents quoted in this Paper may be found in one or other of the following publications: *British*: Blue Book 1890, U.S. No. 2; Blue Book 1891, U.S. No. 1; Blue Book 1891, U.S. No. 2; Blue Book 1892, U.S. No. 3. *United States*: 50th Cong., 2nd Sess., Sen. Ex. Doc., No. 106; 51st Cong., 1st Sess., House Ex. Doc. No. 450; 51st Cong., 2nd Sess., House Ex. Doc., No. 144; 51st Cong., 2nd Sess., House Ex. Doc. For. Rel. pp. 358-508; 52nd Cong., 1st Sess., House Ex. Doc., For. Rel. pp. 530-643; 52nd Cong., 1st. Sess., Sen. Ex. Doc., No. 55; 53rd Cong., 3rd Sess., Sen. Ex. Doc., No. 67. *Canadian*: Sess. Pap., 1887, Vol. 20, Nos. 48, 48 (*a*); Sess. Pap., 1888, Vol. 21, Nos. 65 (*a*), (*b*); Sess. Pap. 1898, Vol. 32, No. 39.

be accomplished on land only—as the seals became scarcer, pelagic operations would become unprofitable, and therefore cease. There was a "tendency towards equilibrium". Everybody now agrees that the Canadian view was the right one (*a*).

Taking the law into their own hands, United States' cruizers, during a series of years (1886, 7 and 9) seized and threatened Canadian vessels. In 1886 and 7, masters and mates of the seized vessels were fined and imprisoned. Negotiations, temporary arrangements, reference to arbitration, further negotiations, etc., ensued, with the result that to-day the whole British Columbia sealing fleet is out of commission, and as compensation Canada receives fifteen per cent. of the skins taken on the islands.

A preliminary statement of the headings under which the facts will be presented, and a short indication, under each, of the argument, will aid the understanding of what is to follow:

I. BRITISH PROTECTION WITH REFERENCE TO THE SEIZURES: Seizures, fines and imprisonment in 1886 and 7. Further seizures in 1889. Meanwhile, British indifference and United States contempt. No explanation or justification attempted until 1890, and the contention then advanced, manifestly absurd.

II. BRITISH PROTECTION WITH REFERENCE TO UNITED STATES' PROPOSALS FOR VOLUNTARY RENUNCIATION OF CANADIAN RIGHTS: The proposals favored by the British government, and on two occasions (1888 and 1889-90) tentatively acquiesced in. Canadian protests saved the situation for the time; but the effect of the British admissions afterwards disastrous.

III. BRITISH PROTECTION WITH REFERENCE TO UNITED STATES' PROPOSALS FOR VOLUNTARY TEMPORARY RENUNCIATION: The proposals cordially concurred in by the British government and enforced, in 1891 and 2, by the joint activity of the British and United States' navies. Canadian opinion and objection fruitless. The British government itself declared that the renunciation of 1891 was "a friendly act towards a friendly Power"—not one of "absolute right or justice"; and that the renunciation of 1892 could not be "reasonably demanded".

IV. BRITISH PROTECTION WITH REFERENCE TO ARBITRATION RESPECTING VOLUNTARY RENUNCIATION: Canada had no objection to arbitrate the question of her right to take seals on the open sea. She did object to submit to anybody the extent to which she ought to renounce or forego the exercise of her rights—especially when United States' action on land and that of all other nations at sea

(*a*) See the unanimous report of the British and American Commissioners of 1897, in the nnual Report of the Canadian Minister of Marine and Fisheries for 1897.

was left unregulated. Canada was over-ruled. Before the arbitrators, Canada was handicapped by previous British admissions. Partial prohibition was imposed upon Canada, and thus, the United States acquired, by British assent, that to which—by the same award—she was declared to have no legal right.

V. Subsequent History.—Canadian influence sufficiently strong to prevent further concessions to the United States, with result that United States agreed to pay, reasonably well, for total renunciation.

The Trent Affair.—Before commencing the narrative, it will be convenient to refer, very shortly, to the *Trent* affair, as indicative of the attitude which the United Kingdom assumes when one of her own ships meets with unauthorized interruption on the high seas. It will give us a sort of standard by which to estimate her action with reference to the seizure of Canadian sealing-ships in Behring Sea.

Shortly after the commencement of the war of secession in the United States, the Confederacy of the Southern States sent two envoys to the governments of the United Kingdom and France to plead for recognition of their independence.

"These two gentlemen having run the blockade of Charleston by night, embarked at Havana in the British mail steamer *Trent*. The *San Jacinto*, a Federal sloop of war . . . ran across the Trent . . . fired a couple of shots across her bows, boarded her, and made prisoners of Messrs. Mason & Slidell . . . . . When the news reached England *it caused tremendous excitement. The flag had been insulted; instant reparation must be demanded.* Russell drafted a vigorous despatch to the Federal Government, at the same time directing Lord Lyons, British Embassador at Washington to require the release of the Confederate envoys, *and to come away if his request were not fulfilled in seven days.* Simultaneously 8,000 troops were embarked to be ready for emergency on the Canadian frontier, and preparation was made for immediate hostilities. In all probability the country was only saved from a fratricidal war by the prudent counsel of the Prince Consort' (*a*)

—by the tactful action of the British Ambassador, also, who made as easy as possible the submission of the United States.

The following are extracts from the despatches of Lord Russell to the British Ambassador at Washington (30 November 1861):

"It thus appears that certain individuals have been forcibly taken from on board a British vessel, the ship of a neutral Power, while such vessel was pursuing a lawful and innocent voyage: an act of violence which was an affront to the British flag and a violation of international law."

Lord Russell demanded:

"the liberation of the four gentlemen, and their delivery to your Lordship, in

(*a*) Maxwell: *A Century of Emp.* 1833-68, pp. 307, 8.

ord[illegible] that they may again be placed under British protection, and a suitable ap[illegible] for the aggression which has been committed."

"Should Mr. Seward ask for delay in order that this grave and painful matter should be deliberately considered, you will consent to a delay not exceeding seven days. If at the end of that time, no answer is given, or if any other answer is given except that of a compliance with the demands of Her Majesty's government, your Lordship is instructed to leave Washington with all the members of your Legation, bringing with you the archives of the Legation, and to repair immediately to London" (*a*).

No explanation is asked. No explanation will be received. The Union Jack has been insulted. Reparation and an apology are the only possible appeasements. Meanwhile British business and finances are upset, consols go down, and marine insurance goes up. And all this because of the arrest by Americans of other Americans, on a British ship. The men were very soon released, and thereupon

"the funds received a sensible increase . . . . The highest price at which consols were quoted in that day was 93¾, or 3¼ per cent. higher than the lowest point to which they had fallen during the interval of suspense and anxiety" (*b*).

That was in 1861-2. It was a case of the United States taking from a British vessel, two American citizens engaged in rebellion against United States' authority. Compare now, what the British government did when (1886-9) not only *Canadian* subjects were taken on the high seas from *Canadian* vessels and subjected to fine and imprisonment, but when the vessels themselves and their equipment—Union Jacks and everything else—were seized and taken into United States' territory.

Behring Sea, 1886.—In this year (about 1 August) three sealing-vessels were seized and taken to a United States' port—the *Onward*, the *Carolina*, and the *Thornton* (*c*). The masters were each sentenced to pay a fine of $500, and to be imprisoned for thirty days; while the mates escaped with fines of $300 and thirty days in gaol. One of them (James Ogilvie) an old man, after his trial but before sentence, took to the woods where he died from want and exposure. The crews were taken to San Francisco and left to find their way home as best they could. The vessels were condemned and appropriated. And the only ground upon which the judgments of condemnation proceeded was the silly, and afterwards abandoned (*d*) pretence that all of Behring Sea east of the 193° of west longitude—a stretch of about seven hundred miles—belonged to the United

(*a*) Ann. Reg. 1861, pp. 290, 1.
(*b*) *Ibid.* 1862, p. 6.
(*c*) A fourth ship, the Favorite, was compelled to quit her operations and leave Behring Sea.
(*d*) Perhaps *repudiated* would be more correct than *abandoned*: See Mr. Blaine's letter of 14 April 1891.

States (*a*). None of the seizures took place within fifty miles of the land.

But there was no excitement in the United Kingdom. The compilers of the Annual Register probably never heard of the seizures, for they do not mention them. Nobody became furious over the insult to the flags, or asked for their return. Nobody ever suggested a demand for an apology. There was not even a cabinet meeting on the subject. Why? For the simple reason that it was a "colonial episode", and that "we cannot be expected to go to war over a few seals."

For my own part I do not complain of that attitude. The British government is responsible to British electors, and must do as the electors wish. The *Trent* affair appealed to the British public. The Behring Sea seizures did not. The later (1904) *Doggerbank* episode—the firing by Russian warships (through foolish mistake) upon British fishermen near at home—drove Englishmen wild, and the government had the greatest difficulty in refraining from war. Not one man in a million gave a second thought to the Behring Sea proceedings. I make no complaint. That is human nature. But do not tell me at the same time, that the British forces protect us from wrongful assault. They do not.

Instead of drafting a vigorous despatch as soon as the seizures were heard of, the British Foreign Minister wrote (9 September) a note of five lines directing a communication to be sent to the United States government—

"asking to be furnished with any particulars which they may possess relative to this occurrence".

The Canadian government took a much more serious view of the subject. An Order-in-Council (24 September) after detailing the facts, concluded as follows—

"In view of the unwarranted and arbitrary action of the United States' authorities, the undersigned recommends that a copy of this Report be sent to Her Majesty's Government to the end that IMMEDIATE REPARATION BE DEMANDED FROM THE GOVERNMENT OF THE UNITED STATES, and that in the meantime the facts contained therein be telegraphed to the Secretary of State for the Colonies and to the British Minister at Washington."

Thus moved the Foreign Secretary eased his conscience by writing to the British Ambassador (20 October) as follows—

"I request that you will lose no time in protesting against these proceedings in the name of Her Majesty's Government; and you will at the same time RESERVE FOR CONSIDERATION HEREAFTER ALL RIGHTS TO COMPENSATION WHICH MAY BE BROUGHT FORWARD."

That was all that need be done in the case of Canadians in

(*a*) See the findings of fact of the arbitrators.

gaol! No satisfaction having been received, the Canadian government, two months after their first demand, forwarded to London (27 November) a further and more urgent protest, declaring that the captains and mates

"have been dragged before a foreign court, their property confiscated, and themselves thrown into prison where they still remain" (*a*).

That protest was not forwarded by the Colonial Office to the Foreign Office until 4 January, 1887! And all that it produced was a letter to the United States (9 January)—

"Such proceedings therefore, if correctly reported, would appear to have been in violation of the admitted principle of international law. Under these circumstances, Her Majesty's Government do not hesitate to express their concern at not having received any reply to their representations, nor do they wish to conceal the grave nature which the case has thus assumed, and to which I am now instructed to call your immediate and most serious attention."

The letter closed with an expression of assurance that—

"the Government of the United States will, with their well-known sense of justice, admit the illegality of the proceedings resorted to against the British vessels and the British subjects above mentioned, and will cause reasonable reparation to be made for the wrongs to which they have been subjected, and for the losses which they have sustained."

More than three weeks afterwards (and six months after the seizures) the United States replied (3 February 1887) promising an early investigation of the subject, and adding—

"In this connection, I take occasion to inform you that, without conclusion at this time of any questions which may be found to be involved in these cases of seizure, orders have been issued by the President's direction, for the discontinuance of all pending proceedings, the discharge of the vessels referred to, and the release of all persons under arrest in connection therewith."

The ships were never delivered to their owners. In 1891, they were still on the beach at Ounalaska (*b*). The seized seal-skins were never returned. Reparation was not even referred to in United States letters.

Thus ended the events of the first years seizures. Three Canadian vessels taken off the high seas. A fourth vessel driven from her work. Five Canadian sailors shut up in gaol. One sailor dead from want and exposure. Three Canadian crews carried off to San Francisco. The only pretence of justification: the ownership by the United States of the open sea. Gentle protests made, but

(*a*) In reality, some if not all the men had been released before that date. They were "turned loose," literally destitute and left to get home (1,500 miles) as best they could.

(*b*) In the Canadian departmental report of 1891, is the following:

"Those seized in 1886, after being condemned, were laid up on the beach at Ounalaska, and after everything saleable had been disposed of, they were offered to their owners. Their deterioration from exposure to the action of time and weather rendered them practically worthless, and the distance at which they lay from their owners precluded their being removed except at a loss."

no explanation given; no reparation offered; the seal-skins kept; the ships furnishings sold; the ships left rotting at Ounalaska.

What would have happened, had these vessels and men been British? What, if from off a British vessel on the Atlantic two *American* citizens had been forcibly taken?

1887—Meanwhile the owners of other Canadian vessels wanted to know if they were to be liable to seizure during the operations of the following season (1887) and, as early as 6 December 1886, the British Ambassador at Washington was instructed to obtain from the United States the necessary assurance. No reply having been received, the instruction was repeated (2 April), and on 12 April the United States' Secretary wrote that

"The remoteness of the scene of the fur-seal fisheries, and the special peculiarities of that industry, have unavoidably delayed the Treasury officials in FRAMING APPROPRIATE "REGULATIONS, AND ISSUING ORDERS TO UNITED STATES' VESSELS TO POLICE THE ALASKAN WATERS FOR THE PROTECTION OF THE FUR-SEALS FROM INDISCRIMINATE SLAUGHTER, AND CONSEQUENT SPEEDY EXTERMINATION."

"The question of instructions to government vessels in regard to preventing the indiscriminate killing of fur seals is now being considered, and I will inform you at the earliest day possible WHAT HAS BEEN DECIDED, SO THAT BRITISH AND OTHER VESSELS VISITING THE WATERS IN QUESTION CAN GOVERN THEMSELVES ACCORDINGLY".

Could contempt go further? No further communication took place. The "instructions" were not communicated. They were not asked for.

Noting the indifference of the Foreign Office, the Canadian government sent a further protest to the Colonial Secretary (16 May) calling attention to—

"the grave injustice done by the United States' authorities to British subjects, peaceably pursuing their lawful occupations on the high seas, and to the great delay which has taken place in inquiring into and redressing the wrongs committed; to the severe, inhospitable, and unjustifiable treatment of the officers and crews of the vessels seized; and to the serious loss inflicted upon owners of the same, *in order that full and speedy reparation may be made by the United States' government.*"

Nothing further being done, the seizures (as was expected) re-commenced. On 9, 12 and 17 July, and 6 and 25 August, six more ships (*a*), and about one hundred and fifty men were seized, when more than forty miles from land; and again some of the men were sent to gaol because being "devoid of funds necessary for their subsistence" they could not provide bail. From a seventh vessel, 1386 seal-skins were forcibly taken—as also the ship's papers

(*a*) The ***Anna Beck***, the *Sayward*, the *Dolphin*, the *Grace*, the *Alfred Adams*, and the *Ada*.

and fishing apparatus. What that would have meant, had a single ship or a single seaman been British we know. Being Canadian only, Lord Salisbury contented himself with writing to Mr. West (10 August) as follows:—

> "I request that you will at once communicate to the United States' Government the nature of the information which has reached them in regard to these further seizures of British vessels by the United States' authorities. You will at the same time say that Her Majesty's Government had assumed, in view of the assurances conveyed to you in Mr. Bayard's note of the 3rd February last (*a*), that pending a conclusion of the discussion between the two Governments on the general question involved, no further seizures of British vessels would be made by order of the United States' Government."

Lord Salisbury knew quite well that there were no "assurances" in the letter referred to; that he had subsequently asked for them; that in reply he had been told that he would be informed of the nature of the instructions to be issued to the cruizers; that he had not received these instructions; and that he had never asked for them. The reply of Mr. Bayard (13 Aug.) was that he could

> "discover no ground whatever for the assumption by Her Majesty's Government that it contained assurances" such as referred to.

Although London was unaffected by these new seizures, the indignation of British Columbia was intense, and the "Victoria Daily Colonist" reflected the general feeling when it said of the ship-owners (6 August)—

> "They are beginning to wonder if, indeed, England is mistress of the seas, when such high-handed piratical acts as those perpetrated last year, and again repeated this, are allowed to occur without some protection being given to British subjects or redress secured for damage done to property and interests at the hands of Americans."

"Redress secured!" The claims were still in a British pigeon-hole!

After a month's delay, Lord Salisbury sent a long argumentative despatch to Mr. West (10 Sept.) and, without entering a protest, concluded with these words:—

> "Her Majesty's Government feel sure that, in view of the considerations which I have set forth in this despatch, which you will communicate to Mr. Bayard, the Government of the United States will admit that the seizure and condemnation of these British vessels, and the imprisonment of their masters and crews, were not warranted by the circumstances, and that they will be ready to afford reasonable compensation to those who have suffered in consequence, and issue immediate instructions to their naval officers which will prevent a recurrence of THESE REGRETTABLE INCIDENTS."

After another fortnight (and seven weeks after he had been

(*a*) The passage referred to is quoted ante, p. 63.

informed of three of the seizures Lord Salisbury went so far as to instruct the British Ambassador (27 September) to

"make a representation to the United States' Government on the subject of the seizure and detention of these vessels in connection with the representations which I instructed you to make in the cases of the "Onward," the "Carolina" and the "Thornton," and that you will RESERVE ALL RIGHTS TO COMPENSATION ON BEHALF OF THE OWNERS AND CREWS."

Meanwhile the Canadian Government continued to urge the Foreign Office to action, and on 26 September a protest containing the following was forwarded—

"It is respectfully submitted that this condition of affairs is in the highest degree detrimental to the interests of Canada, and should not be permitted to continue. FOR NEARLY TWO YEARS CANADIAN VESSELS HAVE BEEN EXPOSED TO ARBITRARY SEIZURE AND CONFISCATION IN THE PURSUIT OF A LAWFUL OCCUPATION UPON THE HIGH SEAS, and Canadian citizens subjected to imprisonment and serious financial loss; while an important and remunerative Canadian industry has been threatened with absolute ruin."

"The Minister advises that Her Majesty's Government be again asked to give ITS SERIOUS AND IMMEDIATE ATTENTION TO THE REPEATED REMONSTRANCES OF THE CANADIAN GOVERNMENT against the unwarrantable action of the United States in respect to Canadian vessels in Behring's Sea, with a view to obtain a speedy recognition of its just rights, and full reparation for the losses sustained by its citizens."

The Colonial Office forwarded the protest to the Foreign Office, and added (17 October)—

"These papers appear to Sir H. Holland to point to a serious state of things, which seem to make it necessary that some decided action in the matter should be taken by Her Majesty's Government. And he would suggest, for the consideration of Lord Salisbury, whether it would not be desirable to instruct Sir L. West, unless he has already done so, formally to protest against the right assumed by the United States of seizing vessels for catching seals beyond the territorial waters of Alaska.

The only effects of this communication were (1) a telegram from Lord Salisbury to the British ambassador (19 October)—

"I have to request that you will forthwith address a protest to the Government of the United States against this seizure, and against the continuance of similar proceedings on the high seas by the authorities of the United States."

and, (2), instructions (26 October) to hand to the United States a copy of the Canadian document!

We are now at the end of the second year of the seizures. Six ships have been taken from the high seas into a United States port, condemned and forfeited. Canadians have been fined and imprisoned. The schooners seized in 1886 had been diplomatically (only) released, but having met with so little real opposition, the United States declined to release those seized in 1887. No pretence

of justification has yet been offered by the United States, and no pressure for explanation has been applied by the United Kingdom. Requests for assurances of future immunity from seizure have been treated with contempt by the United States; and remonstrances from Canada have been treated with indifference by the United Kingdom.

1888.—The first seizures had been made about 1 August 1886, and down to the month of March 1888 (with which we are now to deal) no effective or even earnest step had been taken by the Foreign Office. Vessels of the British navy, in overwhelming force, had been at anchor in Esquimalt harbour, but the efforts of the Admiral were confined to ascertaining, at the end of the season, what had happened, and to sending in reports of what he had heard. The Canadian claims had never been presented to the United States for payment, Lord Salisbury's first excuse being (14 Feb. 1887) that he wanted to have an opportunity

'of examining the statements as to the circumstances under which the seizures took place;

his second excuse (8 July 1887) being that it was desirable that he

"should be in possession of the records of the judicial proceedings in the District Court of Alaska";

and, when the records had been obtained for him (12 July 1887), his third excuse was—nobody knows what. Despairing of any help from British diplomacy or the British navy, the sealers determined to defend themselves, and for that purpose arranged to take large crews of armed Indians in their vessels. News of the intention reached London, but Lord Salisbury was unmoved. In a letter to the Colonial Office, in reply to the suggestion of a direction to the Admiral

"to disarm any British sealing schooners sailing with such intention as is alleged in the report,"

he said (24 March)—

"With reference to the latter part of Mr. Gourley's question, I am to request that you will state to Lord Knutsford that, although some delay is inevitable in pressing for an immediate settlement of the questions which have arisen between this country and the United States in connection with the fur-seal fisheries in Behring's Sea, there is no reason to believe that any further illegal seizures of British vessels will take place, especially as the United States' Government have invited Her Majesty's Government to negotiate a convention for a close time, thereby admitting their claim to exclusive rights in those waters to be untenable (*a*). Lord Salisbury, however, will again endeavour to obtain assurances on the subject from the Government of the United States.

(*a*) If Lord Salisbury had really believed that he had such an admission, he would have urged it when protesting against the seizures of the following year. He did not.

As regards the rumours which have reached this country by telegraph from Victoria, British Columbia, of the clearance of Canadian vessels for Behring's Sea, manned with armed Indian crews, I am to state that Lord Salisbury will be prepared to submit the matter to the Law Officers of the Crown, should the rumours in question be confirmed, but that if the vessels are armed, not for purposes of attack, but for purposes of resistance to illegal seizures on the high seas, *it would seem difficult to justify any interference with them on the part of Her Majesty's cruizers.*"

Canadians might undertake their own defence if they so desired! and having thus comfortably, but not quite frankly, got rid of the matter (for the time), Lord Salisbury wrote to Mr. West the following short note (30 March)—

"I enclose, for your information, a copy of a letter from the Colonial Office, inclosing a telegram from the Governor-General of Canada, from which it appears that the British vessels and crews now fitting out for the approaching seal-fishing season in Behring's Sea are being armed with a view to offering resistance to their capture by American cruizers when so occupied.

Lord Lansdowne also reports that it is rumoured in Victoria that orders have been issued by the United States' Government for the seizure of all sealers found this season in Behring's Sea.

I request that you will inform Mr. Bayard of the report in question, and that you will earnestly represent to him the extreme importance that Her Majesty's Government should be enabled to contradict it."

Meanwhile the Governor General had telegraphed (27 March) as follows:—

"I am informed by Lieutenant-Governor of British Columbia that sealers on the point of departure for Behring's Sea are arming the vessels and crews to resist capture by American Revenue cutters. We think it desirable that Admiral should be instructed to watch proceedings on the spot. I have telegraphed to Lieutenant-Governor to issue notice cautioning sealers to refrain from any assertion of right by force of arms, and pointing out grave results which might ensue from resort to arms whilst negotiations still in progress. It seems to us impossible to prevent fishermen taking on board the arms and ammunition usually required for their own protection and for use in seal-fishing. Reports reach us from Victoria that United States' Government has issued orders for the seizure of all sealers found this season in Behring's Sea. LET ME AGAIN URGE NECESSITY OF OBTAINING FROM UNITED STATES' GOVERNMENT DEFINITE ANNOUNCEMENT OF ITS INTENTIONS DURING PRESENT FISHING SEASON IN THOSE WATERS."

For some months prior to this time Mr. Phelps (United States' Ambassador) had been pressing Lord Salisbury to agree to what he called "a close season" for seals in Behring Sea. Lord Salisbury, without any consultation with Canada, expressed himself as being favorably disposed towards the suggestion. And the United States, believing that they were on the point of obtaining, under the name of "a close season," the complete exclusion of Canadians from sealing operations in Behring Sea, verbally agreed that no actual seizures

should be made in the ensuing season. Lord Salisbury, in a letter (3 April) recounting the interview, after referring to the negotiations, said thatMr. Phelps thought it

"to be of great importance that *no steps should be neglected that could be taken for the purpose of rendering the negotiations easier to conclude*, or for supplying the place of it until the conclusion was obtained. He informed me, therefore, unofficially, that he had received from Mr. Bayard a private letter, from which he read to me a passage to the following effect:

'I shall advise that secret instructions be given to American cruizers not to molest British ships in Behring's Sea at a distance from the shore, and this on the ground that the negotiations for the establishment of a close time are going on.'

"But, Mr. Phelps added, there is every reason that this step should not become public, AS IT MIGHT GIVE ENCOURAGEMENT TO THE DESTRUCTION OF SEALS THAT IS TAKING PLACE."

In other words, the United States' cruizers intended to threaten and frighten the Canadian sealers, but would not actually seize them. That was what happened. Lord Salisbury was a consenting party to the programme, and the British fleet remained inactive at Esquimalt.

1889.—The negotiations for a close season had ceased (owing to Canadian intervention as hereinafter related), and at the commencement of the next sealing-year the President of the United States (22 March) issued a proclamation threatening arrest of all sealing ships found within "the dominion of the United States in Behring Sea." Lord Salisbury (no doubt displeased with Canadian obduracy) declined (11 April) to take any action, upon the ground that the proclamation did not refer to that part of the sea over which the United States had no dominion. That, of course, was mere excuse, and the Canadian government sent him (14 June) strong complaint,—

"Three years have now almost passed since the American Government were apprised of the remonstrance on the part of the British Government against the claim set up to exclusive jurisdiction in the Behring's Sea, WITH PRACTICALLY NO RESULT OTHER THAN THE VIRTUAL AND CONTINUAL EXCLUSION OF CANADIAN SEALERS FROM THOSE OPEN WATERS BY THE GOVERNMENT OF THE UNITED STATES.

Constant enquiry has been made of the Canadian Government as to the present condition of the claims of British subjects in Canada for the damage and loss sustained by the unjustifiable action of the United States' authorities.

The Minister regrets that he has been able to give no other answer to these inquiries than to say that the claims are still being pressed upon the attention of the United States' Government (*a*), but that no settlement has been arrived at.

The Minister of Marine and Fisheries is informed that the failure to obtain satisfaction has already resulted in THE FINANCIAL EMBARRASSMENT AND FAILURE

(*a*) An answer that was quite inaccurate. They were still in Lord Salisbury's pigeonholes.

OF CAPTAIN WARREN, of Victoria, British Columbia, one of the owners most largely interested in the seized vessels; while the sealing industry, so far as Canada is concerned, which was heretofore prosecuted with considerable advantage to labour and capital, HAS BECOME ENTIRELY PARALYZED.

He further observes that while the argument advanced by the British Government touching the rights of British subjects in the open waters of Behring's Sea has not been met, recent expressions and actions on the part of officials and of the authorities in the United States touching the Behring's Sea, taken with the seizures of British vessels already referred to, afford a reasonable ground for the belief that the Revenue-cutters of the United States' Government in the waters in question WILL CONTINUE TO TREAT THESE WATERS AS CLOSED. Great damage has therefore not only been sustained, but is now being suffered, by British subjects in consequence of their not daring to risk their persons and property in these waters in the absence, not only of a settlement of the claims already existing but without any positive assurance from the British Government that, in the event of loss or damage again occurring to them in the open waters of the Behring's Sea at the hands of the United States' authorities, ample redress will be obtained therefor."

"It is to be regretted that some of the leading Representatives in the Canadian Parliament have already been induced to express the opinion that THE BRITISH GOVERNMENT WOULD NOT ACTIVELY PROTECT THE RIGHTS OF BRITISH SUBJECTS RESIDENT IN CANADA IN CASES WHEREIN THE UNITED STATES WERE CONCERNED, and while he, the Minister, believes such opinion to be entirely erroneous and unfounded, he desires to express the hope that these extreme views may be in nowise strengthened by any unnecessary delay in vigorously and effectively pressing the Canadian claims against the American Government for the illegal and unjustifiable action now under consideration.

The records of the claims having been completed on the 12th day of January 1888, and then forwarded to the Imperial authorities, the Minister recommends that HER MAJESTY'S GOVERNMENT BE URGED TO TAKE SUCH FURTHER STEPS AS WILL PROMPTLY SECURE FROM THE GOVERNMENT OF THE UNITED STATES NOT ONLY FULL AND AMPLE REPARATION FOR THE LOSS AND DAMAGE SUSTAINED, BUT ALSO A COMPLETE AND IMMEDIATE RETRACTION OF THE CLAIM OF THAT COUNTRY TO EXERCISE EXCLUSIVE JURISDICTION OVER THE WATERS OF THE BEHRING'S SEA."

No action of any kind was taken, and, as the President had announced, the seizures were proceeded with. On 1 August, the first of them (the Black Diamond) was brought to Lord Salisbury's notice, but, stolid and indifferent as ever, he cooly and sagely replied (5 August) that

"everything seemed to depend, in this case, on the precise position of the Black 'Diamond' at the time of the seizure."

Being in Canada, the Governor General took the matter more seriously, and wrote (8 August):

"In transmitting to your Lordship such information as I have been able to procure up to the present time respecting the recent seizure of the schooner 'Black Diamond', and the detention of the schooner 'Triumph,'" in Behring's Sea, I deem it my duty to bring to your notice THE VERY STRONG feeling which is arising throughout the Dominion consequent upon the continued seizures of

Canadian vessels upon the open sea, and their condemnation in the United States' Courts of law.

A sense of irritation is growing up in the public mind not only against the Government of the United States, but against the Imperial Government, which may at any moment result in serious trouble, and there is reason to apprehend that, if the supposed inaction of the Home Government continues, the sealers may be driven to armed resistance in defence of what they believe to be their lawful calling, and it would be difficult, if not impossible, for the Dominion Government to prevent such a state of affairs."

The Canadian government also sent formal complaint (9 August)

"The Minister represents that FOUR YEARS HAVE ELAPSED since the seizure of British sealing-vessels was commenced by the United States' authorities in the Behring's Sea, and the strong representations of Her Majesty's Ministers to the United States have only RESULTED IN A CONTINUANCE OF THE POLICY, AND A DECLARATION THAT SUCH POLICY WILL BE SYSTEMATICALLY PURSUED.

The Committee advise that copies of the annexed telegrams be transmitted to the Right Honourable the Secretary of State for the Colonies with the request that the attention of Her Majesty's Government be invited thereto, and WITH THE EARNEST HOPE THAT AN EARLY ASSURANCE WILL BE GIVEN THAT BRITISH SUBJECTS PEACEFULLY PURSUING THEIR LAWFUL OCCUPATIONS ON THE HIGH SEAS WILL BE PROTECTED."

Meanwhile a dallying idea occurred to Lord Salisbury. He said (17 August) that it would be

"very desirable . . . . that steps should be taken to proceed at once with the appeals to the Supreme Court of the United States in the cases of the British vessels whose sealing operations were stopped under similar circumstances in 1886.

I am to request, therefore, that you will suggest, for Lord Knutsford's consideration, that a telegram should be sent to the Governor-General of Canada to the effect that, it being very unusual to press for diplomatic redress for a private wrong, so long as there is a reasonable chance of obtaining it from the TRIBUNALS OF THE COUNTRY UNDER WHOSE JURISDICTION THE WRONG COMPLAINED OF HAS OCCURRED, Her Majesty's Government consider that they would be in a stronger position for dealing diplomatically with the Behring's Sea cases if appeals on the cases of seizure which took place in 1886 were pushed on."

Than that letter, nothing could be more exasperating. What we complained of was that the seizures had been made upon the high seas, and therefore *not* within the jurisdiction of the United States. Lord Salisbury knew that; and he had (10 September 1887) presented a cogent argument in support of the contention to the United States. It was the only point about which there was any dispute. Of what use was an appeal to the United States' courts if Behring Sea *was* within the jurisdiction of the United States? (*a*) Moreover, Lord Salisbury knew, for he had been told

(*a*) The appeal was useless in any case. When, at last, it did come on, it was dismissed "upon the well-settled principle, that an application to a court to review the action of the political department of the government upon a question pending between it and a foreign Power, and to determine whether the government was right or wrong, while diplomatic negotiations were still going on, should be denied. Re Cooper, 143 U.S. 472.

(26 April 1889) that the only case appealed—the *Sayward* case —could

"not be reached for call for some three years, the business of the Supreme Court of the United States being, as I am told, nearly or quite four years in arrear."

Why was not an action for damages brought in the United States' courts in connection with the *Trent* affair? Why? Because that was a British ship. The sealers and their crews were only "colonial".

The Canadian Government dealt with Lord Salisbury's suggestion by adopting as an Order-in-Council (16 September) a long report of its Minister of Marine and Fisheries (9 September), in which Mr. (now Sir Hibbert) Tupper showed that the appeal

"has been duly inscribed in the Supreme Court of the United States for nearly a year, and, on enquiry, the undersigned learns that it will not be reached in its turn for argument for another year from this date."

He expressed the hope

"that Her Majesty's Government will not consider that the just demands of the Canadian Government should not be pressed until the case of the 'W. P. Sayward' is disposed of";

and he concluded with some earnest and pointed language—

"With deference, the undersigned further submits that the intimation in the cable despatch above mentioned is somewhat unusual under the circumstances which attended the seizure of the ships in question.

"If the alleged infraction of the laws of the United States had occurred in the waters over which that country is or was entitled to exercise jurisdiction, the courts of the United States could, with propriety, be first resorted to before pressing any claim for the immediate attention of the Executive.

"In view of the firmness with which the rights of British subjects on the high seas have been maintained in the past, THE UNDERSIGNED FAILS TO APPRECIATE NOT MERELY ANY REASON FOR THE LONG DELAY IN OBTAINING SATISFACTION FROM THE AGGRESSIVE AND HOSTILE ACTION EXERCISED AGAINST BRITISH SUBJECTS AND BRITISH PROPERTY BY THE UNITED STATES, BUT ALSO FOR THE WANTON CONTINUANCE OF THIS TREATMENT FROM WHICH SO MUCH DIRECT AND INDIRECT DAMAGE AND LOSS IS SUSTAINED BY ONE OF HER MAJESTY'S COLONIAL POSSESSIONS. Moreover, the undersigned would call attention to the imminent danger of loss of life, not to speak of the physical suffering already sustained, since it requires no argument to show that the lawless violence on the part of the Revenue-cutters of the United States' Government MAY AT ANY TIME LEAD TO FORCIBLE RESISTANCE FROM THE CREWS OF BRITISH VESSELS BEING PURSUED AND MOLESTED IN THEIR LAWFUL PURSUITS.

"The undersigned, therefore, recommends that his Excellency the Governor-General be moved to acquaint the Right Honourable the Secretary of State for the Colonies with these views, and to urge that no further time be permitted to elapse without securing for British subjects in Canada the same freedom in the navigation and enjoyment of the waters of the Behring's Sea which the United States claimed for the seamen of all nations when the territory adjacent to that part of the Pacific Ocean belonged to the Empire of Russia."

Meanwhile the seizures went on: the *Minnie* on 15 July; the *Pathfinder* on 29 August; the *Juanita* on 31 July, and the *Lily* on 6 August; while the *Ariel* on 30 July, and the *Kate* on 7 August were ordered out of Behring Sea.

Not until 22 August did Lord Salisbury take the first diplomatic step, and then all he did was to telegraph the British Ambassador at Washington—

> "Her Majesty's Government are in receipt of repeated RUMOURS that British vessels have been searched and even seized in Behring's Sea, outside the 3-mile distance from any land.
>
> No official confirmation of these rumours has yet reached Her Majesty's Government, but they appear to be authentic.
>
> I have to instruct you to inquire of the United States' Government whether any similar information has reached them.
>
> You will also request that stringent instructions may be issued as soon as practicable to the officials of the United States to prevent the possible recurrence of such incidents".

The "rumours" were the official communications from the Colonial Office. In a letter of the same date, to the Ambassador, Lord Salisbury said that he "must necessarily protest" against the seizures, and he had recourse to his former complaint of breach of assurances declaring that—

> "clear though unofficial assurances were given last year by Mr. Bayard that, pending the general discussion of the questions at issue between Her Majesty's Government and that of the United States, no further interference should take place with British ships in Behring's Sea at a distance from the shore."

The "assurances" to which Lord Salisbury referred were the "secret instructions" which Mr. Phelps told him were to be given to the United States' cruizers in the previous year—

> "on the ground that the negotiations for the establishment for a close time are going on" (*a*).

But those negotiations had long since ceased; the United States' President had issued his prohibitory proclamation; and the Canadian government had asked for protection. The assertion of "assurance" was the same pretence as in 1887, and of the same dallying quality as the suggestion of an appeal to the United States' Supreme Court. Mr. Blaine replied (24 August) to Lord Salisbury's letter, in the usual contemptuous style—making no reply to the request for "stringent instructions", or to the allegation of assurances—saying, indeed, nothing in effect but this—

> "It has been, and is, the earnest desire of the President of the United States to have such an adjustment as shall remove all possible ground of misunder-

(*a*) See Lord Salisbury's letter of 3 April, 1888, ante, p. 69.

standing with Her Majesty's Government concerning the existing troubles in Behring's Sea, and the *President believes that the responsibility for delay in that adjustment cannot be properly charged to the Government of the United States.*"

An additional sentence indicated that he would be prepared "to discuss the whole question" when the new ambassador was ready. And to that, the British representative made the following obsequious reply (25 August)—

"I shall lose no time in bringing your reply to the knowledge of Her Majesty's Government, who, while awaiting an answer to the other inquiries I have had the honour to make to you, will, I feel confident, RECEIVE WITH MUCH SATISFACTION THE ASSURANCES WHICH YOU HAVE BEEN GOOD ENOUGH TO MAKE TO ME IN YOUR NOTE OF YESTERDAY'S DATE."

Seizures of Canadians and Canadian vessels affected that representative as little as Lord Salisbury, and he received, from Lord Salisbury (9 September) formal approval of what he had done.

Meanwhile an indignation meeting had been held in Victoria, B.C., and, from the *Colonist* of 1 September, the following extracts are taken. Mr. E. Crow Baker, M.P., said—

"It was a matter that concerned not only the individual, but the entire province, the Dominion at large, and the whole British Empire. The matter was one deserving of consideration, not only because it touched the individual pockets and the province our home, but because it touched our hearts. The view taken by the people of British Columbia was that THE GRAND OLD FLAG THAT THEY HAD LEARNED TO LOVE FROM INFANCY HAD NOT ONLY BEEN INSULTED, BUT HAD BEEN TRAMPLED IN THE DUST."

"Matters of losses were expected by every one in business: but every British Columbian felt that he was protected by the flag of England, under which many present were born, and thought it strange that HE WAS NOT SHELTERED BY THE FLAG WHOSE PROTECTION HE HAD A RIGHT TO EXPECT."

"It was impossible for the Government of Canada to protect its citizens outside of the coast limit of a marine league. When the citizens of British Columbia sailed for the northern seas they passed beyond the protection of the Federal Government, FONDLY HOPING THAT WHEREVER THEY WENT THEY WERE PROTECTED BY THE OLD FLAG OF ENGLAND."

Col. Prior, M.P., said—

"If France set up a claim of jurisdiction over some particular part of the ocean, and seized a German sealer therein, do you think that it would have taken three years to settle the question? Possibly, but they would be three very bad years for some one. (*Cheers*). If Beaconsfield had lived, would it have taken England three years and a half to settle this question? No! (Cheers). He had pleasure in seconding the Resolution introduced by his colleague."

The Honorable Robert Beaven, M.P.P.:

"touched upon the various treaties dealing with Behring's Sea, and referred to the manner in which BRITISH SUBJECTS WERE TAUGHT THAT THEY WERE PROTECTED BY THE FLAG OF ENGLAND WHILE AND WHEREVER THEY WERE ENGAGED IN A LAWFUL CALLING."

Mr. R. P. Rithet

"acknowledged that it was humiliating to be compelled to make an appeal for protection to our own nation while pursuing a lawful avocation on the high seas. The matter was of no moment whether the insult had been offered to one humble subject or to many. The principle was the same. British subjects had been illegally made prisoners of on the high seas, and had been fined and imprisoned. Like good subjects, they had waited long for action to be taken without their demanding it as their right. This action not having been made, however, it was necessary now to emphasize the representations that had been made to the Imperial Government."

The Mayor of the City (Mr. Grant) said—

"TOO LONG HAD THE GLORIOUS OLD FLAG OF WHICH WE ALL FELT JUSTLY PROUD BEEN TRAILED IN THE DUST ON THESE WESTERN SEAS WITH IMPUNITY (loud applause), and true loyalty required that we should employ every legitimate means to put a stop to it. Long enough had Brother Jonathan been allowed with impunity to twist the tail of the British lion, and now it remained for the 'simple fishermen of Victoria' TO STRIKE A LUCIFER UNDER THE LETHARGIC OLD ANIMAL'S NOSE, AND AROUSE IT TO A PROPER SENSE OF DUTY. (Applause). One speaker had said the Provincial Government had nothing to do with this matter, while another said it had. Perhaps in the strict official sense it had not; but he conceived that in a very important sense it had to do with whatever concerned the welfare of the country, and he felt it to be due to the Provincial Government to say that this matter had received its most earnest attention (Applause). IT HAD PREPARED AND TRANSMITTED NO FEWER THAN SIXTEEN ORDERS-IN-COUNCIL AND TELEGRAMS, AND HE COULD ASSURE THE MEETING THAT THESE WERE COUCHED IN AS STRONG LANGUAGE AS WAS CONSISTENT WITH STATE DOCUMENTS."

Among the resolutions, the following was "put and carried with loud applause"—

"RESOLVED,—THAT, AS LOYAL BRITISH SUBJECTS, WE RESENT THE INSULT TO OUR FLAG, AND RESPECTFULLY CLAIM FOR OUR VESSELS AND CITIZENS ON THE HIGH SEAS THAT PROTECTION BY THE BRITISH GOVERNMENT WHICH FOR CENTURIES HAS BEEN THE RIGHT AND PRIDE OF EVEN THE MEANEST SUBJECT OF THE EMPIRE, BUT WHICH NOW SEEMS TO BE DENIED US, CAUSING GREAT LOSS TO THE COMMERCE OF OUR CITY, AND FINANCIAL RUIN TO OUR FELLOW-CITIZENS ENGAGED IN THE SEALING-INDUSTRY."

The Canadian government forwarded (19 September) a copy of the resolution to the Colonial Office and a Mr. Clarke (Rugby, England) handed in (24 September) a copy of the *Colonist*. These were sent (5 October) to Lord Salisbury, who took no notice of them.

Urged by a previous communication from Canada and a request from the Colonial Office, Lord Salisbury directed (2 September) that Office to reply to Canada—

"that Her Majesty's Government are in communication with that of the United States with the object of procuring instructions which will prevent any further seizures.

I am, at the same time, to request that you will point out to Secretary Lord Knutsford that as yet no authentic and detailed information has reached this Department as to the circumstances attending the seizure and searching of these or other British vessels by the United States' authorities during the present fishing season."

The excuse was flimsy and inaccurate. Lord Salisbury had the Canadian Order-in-Council of 2 August stating that the *Black Diamond* had been seized "seventy miles from land", and that the Triumph had been searched "in the same locality". What more did he want. MOREOVER HE HAD ALL THE DETAILS OF THE SEIZURES OF THE PREVIOUS YEARS, AND HAD DONE NOTHING WITH THEM. THE CLAIMS FOR COMPENSATION HAD NEVER YET LEFT HIS PIGEON-HOLES. Indeed upon one occasion (19 April 1888) the United States' Secretary said that "HE HAD BEEN LED TO BELIEVE THAT THESE CLAIMS WOULD BE HELD OVER." They were.

Fighting off Canada in this lofty and exasperating way, Lord Salisbury, in dealing with the United States, was willing to undergo one humiliation after another. His official communications had been treated with contempt. No pretence of justification of the seizures had ever yet been attempted, and requests for assurances of cessation of seizures had never been treated seriously. Under those circumstances, what must be thought of the following letter which Lord Salisbury wrote to the British representative at Washington (11 September) directing him to—

"WRITE PRIVATELY to Mr. Blaine, saying that Her Majesty's Government were earnestly expecting an answer to their request that the United States' Government would send to Alaska such instructions as would put a stop to the seizures of British vessels."

Do please Mr. Blaine. Will you not be good enough? You have seized fourteen British vessels—Union Jacks included. Are you not satisfied? Do you really mean to seize any more? You will ruin a lot of good British subjects, Mr. Blaine. It is too bad, too bad. I really must take the liberty of assuring you, Mr. Blaine, that it is altogether too bad.

The British representative wrote his letter, marking it "Personal", and added a request for a reply to his former protest against the seizures. This is Mr. Blaine's reply (14 September, without any confidential indication)—

"Referring more particularly to the question to which you repeat the desire of your Government for an answer, I have the honour to inform you that a CATEGORICAL RESPONSE WOULD HAVE BEEN AND STILL IS IMPRACTICABLE, UNJUST TO THIS GOVERNMENT, AND MISLEADING TO THE GOVERNMENT OF HER MAJESTY. It was, therefore, the judgment of the President that the whole subject could more easily be remanded to the formal discussion so near at hand

which Her Majesty's Government has proposed, and to which the Government of the United States has cordially assented."

Could anything be more contemptuous? Seizures had been made more than two and three years before; protests had been made and replies asked; and now Lord Salisbury is told that "a categorical response . . . is impracticable". How would that reply have suited the temperament of Lord Palmerston in the *Trent* affair?

The letter reached Lord Salisbury on 30 September. It made not the slightest impression. Indeed two days afterwards in writing to the British representative at Washington he spoke as though he had never seen it (*a*):

"In a despatch to Sir L. West dated the 10th September 1887, which was communicated to Mr. Bayard, I drew the attention of the Government of the United States to the illegality of these proceedings, and expressed a hope that due compensation would be awarded to the subjects of Her Majesty who had suffered from them. I HAVE NOT SINCE THAT TIME RECEIVED FROM THE GOVERNMENT OF THE UNITED STATES ANY INTIMATION OF THEIR INTENTIONS IN THIS RESPECT OR ANY EXPLANATION OF THE GROUNDS UPON WHIICH THIS INTERFERENCE WITH THE BRITISH SEALERS HAD BEEN AUTHORIZED."

"But, in view of the unexpected renewal of the seizures of which Her Majesty's Government have previously complained, IT IS MY DUTY TO PROTEST AGAINST THEM, AND TO STATE THAT, IN THE OPINION OF HER MAJESTY'S GOVERNMENT, THEY ARE WHOLLY UNJUSTIFIED BY INTERNATIONAL LAW."

Once again (14 September) the Canadian government adopted an Order-in-Council—this time with reference to the *Pathfinder*—declaring

"that the circumstances which characterize this seizure are no less irritating and unjustifiable than those which have preceded it."

The two Canadian Orders-in-Council of 14 and 16 Septmeber above referred to (mailed 23 September) were not forwarded by the Colonial office to the Foreign Office until 24 October; and, on 2 November, this was all that Lord Salisbury had to say—

"In reply, I am directed by his Lordship to request that you will state to Lord Knutsford that copies of all these papers will be forwarded at once to Her Majesty's Minister at Washington.

I am to suggest that the Governor-General of Canada should be informed tnat Sir Julian Pauncefote before leaving for his post, was instructed to take the earliest opportunity of discussing the question with Mr. Blaine.

LORD SALISBURY PROPOSES TO AWAIT SIR JULIAN'S REPORT BEFORE DECIDING AS TO WHAT FURTHER STEPS SHOULD BE TAKEN IN THE MATTER."

The Canadian Government now determined upon a new method of procedure, namely the active personal persistence of its London

(*a*) Whether he ever saw it, I cannot say. He never alludes to it.

Commissioner, Sir Charles Tupper. On 18 October, the government adopted the following Order-in-Council—

"The Minister, with reference to the information supplied from time to time to the Imperial Government on the subject of the seizure of British vessels in the Behring's Sea, and to the great national importance of the earliest possible settlement of the question, owing not only to the continuation of the outrages during the past season by United States' Revenue-cutters, but to THE GROWING DOUBT ON THE PART OF THE CANADIAN PEOPLE AS TO WHETHER HER MAJESTY'S GOVERNMENT WILL ACTIVELY SUPPORT THE DEMANDS OF THE DOMINION OF CANADA in consequence of the long delay which has taken place in arriving at a satisfactory adjustment of the question, recommends that the High Commissioner for Canada in London be directed to place himself in personal communication with Her Majesty's Government, with the object of expediting, in any way he may be able to do, a speedy and satisfactory settlement of the question."

1890—The period between early in December 1890, and the end of May 1891, was occupied in negotiations for settlement. As in 1888, Lord Salisbury was willing to concede, to the United States, all that was asked, but Canada again (with Mr. C. H. Tupper at Washington) objected and, once more, the concession was prevented.

It was during this period that the United States (22 January) for the first time since the commencement of the correspondence deigned to indicate the ground upon which

"this government rests its justification for the action complained of by Her Majesty's Government."

The position assumed was that lawless pelagic sealing would exterminate the species; that the United States had a special interest in its preservation; that wanton destruction could surely be prevented as *contra bonos mores*; and that Russia always exercised a protective jurisdiction over the seals in Behring Sea.

"The forcible resistance to which this Government is constrained in the Behring's Sea is, in the President's judgment, demanded not only by the necessity of defending the traditional and long-established rights of the United States, but also the rights of good morals and of good government the world over."

Probably such rubbish does not appear elsewhere in the diplomatic interchanges of history. Absurd, as it was, Lord Salisbury's reply was not dated until four months afterwards (22 May), and was not delivered to the United States until 14 June.

Meanwhile the sealing time again approached and the President issued the usual proclamation, giving instructions; however, not to capture vessels but to dismantle them only, and to take their log-books and skins as evidence of their operations.

At last Lord Salisbury made up his mind to do something, even if it was only to send a protest that had the appearance of having been dictated by some appreciation of the importance of the situation

Accordingly he telegraphed (23 May) the British Ambassador as follows:—

"I have to instruct you to inform the Secretary of State that a formal protest against any such interference with British vessels is now being prepared, and that no time will be lost in forwarding it to him."

On the 29th he forwarded the draft of a note to be handed to Mr. Blaine. Its important clause was as follows—

"The undersigned is in consequence instructed formally to protest against such interference, and to declare that Her Majesty's Government must hold the Government of the United States responsible for the consequences which may ensue from acts which are contrary to the principles of international law."

To the first of these intimations, the United States replied (29 May) as follows—

"Your note of the 23rd instant, already acknowledged, informs this Government that you 'have been instructed by the Marquis of Salisbury to state that Her Majesty's Government would forward, without delay, a protest' against the course which this Government has found it necessary, under the laws of Congress, to pursue in the waters of the Behring's Sea.

In turn, I am instructed by the President to protest against the course of the British Government in authorizing, encouraging, and protecting vessels which are not only interfering with American rights in the Behring's Sea, but which are doing violence as well to the rights of the civilized world."

The letter proceeded to remind Lord Salisbury of the negotiations of 1888 and 1889, in which he had agreed to the necessity for a close season covering the ensuing months—an unpleasant reminder. And in conclusion the suggestion was made that the British government should prohibit Canadian vessels entering Behring Sea. Lord Salisbury rejected this proposal (31 May) saying that legislative authority would be necessary, to which the United States replied (11 June)—

"The President instructs me to say that it would satisfy this Government if Lord Salisbury would, by public Proclamation, simply request that vessels sailing under the British flag should abstain from entering the Behring's Sea for the present season. If this request shall be complied with, there will be full time for impartial negotiations, and, as the President hopes, for a friendly conclusion of the differences between the two Governments."

To this the reply was (27 June)—

"that the President's request presents constitutional difficulties which would preclude Her Majesty's Government from acceding to it, except as part of a general scheme for the settlement of the Behring's Sea controversy, and on certain conditions which would justify the assumption by Her Majesty's Government of the grave responsibility involved in the proposal."

No agreement was arrived at. The cruizers went out, and, as in 1888, contented themselves with warnings and threatenings.

Lord Salisbury's protest has sometimes been referred to by Imperialists as an instance of the occasions upon which the United Kingdom has afforded protection to Canada. To that the following replies may be made—

1. It is not an "instance." If it is a case, it is the only one.

2. There is not the slightest evidence that Lord Salisbury intended his protest as a threat, or that it was so regarded by the United States.

3. I have reason for believing that Lord Salisbury would not have sent his protest at all, but for something very like a threat which he received from Canada; and that no amount of further threatening would have moved him to action. Those who remember how meekly he ate his Venezuelan humble pie in 1895-6 will agree with me. I give five reasons for the opinion which I express:

A.—We need not go outside the humiliating record of the present case, in order to agree with Mr. Chamberlain when he said that preservation of cordial relations with the United States has been—

"something more than a desire; it is almost a religion" (*a*);

and that Lord Salisbury was the most devout of its votaries.

B.—Sir Charles Tupper was Canada's High Commissioner in London and had charge there of the very matter which we are now discussing. He knew, therefore, whereof he spoke when he said—

> "I now come to a very important question, and that is the reluctance on the part of Her Majesty's Government to do that with the United States that they would do with any other country in the world. I speak from intimate knowledge, and from my personal acquaintance and official association with both the great governing parties in England—because there were many changes of government while I held the position of High Commissioner, and I was necessarily thrown in relation to these matters, into intimate association with both—when I say that from 1868, when I had occasion to deal with an important question relating to Canadian interests with Her Majesty's government, down to the present hour, I have been struck very forcibly with the unwillingness on the part of Her Majesty's government to allow any circumstances whatever even to threaten a collision with the United States" (*b*).

C.—There is not a word in the correspondence between Lord Salisbury and the British Ambassador at Washington that indicates, in the most remote way, that the protest was intended to be anything but a protest. Most certainly the Ambassador was not informed of any belligerent intention, and conceived no such idea. All that he had in mind was that the Canadian threat of armed resistance would be carried into execution. Complaining (10th June—eighteen days after delivery of the intimation of intended protest) to the United States' Secretary, of the delay in the negotiations for a *modus vivendi*,

(*a*) Jebb: The Imperial Conference, p. 316.
(*b*) House of Commons, February 22, 1899.

the Ambassador suggested, not that the British navy might meanwhile become active, but

> "the danger of some *untoward* event."

He was apprehensive of Canadian self-defence. He had no notion that the British navy would have been foolish enough to interfere.

D.—If Lord Salisbury had intended to afford protection to the sealers, instructions to that effect would have been sent to the Admiral at Esquimalt—and the Admiral would have convoyed the sealers. But all that the Admiral did was to bob at anchor in his comfortable harbor, and transmit such news as he could get. Reporting (6 August), he told of the threatenings of the American cruizers, and added that—

> "there will probably be no more news from the sealers until their return, about the end of September, and they are so scattered while sealing that it is very unlikely, if any seizures do take place, that I should hear of them until some time after."

The instructions to the Admiral were to report what happened. A newspaper man could have done as much.

E.—Two years afterwards (1892) when Lord Salisbury objected to renewing the *modus vivendi* of 1891, saying (18 March) that he did not believe that

> "any necessity exists for the suspension of sealing for another year."

Mr. Blaine replied that in that case

> "no choice remains for the United States, but to proceed on the basis of their own confident contention that pelagic sealing is an infraction of its jurisdiction and proprietary rights."

That was enough. Lord Salisbury agreed to the *modus*.

SUMMARY—The story of the next two years (1891-2)—how the Canadians were excluded from Behring Sea by the action of the British parliament, and the co-operation of the British with the United States war-vessels—will be related under a separate heading; and it will be convenient, at this point, to summarize the events of the years 1886-90.

In 1886, three vessels were seized and one turned out of Behring Sea. In 1887, six were seized, and one not permitted to enter the sea. In 1888, no seizures, only threats. In 1889, five were seized and two turned out of the sea. In all—fourteen vessels seized, and four stopped. Fines and imprisonments moreover of some of the officers, and transportation of the crews to United States' ports—the Union Jacks carried away with the crews.

During all this period, only one serious protest was made, and

that was not delivered until 14th June 1890—nearly four years after the first of the seizures.

There was never any insistance upon explanation or justification of the seizures. Mild requests, at long intervals, were made; but the first answer came only on the 14 September 1889 (three years after the first of the seizures) and that was to the effect that

> "a categorical response would have been and still is impracticable, unjust to this government, and misleading to the government of Her Majesty."

—a palpable evasion of which Lord Salisbury took no notice. It was not until 22 January 1890, that the United States formulated its defence, and to it Lord Salisbury made no reply until 22 May.

During all this period, the claims of the Canadian sealers remained in their pigeon-hole in Lord Salisbury's office. On one flimsy excuse after another, and finally without any excuse, Lord Salisbury declined to present them for payment.

During the years 1887-90, Lord Salisbury (at the urgent instigation of Canada) requested assurances of cessation of the seizures. He received none. He forebore to press for them. And the only direct reply which he ever got was (12 April 1887) to the effect that when the instructions to the cruizers had been prepared, he would be informed.

> "so that British and other vessels visiting the waters in question can govern themselves accordingly."

In truth, the United States treated the British communications with the lightness and indifference which they rightly believed to have actuated the sending of them. The United States were astute enough to see that her difficulty was with Canada; that any interest which the United Kingdom had in the matter was that of the fur-dealers in London who were constantly plying Lord Salisbury with arguments in favor of the United States' view; and that all Lord Salisbury wanted was, while conceding all that was asked, to escape (as far as possible) censure for the surrender.

During all this period the Canadian government urged, pressed, appealed, remonstrated, in vain. To the British government, the seizures, fines and imprisonments were nothing but "regrettable incidents."

That is the sort of "British protection" that Canada received on one of the two occasions on which she asked for it.

Before leaving the subject let us recall the *Trent* affair. In that case two *American* citizens were taken from a British vessel. The vessel itself was not taken, and no damage was done to anybody

or anything British. The flag had been insulted, and that alone was enough to bring sharp demand for the liberation of the men

"and their delivery to your Lordship, in order that they may again be placed under British protection, and a suitable apology for the aggression which has been committed."

That had to be done within seven days, and if not, then, peremptorily,—

"Your Lordship is instructed to leave Washington with all the members of your Legation, bringing with you the archives of the Legation, and to repair immediately to London."

The *Trent* was a British vessel. The seal-ships were Canadian.

II.—BRITISH PROTECTION WITH REFERENCE TO UNITED STATES' PROPOSAL FOR VOLUNTARY, PERMANENT RENUNCIATION OF CANADIAN RIGHTS.

It is extremely probable that from the very commencement of the dispute, the United States felt that the seizures of Canadian vessels on the high seas could not be justified, and that, very astutely, her statesmen applied themselves to the task of securing from the British Government, by friendly assent, such prohibition of pelagic sealing as would, in effect, give them all that they desired. It was for this purpose that they postponed discussion upon the merits (*a*), and instead, plied Lord Salisbury so successfully with arguments as to the necessity for what they called *a close season* at sea (really prohibition) that they obtained from him—without any previous reference to Canada—concurrence in their views.

Premising that the contention of Canada always was that, for the preservation of the seal species, any prohibition of pelagic sealing was unnecessary; that the partial depletion of the herd had been caused by the land operations—(1) by marauders whose depredations were not sufficiently guarded against, (2) by the reckless cruelties of the American lessees; and that if any restriction were to be placed upon Canadian pelagic sealing, it ought to be accompanied (1) by the same restriction upon the operations of other nations, and (2) by proper restrictions upon operations on the islands—premising that these were the Canadian contentions, let us see how Lord Salisbury, without Canada's consent or, indeed, without any consultation with her, accepted the American view, and made such admissions as to render Canadian success, either in diplomacy, or, afterwards, in arbitration, almost impossible.

(*a*) Although the first seizures took place in August 1886, it was not until 22 January 1890 that the United States first attempted justification.

The story must be told in three parts: (1) Lord Salisbury's negotiations for permanent renunciation of Canadian rights; (2) Lord Salisbury's agreement to a temporary renunciation of Canadian rights (1891-2), and the co-operation of British with United States war-ships for the purpose of enforcing that agreement as against the Canadian sealers; and (3) Lord Salisbury's agreement to submit to arbitration, the question whether, and to what extent, Canadian vessels ought to give up their rights to take seals in the open sea—the vessels of all other nations being left free to do as they pleased, and the United States being permitted to slaughter all the seals, if they so wished, on land. The facts relating to the first of these subjects will be stated under the present heading.

1886–7.—The earlier advances of the United States are hinted at, only, in the printed correspondence, but we are able to see that the London fur trade, through Lampson & Co., almost at the inception of the difficulties (12 November 1886), and constantly afterwards, urged upon the British government the loss to British industries.

"should Great Britain deny the right of the United States' government to protect the fishery in an effectual manner."

1887.—The correspondence shows that Mr. Phelps officially presented the matter of a closed season for pelagic sealing to Lord Salisbury on 11 November 1887, in an interview which he reported the next day—

"His Lordship PROMPTLY ACQUIESCED in this proposal on the part of Great Britain, and suggested that I should obtain from my government and submit to him a sketch of a system of regulations which would be adequate for the purpose."

1888.—The next United States letter to Mr. Phelps (7 Feb.) directed submission to Lord Salisbury (as the requested sketch) the necessity for

"concerted action to prevent their citizens or subjects from killing fur seals with firearms, or other destructive weapons, north of 50 degree of north latitude, and between 160 degree of longitude west and 170 degree of longitude east from Greenwich, during the period intervening between 15th April and 1st November."

This area covers 30 degrees of longitude—not only in Behring Sea (covering the whole eastern part of it), but in the north Pacific Ocean also, and that the purpose of the suggestion was absolute exclusion, appears from the fact (noted in the letter) that the period mentioned *included the whole time during which the seals are at the islands*. The letter does not omit to remind the British government of British interests in the fur trade.

Mr. Phelps, thereupon, had an interview with Lord Salisbury and of what passed between them there are two records. Mr. Phelps's

letter to Washington (25 February) was as follows:—

"Lord Salisbury assents to your proposition to establish by mutual arrangement between the governments interested, a close time for fur-seals between April 15th and November 1st in each year, and between 160 degrees of longitude west and 170 degrees of longitude east in the Behring Sea.... He will also join the United States government in any preventive measures it may be thought best to adopt by orders issued to the naval vessels of the respective governments in that region.

Lord Salisbury's letter of 22 February is as follows:—

"I expressed to Mr. Phelps the entire readiness of Her Majesty's Government to join in an agreement with Russia and the United States TO ESTABLISH A CLOSE TIME FOR SEAL-FISHING NORTH OF SOME LATITUDE TO BE FIXED" (*a*).

For present purposes, these statements are identical, for, according to either of them, Lord Salisbury had practically conceded the contention of the United States as to the necessity for a close season for pelagic sealing. As to the line of latitude "to be fixed," the subsequent correspondence shows that the only question was whether it was to be the 47th or the 50th degree. *Both of them are well to the south of Behring Sea.*

Having thus completely committed himself and Canada to a perfectly absurd proposal, Lord Salisbury asked the Colonial Secretary (3 March) for—

"any observations he may have to offer on the subject."

Very properly, but probably much to the surprise of Lord Salisbury, the Colonial Office replied (12 March) that—

"it will be necessary to consult the Canadian Government on the proposal to establish a close time for seals in Behring's Sea before expressing a final opinion upon it."

Not content with the acceptance of proposals from the United States for the voluntary surrender of Canadian rights, Lord Salisbury suggested (without a word to Canada) that Russia should be brought into the negotiations. The United States was interested in the eastern part of Behring Sea only (within the above mentioned limits), it was Lord Salisbury who suggested that his renunciation should cover the western part also. On the same day that he asked the Colonial Office for its "observations" (3 March), he wrote to the Russian ambassador

"I informed you a short time ago that the government of the United States had proposed negotiations with the object of regulating the catching of fur seals in Behring Sea. It would be a source of satisfaction to me if the Russian government would authorize your Excellency to enter into a discussion of the matter with Mr. Phelps and myself.

(*a*) The same words appear in Lord Salisbury's letter to the British Ambassador of 22 October 1890.

Hard to believe, is it not? Russia having assented, a tripartite conference was held (16 April) of which Lord Salisbury advised the British Ambassador at Washington, on the same date:

"At this preliminary discussion it was decided, provisionally, in order to furnish a basis for negotiations, and without definitely pledging our governments, that the space to be covered by the proposed convention should be THE SEA BETWEEN AMERICA AND RUSSIA NORTH OF THE 47TH DEGREE OF LATITUDE; that the close time should extend FROM THE 15TH APRIL TO THE 1ST NOVEMBER..... and that as soon as the three Powers had concluded a convention, they should join in submitting it for the assent of the other maritime Powers of the Northern Seas."

How could Canada hope to do anything after that? The account of the interview given by the American Ambassador (20 April) shows that it was Lord Salisbury himself who proposed the 47th parallel—

"With a view to meeting the Russian government's wishes respecting the waters surrounding Robben Island, HE SUGGESTED THAT BESIDES THE WHOLE OF BEHRING SEA, THOSE PORTIONS OF THE SEA OF OKHOTSK AND OF THE PACIFIC OCEAN NORTH OF NORTH LATITUDE 47 DEGREE SHOULD BE INCLUDED IN THE ARRANGEMENT."

LORD SALISBURY MADE THAT PRELIMINARY AGREEMENT WITHOUT WAITING FOR THE EXPECTED REPLY FROM CANADA. The United States' Secretary (1 May) accepted the proposed terms, and an agreement, though informal, was thus arrived at. That is what is called "British protection"!

Canada's reply was dated 9 April—

"Such a close time could obviously not be imposed upon our fishermen without notice or without a fuller discussion than it has yet undergone."

"It would appear to follow that, if concurrent regulations based upon the American law were to be adopted by Great Britain and the United States, the privileges enjoyed by the citizens of the latter Power would be little if at all curtailed, while British fishermen would find themselves completely excluded from the rights which until lately they have enjoyed without question or molestation."

"In making this observation I do not desire to intimate that my government would be averse to entering into a reasonable agreement for protecting the fur-bearing animals of the Pacific Coast from extermination, but merely THAT A ONE-SIDED RESTRICTION SUCH AS THAT WHICH APPEARED TO BE SUGGESTED IN YOUR TELEGRAM COULD NOT BE SUDDENLY AND ARBITRARILY ENFORCED BY MY GOVERNMENT UPON THE FISHERMEN OF THIS COUNTRY."

That seems to be clear enough, but the Colonial Office did not like it. The negotiations for renunciation had been almost completed. Canadian sealing was to be stopped—to the satisfaction of the United States—and Lord Salisbury was to be freed from all further trouble. Was Canada to upset all that? Not if a little pressure from the Colonial Office could help it, and so the following telegram

was sent to the Governor General (21 April)—

"I have the honour to acquaint you that I have this day telegraphed to you, with reference to your despatch of the 9th instant, that NEGOTIATIONS ARE PROCEEDING between Russia, the United States, and Great Britain with regard to the establishment of a close time, during which it would be unlawful to kill seals AT SEA, in any manner, TO THE NORTH OF THE 47TH PARALLEL OF LATITUDE BETWEEN THE COASTS OF RUSSIA AND AMERICA, AND INQUIRED WHETHER YOUR GOVERNMENT WAS AWARE OF ANY OBJECTION TO THE PROPOSED ARRANGEMENT."

All that Canada could do was to repeat (25 April) what she had already said—

"If proved to be necessary, Canadian government will be ready to join other governments in adopting steps to prevent extermination of fur-seals in Northern Pacific Ocean, but, before final agreement, desires full information and opportunity for considering operation of proposed close time.

ESTABLISHMENT OF CLOSE TIME AT SEA ONLY, WOULD GIVE VIRTUAL MONOPOLY OF SEAL FISHERIES TO RUSSIA AND UNITED STATES; the latter Power owns the most important breeding places, in which close time would not operate."

Was it stupidity, or ignorance, or indifference, or mere pressure for assent, that dictated the following reply (9 May)—

"With reference to your telegram 25th April, would objections of your government be met if proposal to take 50th degree north latitude be reverted to instead of 47th?"

Of course they would not, and Canada answered (11 May)—

"The objections of the Canadian government would not be removed by the substitution of the 50th instead of the 47th parallel. A report on close time question is in course of preparation. My government hopes that no decision will be taken until you are in possession of it."

The Canadian report is dated 7 July—

"The time proposed as close months deserves consideration, viz., from the 15th April to the 1st November. For all practical purposes, so far as Canadian sealers are concerned, IT MIGHT AS WELL READ FROM THE 1ST JANUARY TO THE 31ST DECEMBER.

It is a well-known fact that seals do not begin to enter the Behring's Sea until the middle or end of May; they have practically all left those waters by the end of October. The establishment of the proposed close season, therefore, prohibits the taking of seals during the whole year. Even in that case, if it were proposed to make this close season operative for all, on the islands of St. Paul and St. George as well as in the waters of the Behring's Sea, it could at least be said that the close time would bear equally on all.

But the United States' government propose to allow seals to be killed by their own citizens on the rockeries, the only places where they haul out in Alaska during June, July, September and October, four of the months of the proposed close season. The result would be that while all others would be prevented from killing a seal in Behring's Sea, the United States would possess a complete monopoly, and the effect would be to render infinitely more valuable, and maintain in perpetuity, the seal fisheries of the North Pacific FOR THE SOLE BENEFIT OF THE UNITED STATES."

"It is to be borne in mind that Canada's interest in this industry is a vital and important one, that she has had a very large capital remuneratively employed in it, and that while by the proposed plan the other Powers chiefly interested have their compensations, Canada has none. To her IT WOULD MEAN RUIN SO FAR AS THE SEALING INDUSTRY IS CONCERNED."

That document put an end (for the moment) to the negotiations for a voluntary permanent renunciation of Canadian rights. But the effect of the British admissions—the nearly completed agreements—remained, and were made good use of by the United States on three subsequent occasions: (1) As justification for the seizures in the following year—1889; (2) As a reason for the temporary renunciations of 1891-2; and (3) Before the arbitrators, as evidence of what the United Kingdom had thought to be reasonable restrictions upon Canadian operations.

Lord Salisbury's account of the dropping of the negotiations is to be found in his letter of 3 September—

"I pointed out the difficulties felt by the Canadian government, and said that, *while the scheme was favourable to the industries of the mother country*, considerable apprehension was felt in Canada with respect to its possible effect on colonial interests.

I ADDED THAT I WAS STILL SANGUINE OF COMING TO AN ARRANGEMENT, BUT THAT TIME WAS INDISPENSABLE."

In other words: "I am very sorry that Canada declines to agree to an arrangement that would be beneficial for you and me, but give me time and all will come right." It did. Lord Salisbury and the United States had their way.

1889.—Negotiations being at an end, the United States' President issued (22 March) his proclamation threatening further seizures, and Lord Salisbury, probably out of temper with the Canadians, declined to take the smallest step. The Canadian Government (ante, p 69) appealed unavailingly for protection. Lord Salisbury treated the seizures with indifference—telling the Canadians to appeal to the United States' courts for redress (ante, p 71). And, probably feeling that the seizures of their vessels would have produced, among Canadians, a more submissive state of mind, Lord Salisbury (without any further communication with Canada) proposed (2 October) resumption of negotiations with the United States for a voluntary and permanent renunciation of Canadian rights. The indispensable "time" had elapsed.

It is almost incredible that about seven weeks before he made that proposal, Lord Salisbury had received from Canada a copy of A REPORT WHICH HAD BEEN MADE TO THE UNITED STATES' HOUSE OF REPRESENTATIVES, BY A COMMITTEE SPECIALLY APPOINTED TO CON-

SIDER THE SEAL QUESTION, AND WHICH COMPLETELY CONFIRMED THE CANADIAN VIEW. Part of that report is as follows—

"Let the Government take charge of this reservation, and, instead of killing 100,000, take 50,000 seals; and in doing this, let the selection be more thorough, so that the 50,000 skins shall be strictly choice skins, that would average the highest possible price. Then ABANDON THE PRESENT POLICY OF CLAIMING THE BEHRING'S SEA AS AN INLAND SEA, WHICH CANNOT BE MADE TO STAND IN THE END. Restrict the killing of seals within the 3-mile or 6-mile limit, whatever is decided to be the limit of what a nation can hold authority over the high seas, and IN THIS WAY IT WOULD PROMOTE THE INDUSTRY OF PRIVATE SEALING TO A MUCH LARGER EXTENT THAN IT NOW IS."

Lord Salisbury had not only received that report, but, in the letter sending it to him (9 August), the Colonial Secretary had said—

"Lord Salisbury will observe that the last sub-inclosure to this despatch tends to show that the shooting of seals in the open sea is not the wanton and wasteful destruction of seal life which it is alleged to be by the authorities of the United States."

Of that document Lord Salisbury took not the slightest notice, and, having agreed to re-open the negotiations for voluntary renunciation, pressure was again applied upon Canada in order to obtain her consent. On 23 November, the Colonial Secretary wrote to the Governor General—

"I think I am right in concluding that the Dominion government is now prepared to concur in any reasonable arrangement for the establishment of a close season in Behring's Sea, and I therefore anticipate that your advisers will agree with Her Majesty's Government in thinking it expedient to commence the suggested negotiation at an early date, Her Majesty's Minister being assisted during the negotiations by an officer or officers of the Canadian Government."

The negotiations had already been commenced. Canada replied (6 December) holding to her former opinion, but (foolishly, as I think) submitting, to some extent to be overruled by the Colonial Office (*a*)—

"In reply to your telegram, Privy Council, at a meeting held to-day, recommend a reply to be sent as follows:—

1. Satisfactory evidence is held by Canada that the danger of extermination does not really exist.

2. That if United States' Government holds different opinion the proposal should be made by them.

If it is deemed expedient by Her Majesty's Government to initiate proceedings, Canadian authorities consent to a reopening of negotiations on the following conditions:—

(a) That the United States abandon its claim to consider Behring's Sea as a *mare clausum*, and repeal all legislation seeming to support that claim.

(b) That as in the cases of the Washington Treaty 1871, the Fishery Commission under that treaty, and the Washington Treaty 1888, Canada shall have direct representation on the British Commission.

(*a*) Canada had a short time before (11 November) sent to the Colonial Office another argument against the proposal for close season.

(*c*) The approval of Canada to any conclusions arrived at shall be necessary.
(*d*) Russia to be excluded from the negotiations in reference to compensation and seizures."

Mr. Blaine's reply to this was reported by the British Ambassador (12 December)—

"MR. BLAINE AT ONCE EXPRESSED HIS ABSOLUTE OBJECTION TO SUCH A COURSE. He said the question was one between Great Britain and the United States, and that his Government would certainly refuse to negotiate with the Imperial and Dominion Government jointly, or with Great Britain, with the condition that the conclusions arrived at should be subject to the approval of Canada."

This and other points having been intimated to Canada, she sent a reply (14 December)—

"Canada expects British Government not to conclude arrangement unless Behring's Sea declared in it to be free. She adheres to opinion that agreement as to close season and preservation of seals should be subject to her approval as one of the parties chiefly interested in the question.

Agreement as to close season should be terminable by each of the parties to the treaty. Canada fails to understand objection of the United States of America to a Canadian being direct representative of Her Majesty's Government; but to avoid delay will defer without further protest to course decided on by Her Majesty's Government."

Mr. Blaine was quite right from his point of view, in objecting to a Canadian representative. He knew that, but for Canada, he could have obtained in the previous year all that he wanted; and he knew what trouble Sir John A. Macdonald had made for one of his predecessors in the negotiations of 1871. The British Ambassador, too, did not wish that his proceedings should be embarrassed by the necessity for obtaining the assent of Canada, and consequently when the Colonial Office proposed (16 December) to say to Canada—

"that Her Majesty's Government is glad to find that the Dominion Government consents to the negotiations in the form proposed, and will consult that Government at stages, *and conclude no agreement as to a close time without their approval*, and requests that a representative of the Dominion Government may be ready to proceed to Washington as soon as Sir J. Pauncefote has received his instructions."

the Ambassador urged (18 December) that

"It would be desirable that proposed communication of Colonial Office to Canada, as to her consent to close season agreement, be deferred."

1890.—Accordingly, without waiting for any concurrence on the part of Canada, and although he knew perfectly well the Canadian view of the situation, the British Ambassador proceeded to discuss the question of a close season with Mr. Blaine and the Russian Ambassador. On the 22 February, he wrote to Lord Salisbury—

Mr. Blaine, M. de Struve, the Russian Minister, and I, held a preliminary and informal meeting this morning, at which question of THE AREA of the possible arrangement was discussed.

Mr. Blaine and M. de Struve then proposed the following area: "From a point on the 50th parallel north latitude, due south from the southernmost point of the Peninsula of Kamtchatka; thence due east on the said 50th parallel to the point of the intersection with the 160 meridian of longitude west from Greenwich; thence north and east by a straight line to the point of intersection of the 60th parallel of north latitude with the 140th meridian of longitude west from Greenwich (*a*).

The 50th parallel, as your Lordship is aware, was the southernmost limit proposed by Mr. Bayard, and it need only be extended on the west to the Kamtchatka Peninsula, as M. de Struve states that there is no seal fishery in the Sea of Okhotsk.

I OBJECTED, HOWEVER, TO THE LIMIT ON THE EAST BEING EXTENDED BEYOND THE 160TH MERIDIAN OF LONGITUDE WHICH WAS THE LIMIT PROPOSED BY MR. BAYARD, AND IS QUITE SUFFICIENT FOR THE NECESSITIES OF THE CASE."

That was all that he objected to. It was a wholly immaterial point. And of the extent of his acquiescence Mr. Blaine afterwards reminded him (29 May) when he was objecting to the United States intended interference with Canadian sealers.

"You will not forget an interview between yourself, the Russian minister, and myself, in which the lines for a close season in Behring Sea laid down by Lord Salisbury were almost exactly repeated by yourself, and WERE INSCRIBED ON MAPS WHICH WERE BEFORE US, A COPY OF WHICH IS IN THE POSSESSION OF THE RUSSIAN MINISTER, AND A COPY ALSO IN MY POSSESSION."

We have here, therefore, almost an exact repetition of the proceedings of the previous year—negotiations opened; then Canada's assent asked; and, prior to her reply, an understanding that was known to be objectionable to her, and, in her opinion, quite unnecessary, arrived at. Canada afterwards did object, and fought the matter out both in Washington and before the arbitrators in Paris. Her case was a good one, and she succeeded in modifying very considerably the arrangements which Lord Salisbury and the British Ambassador had tentatively agreed to, but, weighted with their admissions and the opposition at Paris of the English judge, she could not hope for very great success.

Mr. C. H. (now Sir Hibbert) Tupper arrived at Washington, 25 February 1890 (three days after the above conversation), and from that moment the negotiations took on a completely different aspect. Henceforth the question for discussion is not one of area or time, but whether there is any necessity for a close season of any kind. In his next letter (1 March), reporting an interview with Mr. Blaine, the British Ambassador said that he had pointed out that it was

(*a*) These limits take in, not only the whole of Behring Sea—from Russia to America—but part of the Pacific Ocean to the south of the Aleutian islands.

"Essential, in the first place, to examine the evidence on which the United States' Government base their contention AS TO NECESSITY FOR A CLOSE SEASON."

No sufficient evidence (in Mr. Tupper's opinion) being offered, the British Ambassador reported (18 March)—

"With reference to my despatch of the 1st instant, I have the honour to report that the Behring's Sea negotiations have come to a deadlock, owing to a conflict of evidence in regard to the necessity for a close season for the fur-seal fishery. Mr. Blaine and M. de Struve both agree that the preservation of the fur-seal species is the sole object in view; but they insist, at the same time, that it will necessitate the total exclusion of sealing vessels from Behring's Sea during the close season. Mr. Tupper, on the other hand, maintains that no close season is necessary at all; but I believe the Canadian Government are ready to give way to some extent on this point. Mr. Blaine says that the arguments on his proposal are exhausted, and has called upon me to put forward a counter-proposal. I have accordingly prepared a draft convention, which, I venture to state, offers the only prospect of a possible arrangement. Mr. Tupper left for Ottawa last night, taking with him a copy of it, which he will submit for the consideration of the Canadian Government."

The Ambassador further reported that Mr. Tupper

"STRONGLY CONTENDED THAT A CLOSE SEASON WAS NOT NECESSARY FOR THE PRESERVATION OF FUR-SEAL SPECIES. ALL THAT WAS REALLY REQUIRED FOR THAT PURPOSE WAS TO USE GREATER VIGILANCE FOR THE PROTECTION OF THE ROOKERIES AGAINST THE DESTRUCTION OF SEALS ON SHORE BY MARAUDING PARTIES. This would be effectually carried out by the United States' Government by the employment of additional cruizers, without necessitating the exclusion of all sealing vessels from the Behring's Sea for any period."

That Mr. Tupper did good work when in Washington is evidenced by the change wrought in the opinion of the Ambassador. Writing on 24 July the latter said that the effect of the evidence produced

"was to satisfy my own mind that, while measures are called for to protect female seals with young from slaughter during the well-known periods of their migration to and from the breeding islands, and also to prohibit the approach of sealing-vessels within a certain distance of those islands, THE INQUIRY HAD FAILED TO ESTABLISH THE CONTENTION OF THE UNITED STATES' GOVERNMENT THAT THE ABSOLUTE PROHIBITION OF PELAGIC SEALING IS NECESSARY FOR THE PRESERVATION OF THE FUR-SEAL SPECIES."

And yet, without that evidence, Lord Salisbury and the Ambassador had been negotiating for prohibition! Mr. Tupper subsequently (19 November) criticized the Ambassador's modified view as to the necessity for the sort of protection he referred to.

After Mr. Tupper's return, the Ambassador reported (11 April) that he (Mr. Tupper)—

"informed me that THE CANADIAN GOVERNMENT OBJECTED TO MY PROPOSED DRAFT of a Convention for the settlement of the Behring's Sea question in so far as it admitted the necessity of a close season, and provided, although provisionally, for the exclusion of sealers within a certain radius round the breeding islands.

I understand that the principal objection of the Canadian Government to the radius clause is that it would practically have the effect of an admission that it was necessary for the preservation of the fur-seal species; and THEY MAINTAIN THE POSITION THAT NO INTERFERENCE WITH PELAGIC SEALING IS NECESSARY FOR THE PURPOSE IN VIEW."

The Ambassador made another draft (29 April) which was approved by Canada. It proposed an inquiry as to the propriety of regulations BOTH ON LAND AND AT SEA, and meanwhile—

1. No seals to be taken (north of 50 degree of latitude) in May, June, October, November or December, either on land or sea. July, August and September were to be open.

2. As protection against marauders on the land, vessels not to approach within 10 miles of islands.

Mr. Blaine objected, saying very effectively, amongst other things, that—

"Lord Salisbury's proposition of 1888 was that, during the same months for which the 10-mile privilege is now demanded, no British vessel hunting seals should come nearer to the Pribyloff Islands than the 47th parallel of north latitude about 600 miles."

With Mr. Tupper at Washington (even as an assistant) Mr. Blaine could do nothing, and the negotiations terminated (*a*). He then tried to get Lord Salisbury to forbid the sailing of the Canadian vessels, but Lord Salisbury had no sufficient legal authority. He asked (11 June) that at least a proclamation might be issued requesting that the vessels

"should abstain from entering Behring Sea for the present season."

To this Canada had no objection (25 June) provided that, if the vessels did go, there should be no interference with them; but that did not suit Mr. Blaine's purpose, and so that proposal dropped.

When in 1871, the United States' plenipotentiaries made unreasonable demands (as Sir John A. Macdonald thought) the British negotiators gave in, having (as Sir John said)—

"only one thing in their minds—that is to go home to England with a treaty in their pockets settling everything, no matter at what cost to Canada" (*b*).

When Sir Wilfrid Laurier and Sir Louis Davies found the United States unreasonable in 1899, they came home without a settlement. Mr. Tupper did the same in 1890. And he lost nothing. The United States' cruizers indeed patrolled the sea during the ensuing season but, beyond warnings and threatenings, they refrained from interference. Had Mr. Tupper submitted, we could not have hoped

(*a*) Mr. Blaine resented and complained (29 May) of the interference of Canada, as a sufficient reason for Lord Salisbury's change of policy.

(*b*) Pope, Life of Sir John A. Macdonald, Vol. 2, p. 105.

for even the modicum of comfort which eventually we got out of the subsequent arbitration.

Here we finish part two of the story, namely the relation of the facts with reference to British protection in connection with the negotiations of 1888–90, for voluntary permanent renunciation of Canadian rights. Lord Salisbury had, from the outset, either (1) accepted the view of the United States as to the necessity for prohibition, or else (2) he had determined to sacrifice the interests of Canada in order to propitiate the United States—to sweep Canadian sealers from the open ocean, not (as the leader of the British House of Commons afterwards, 1 June 1891, said)—

> "on the ground of absolute right or justice, but on the ground that it is a friendly act towards a friendly Power" (*a*).

The former of these suggestions cannot be the true one. There is not the slightest evidence, or probability, that Lord Salisbury ever examined the subject. If he had, and if he thought Canada in the wrong, he ought to have given her some intimation of that fact. He never did.

Whatever his reason, there is, unfortunately, no doubt that Lord Salisbury was twice (1888 and 1890) on the point of making an agreement with the United States for prohibition of Canadian sealers not only in Behring Sea but in the north Pacific Ocean; that the first negotiations were terminated because of Canadian protest; that Lord Salisbury then told the United States that he regarded the proposal as "favourable to the industries of the mother country," and that he

> "was still sanguine of coming to an arrangement, but that time was indispensable";

that he stood by, indifferent, while the seizures were renewed in the following year; that, believing Canada, after such chastizing, to be in more complacent humor, he decided (without communicating with Canada) to re-open the negotiations; that both he and the British Ambassador at Washington arrived at a tentative understanding for prohibition, and that, once more, Canada (through Mr. Tupper) succeeded in preventing the consummation of the conspiracy.

All attempts at permanent prohibition by consent being now frustrated, we have yet to see how, by the help of temporary renunciations and arbitration; the same object was to some extent achieved. Time, as Lord Salisbury had said was indispensable. Time being taken, the thing was done.

(*a*) Hans. p. 1402.

III.—BRITISH PROTECTION WITH REFERENCE TO THE UNITED STATES' PROPOSAL FOR TEMPORARY RENUNCIATION OF CANADIAN RIGHTS.

1891.—Thus far we have been able to relate almost all of the incidents of the negotiations. Lord Salisbury has been anxious to accomodate himself to the wishes of the United States, but Canada has declined to be sacrificed, and by her expostulations and pluck has kept her sealers at work. From the narrative of the proceedings of 1891, however, Canada must be almost entirely eliminated. Not because she was inactive, but because almost all the papers which would show what she said and did have been suppressed. British blue-books have been printed containing some of the correspondence between Lord Salisbury and the British Ambassador, and between the United Kingdom and the United States, but, prior to the date of the passage of a British act of parliament authorizing the British government to prohibit sealing in Behring sea, only a simple, unintelligible telegram from Canada has been permitted to see the light. The Canadian government, at one time, actually set the correspondence in type, but at the last moment (no doubt in "the interest of the Empire as a whole") determined to conceal it. How do I know that? Because the officials in charge of the printing of the Canadian sessional papers forgot to alter the Table of Contents of the volume in which the correspondence was to appear. Look at the "List of Sessional Papers" at the beginning of volume 9 of 1891 and you will see—

> "8 b. Correspondence relative to the seizure of British vessels in Behring Sea by United States' authorization in 1886-91. *Printed both for distribution and sessional papers.*"

But there is no such correspondence in the book, and we shall have to get on as best we can without it. When we read the documents which we have, we shall, aided by what we now know of Canada's attitude, and by gleanings of information here and there, be able to form some opinion as to the reason for the suppression of the correspondence.

Early in April (1891) Mr. Blaine proposed, as a *modus vivendi* for the coming season, cessation of killing both on land and sea. Lord Salisbury replied enthusiastically (17 April), and the British Ambassador thereupon told Mr. Blaine (20 April) that Lord Salisbury seemed to approve and wanted to know whether

> "YOU WOULD PREFER THAT THE PROPOSAL SHOULD COME FROM THEM."

Mr. Blaine, finding that he was getting on so well, then proposed as

an amendment (27 April, 5 May) that killing upon land, to the extent of 7,500 should be permitted. That was forwarded to Lord Salisbury, and was ultimately agreed to.

Did Canada agree that her sealing should be stopped? All that we know is as follows, but it is probably enough: On 16 May (after the proposal had been accepted) Lord Salisbury telegraphed the British Ambassador—

"As soon as the Government of Canada have answered communication addressed to them I will reply to your telegram".

On 21 May, Lord Salisbury again telegraphed the Ambassador—

"No definite reply has yet been received from Canada with regard to the proposed *modus vivendi* in Behring's Sea".

On 27 May, Canada telegraphed (*a*)—

"With reference to your telegrams of the 17th and 23rd instant, the Government of the Dominion accede to the proposition of Her Majesty's Government, provided that compensation be given to the sealers who may be prevented from prosecuting their avocation, and that the authorities of the United States accept at once the terms suggested by Her Majesty's Government, and concurred in by the Dominion Government in August last, as an essential part of the same agreement."

On June 1, the Right Honorable W. H. Smith (leader of the House) introduced into the British House of Commons a bill, the principal clause of which (afterwards amended) was as follows:

"Her Majesty the Queen may, by Order-in-Council prohibit the catching of seals by British ships in Behring Sea, or such part thereof as is defined by the said Order, during the period limited by the Order."

Mr. Smith in opening said that Canada's consent to the bill "only reached us late last week." And in reply, he said—

"The painful circumstances in which the government of the Dominion are placed render it impossible for us to hold regular official communication with them, and those which had passed were sufficient to satisfy us that the Dominion government were consenting parties to the proposals we had made to parliament subject to the concession of compensation to British subjects for any loss they could be shown to have sustained by reason of the prohibition, and to the acceptance of the terms of arbitration by the United States' government" (*b*).

He further said—

"I do not urge the House to accept this bill on the ground of absolute right or justice, but on the ground that it is a friendly act towards a friendly Power" (*c*).

(*a*) This telegram is not printed in the British blue book covering its date. It does not appear, either, in the next blue book—book of March 1892. It was thought not advisable to publish it until the book of April 1892. Meanwhile a very misleading account was, officially given of it—as we shall see.

(*b*) Hans. p. 1634. See also the remarks of Lord Salisbury, 8 June, p. 1807.

(*c*) Ibid. 1402.

I am afraid that Mr. Smith was not very frank. Sir John A. Macdonald was, at the moment, upon his death bed, but that had not prevented governmental action. The above quoted telegram of 27 May (''late last week'') was a specific and official declaration of the government's consent upon two conditions.

Nor was Mr. Smith correct in saying that Canada's second condition was—

> '' the acceptance of the terms of the arbitration by the United States' government.''

That would have been to impose a wholly impracticable condition for the arbitration negotiations were not nearly concluded, and it was not until the 29 February of the following year that the agreement to arbitrate was signed.

Moreover the words of the telegram are that the United States should accept.

> ''the terms suggested by Her Majesty's Government and concurred in by the Dominion government in August last.''

But all that had happened about arbitration ''in August last'' was that Lord Salisbury had said that he was willing to arbitrate, and to this there was no reply until 19 December.

For a third reason, Mr. Smith's version of the second condition cannot be correct, for, if it were, faith with Canada and the British parliament was not kept; for the *modus* was signed on 15 June, and the terms of arbitration were not agreed to until the following year.

It would appear to be clear that the Canadian second condition referred, not to an arbitation agreement at all, but to the terms of the *modus* proposed and concurred in when Mr. Tupper was in Washington in April (see ante p. 93)—not *August* as the printed telegram has it. Why do I say so? Because there were no terms of any kind under discussion in August. Because the only terms ever proposed and concurred in are those of April. And because the official charged with the censorship of the papers, while carefully suppressing the documents prior to the signing of the *modus*, overlooked the fact that much of what he was told to conceal appeared in a Canadian Order-in-Council of a date (25 July) *subsequent* to the *modus*. In that important document the Canadian government after reiterating its views as to proposals for a close season proceeded:

> ''The undersigned, however, would again revert to the proposal forwarded by Sir Julian Pauncefote to Mr. Secretary Blaine, 13TH APRIL 1890, which provided for just and equitable close times for seals in Behring's Sea, covering the migrations to and from the breeding-grounds; and which was rejected by the United States' Government.''
>
> ''The undersigned, therefore desires to impress upon your Excellency this aspect of the matter, with a view to avoiding, in any close season which might

ultimately be agreed upon, a practical or actual surrender of participation in the sealing industry by Her Majesty's subjects; and establishing the fact that the carefully considered proposal already rejected by the United States CONTAINED THE FULL MEASURE OF CLOSE TIME THAT YOUR EXCELLENCY'S ADVISERS ARE AT PRESENT PREPARED TO ENTERTAIN IN THE INTEREST OF CANADIAN SEALERS."

That is clear enough. Canada was willing to agree in 1891 to the terms proposed by the British government in April 1890, and concurred in, then, by Canada. She was willing to do nothing else. But Lord Salisbury, in utter disregard of this information, agreed (15 June) to the complete exclusion "until May next", of Canadians from the whole eastern part of Behring Sea. And he not only agreed to that exclusion, but he agreed that the British navy should co-operate with the United States cruizers in the enforcement of the exclusion. The British war-ships at last cleared their decks for action.

It will have been observed that one of the conditions of Canada's assent to temporary exclusion was compensation to her sealers. Who paid that? If the United States was wrong (as she was) in her denial of Canadian rights, the United States ought to have paid it; but Lord Salisbury did not suggest that. He tried to persuade Canada to pay it or a part of it. Canada very properly declined, and SO HE AGREED TO PAY IT OUT OF THE BRITISH EXCHEQUER. It was a case similar to Canada's claims against the United States in respect of the Fenian raids. The United States ought to have paid for the damage done by her citizens, but she would not, so "as a friendly act to a friendly Power" the United Kingdom withdrew the claims (agreeing, at the same moment, to pay the United States' Alabama claims) and offered to pay them herself!

1892.—The arbitration proceedings being in progress, the United States proposed a renewal of the temporary exclusion until the award should be given. Canada was consulted and replied (23 February)—

"With reference to your telegram of the 16th instant respecting the *modus vivendi* in Behring's Sea, MY MINISTERS DO NOT POSSESS ANY INFORMATION TO SHOW THAT A MODUS VIVENDI IS NECESSARY, OR THAT IT CAN BE REASONABLY DEMANDED. If, however, such information has reached Her Majesty's Government, the Government of the Dominion would not oppose such a *modus vivendi*, provided that it were confined to a zone of moderate limits, say, 25 MILES, AROUND THE SEAL ISLANDS, AND PROVIDED THAT IT IS ACCOMPANIED BY STRINGENT RESTRICTIONS AGAINST THE KILLING OF SEALS ON LAND, with better supervision than during the *modus vivendi* of last year."

The British and Canadian members of the joint commission that had been appointed to study the whole question, having been asked

their opinion, replied—

"WE DO NOT APPREHEND ANY DANGER OF SERIOUS FURTHER DEPLETION OF THE FUR-SEALS RESORTING TO THE PRIBYLOFF ISLANDS, AS THE RESULT OF HUNTING THIS YEAR, UNLESS EXCESSIVE KILLING BE PERMITTED ON THE BREEDING ISLANDS. As a judicious temporary measure of precaution, however, for this season, and looking to permanent regulations for the fishery as a whole being established in time for the season of 1893, we would recommend the prohibition of all killing at sea during this season, within a zone extending to, say, not more than 30 nautical miles around the Pribyloff Islands, such prohibition being conditional on the restriction to a number not to exceed 30,000 as a maximum of the seals killed for any purpose on the islands."

Lord Salisbury offered these terms to the United States (27 February) saying at the same time—

"The consent of Her Majesty's Government was given last year to a *modus vivendi* solely on the ground that the perservation of the seal species in those waters was supposed to be endangered unless some interval were given during which there would be a cessation of hunting both on land and sea.

NO INFORMATION HAS REACHED HER MAJESTY'S GOVERNMENT TO LEAD THEM TO SUPPOSE THAT SO DRASTIC A MEASURE IS REQUISITE FOR TWO SUCCESSIVE SEASONS."

Good for Lord Salisbury! To further urging by the United States, he replied (18 March)—

"The information which has reached Her Majesty's Government does not lead them to believe that, in order to prevent an undue diminution of the number of fur-seals, ANY NECESSITY EXISTS FOR THE SUSPENSION OF SEALING FOR ANOTHER YEAR."

"As a more equitable arrangement, might it not be agreed that sealing-vessels shall be at liberty to hunt in Behring's Sea on condition that security is given by the owner of each vessel for satisfying the award of damages, if any, which the Arbitrators may eventually pronounce?"

This curious idea of shouldering off all responsibility on to the sealers—the idea that the United States should busy themselves about security from individuals, was not acceptable to Mr. Blaine, who, knowing Lord Salisbury's indifference about the whole matter, replied (23 March) in truculent tone—

"If Her Majesty's Government proceeds this season on the basis of its contention as to the rights of the Canadian Sealers, NO CHOICE REMAINS FOR THE UNITED STATES BUT TO PROCEED ON THE BASIS OF THEIR OWN CONFIDENT CONTENTION, that pelagic sealing is an infraction of its jurisdiction and proprietary rights. This, in the opinion of the President, constitutes the gravity of the situation, and he is not willing to be found responsible for such results as may follow from an insistance on the part of either Government during this hunting season on the extreme rights claimed by it. The two great Governments interested in the question would be discredited in the eyes of the world if the friendly adjustment of their difficulties, which is so nearly concluded were to be thwarted, or even disturbed, on account of the paltry profits of a single season. BUT IF YOUR LORDSHIP PERSISTS IN REFUSING TO JOIN THE GOVERNMENT OF THE UNITED

STATES IN STOPPING PELAGIC SEALING PROMPTLY, AND INSISTS UPON THE MAINTENANCE OF FREE SEALING FOR BRITISH SUBJECTS, THE QUESTION NO LONGER IS ONE OF PECUNIARY LOSS OR GAIN, BUT ONE OF HONOR AND SELF-RESPECT, SO FAR AS IT AFFECTS THE GOVERNMENT OF THE UNITED STATES."

As in the Venezuela affair (1895–6) at the word of President Cleveland, so now at the word of Secretary Blaine, Lord Salisbury at once withdrew (26 March). The arbitation treaty being nearly ready for signature, Lord Salisbury said that when it was complete, he would agree to the *modus*—Her Majesty's government (he might have added) having now (in the shape of a letter from Mr. Blaine) information which has "lead them to suppose that so drastic a measure *is* requisite"—

"Inform President that we concur in thinking that when the treaty shall have been ratified there will arise a new state of things. Until it is ratified our conduct, is governed by the language of your note of the 14th June, 1890. But when it is ratified both parties must admit that contingent rights have become vested in the other, which both desire to protect.

We think that the prohibition of sealing, if it stands alone, will be unjust to British sealers, if the decision of the arbitrators should be adverse to the United States. We are, however, willing, when the treaty has been ratified, to agree to an arrangement similar to that of last year, if the United States will consent that the arbitrators should, in the event of a decision adverse to the United States, assess the damages which the prohibition of sealing shall have inflicted on British sealers during the pendency of the arbitration; and, in the event of a decision adverse to Great Britain, should assess the damages which the limitation of slaughter shall, during the pendency of the arbitration, have inflicted on the United States or its lessees."

That was all that Mr. Blaine wanted, and a *modus* (to last during the pendency of the arbitration) in exactly the same terms as that of 1891 (with the addition of a damage clause) was signed (18 April) without waiting for the ratification of the arbitration treaty (7 May). There is no reason to think that Canada was consulted prior to that surrender. The rapidity of the retreat left little time for reference to the only people interested. As to what Canada thought and said about it, the blue-books are silent.

Here then we have the facts relating to the voluntary, though fortunately only temporary, renunciation of Canadian rights in Behring Sea. It was agreed to by the British government, and enacted by the British parliament, not because either the government or the parliament believed that it was necessary for the preservation of the seal species, and not—

"on the ground of absolute right of justice, BUT ON THE GROUND THAT IT IS A FRIENDLY ACT TOWARDS A FRIENDLY POWER."

Would the British government have agreed to prohibit herring fishing

in the North Sea for the same kindly reason?

IV.—BRITISH PROTECTION WITH REFERENCE TO ARBITRATION RESPECTING VOLUNTARY RENUNCIATION.

The reference to arbitration included two main points—(1) as to the rights of the parties, and (2) in case the United States had no authority to interfere with Canadian sealers, then how much of Canada's right ought to be given up. The first of these references was proper; the second was unqualifiedly wrong. Canada assented to the first. To the second, she objected. Whether, eventually, pressure produced reluctant assent, the blue-books do not say.

What class of subjects can be, and usually are referred to arbitration? The form of the many arbitration treaties agreed to by the United States supplies the answer, namely,

> "Differences which may arise of A LEGAL NATURE, or relating to the interpretation of treaties."

The form recently proposed for a treaty between the United Kingdom and the United States was as follows—

> "All differences....relating to international matters....by virtue of A CLAIM OF RIGHT made by one against the other under a treaty or otherwise and which are JUSTICIABLE IN THEIR NATURE BY REASON OF BEING SUSCEPTIPLE OF DECISION BY THE APPLICATION OF THE PRINCIPLES OF LAW OR EQUITY."

No argument is necessary to prove that a question of the extent to which a nation ought voluntarily to renounce the exercise of an undoubted right—either for the benefit of herself or another nation—is not one either "of a legal nature" or "justiciable."

In relating the facts connected with the making of the arbitration agreement, we are again handicapped by the absence of the suppressed correspondence; but probably, here also, we shall find that we have sufficient to lead us to two correct conclusions—(1) that Canada's objection to submit any question as to renunciation of the exercise of her rights, and more particularly to the submission of renunciation of her rights at sea in the absence of renunciation by the United States of its rights upon land, and by other nations of their rights at sea, was overruled, disregarded, or otherwise got rid off; and (2) that, afterwards, before the arbitrators, British and Canadian advocates did their best, but unavailingly, to modify the effect of the British agreement to arbitrate such a question.

Consider Canada's position: She had always contended that regulations for the killing of seals were much more necessary in res-

pect of the *land* operations than with regard to pelagic work. To regulate the operations of the Canadians on the water, while the operations of the Americans on the land were left unregulated, would manifestly be very unfair. And if it were said, in reply, that the United States would herself enact and enforce such laws as were necessary on the land, the sufficient answer was that Canada might just as well be trusted to enact and enforce (against her own citizens) such laws as were necessary on the water.

It was also manifestly unfair that Canadians should be prohibited from sealing at sea, unless the citizens of other countries were subjected to similar prohibition. In fact, Canadian success on the question of international right, accompanied by prohibition of the free exercise of that right, was a victory rather for other nations than for Canada; inasmuch as, while the right of everybody to take the seals had been established, Canada alone was partially deprived of the benefit of the right. Foreigners were not slow to appreciate that fact, and, for years after the award, although Canadians were, by its effect, excluded from Behring Sea, Japanese and Russians did as they pleased there. Canada had proved that the United States had no right to stop them, and they were not (fortunately for them) colonies of another country which had voluntarily agreed to stop them.

Before discussing responsibility for the reference to arbitration of that which ought not to have been referred, it will be convenient to set out the language of the reference, and to state the effect of the prohibitions which were directed by the arbitrators:

The arbitration treaty provided that in case the United States had no right to interfere with Canadian ships—

> "the arbitrators shall then determine what concurrent regulations, outside the jurisdictional limits of the respective governments, are necessary, and over what waters such regulations should extend."

"Outside the jurisdictional limits" prevented the arbitrators considering what regulations were necessary on hand. And a provision that the parties were "to co-operate in securing the adhesion of other Powers to such regulations" prevented the arbitrators making Canadian obedience *conditional* upon the assent of the other Powers being obtained.

The regulations established by the arbitrators were as follows:—

1. No seals to be taken at any time within 60 miles of the islands.

2. No seals to be taken between 1 May and 31 July in the Pacific Ocean (including Behring Sea) north of 35 degree of latitude. (Lord Salisbury's tentative agreement had extended from 15 April to 1

November—ante, p. 85, 6).

3. Sailing vessels (with the usual boats) only to be used.

4. No nets, explosives or firearms at any time or place; with the exception of shotguns outside Behring Sea during the open season.

The history of the negotiations for the arbitration treaty (so far as relates to the prohibitions) commenced with a proposal from Mr. Blaine (17 December 1890). On 21 February 1891, Lord Salisbury replied that the question would "more fitly form the subject of a separate reference." On 14 April, Mr. Blaine—assuming, as he said, that Lord Salisbury did not actually object to the reference as to a close time—proposed another form of words. On June 3, Lord Salisbury proposed that the matter should be referred to four experts, and that the question should be

> " For the purpose of preserving the fur-seal race in Behring Sea from extermination, what international arrangements, if any, are necessary between Great Britain and the United States and Russia or any other power?"

Canada would have made no objection to that proposal, for it covered her two points—(1) enquiry as to land regulations, and (2) other nations to be equally bound. It looks as though, at this stage, Canada had been consulted and her wishes regarded. On 25 June, the United States (adhering to their proposal for inclusion of the question in the arbitration) suggested the form of words which afterwards formed part of the treaty. On 13 July, the British Ambassador replied that he had been in telegraphic communication with Lord Salisbury with reference to the proposals as to regulations and damages, and that the latter was

> "the only one which appears to me to raise any serious difficulty"

The reference to arbitration, therefore, of the question of voluntary renunciation, without either of the Canadian conditions, was conceded, and Mr. Donald MacMaster, K.C., was undoubtedly right when he said—

> "From that moment, the case, in so far as regulations were concerned, was given away" (*a*).

Reference as to prohibitions having thus been agreed to, the correspondence continued upon the damage question, and it was not until 29 February of the following year (1892) that the treaty was signed. Meanwhile, Canada had been informed of what had taken place, and had pressed her objections. How am I aware of that? Because, after five months, Lord Salisbury endeavored (23 November) to secure one of the Canadian objects by adding to the agreed words, the condition

(*a*) Pamphlet, p. 32; and see pp. 34-5.

"that the regulations will not become obligatory on Great Britain and the United States UNTIL THEY HAVE BEEN ACCEPTED BY THE OTHER MARITIME POWERS. Otherwise, as his Lordship observes, the two governments would be simply handing over to others the right of exterminating the seals."

Mr. Blaine assumed to be ruffled (27 November)—

"What reason had Lord Salisbury for altering the text of the article to which he had agreed?"

"The President regards Lord Salisbury's second reservation, therefore, as a material change in the terms of the arbitration agreed upon by this government; and he instructs me to say that he does not feel willing to take it into consideration. He adheres to every point of agreement which has been made between the two powers, according to the text which you furnished. He will regret if Lord Salisbury shall insist on a substantially new agreement."

After telegraphing Lord Salisbury, the British Ambassador gave (1 December) his reason for the proposal—

"There is nothing to prevent such third power (Russia, for instance, as the most neighboring nation), if unpledged, from stepping in and securing the fishery in the very seasons and in the very places which may be closed to the sealers of Great Britain and the United States by the regulations."

And added—

"How is this difficulty to be met? Lord Salisbury suggests that if, after the lapse of one year from the date of the decree of regulations, it shall appear to either government that serious injury is occasioned to the fishery from the causes above mentioned, the government complaining may give notice of the suspension of the regulations during the ensuing year, and in such case the regulations shall be suspended until arrangements are made to remedy the complaint."

In reply to a further note from Mr. Blaine, the British Ambassador said—

"I do not understand you to dispute that should such a state of things arise, the agreement must collapse, as the two governments could not be expected to enforce, on their respective nationals, regulations which are violated under foreign flags to the serious injury of the fishery."

Mr. Blaine was immovable, and Lord Salisbury gave in (11 December). In doing so, however, he made a reservation which would have covered the point—

"Her Majesty's Government of course retain the right of raising the point when the question of framing the regulations comes before the arbitrators, and it is understood that the latter will have full discretion in the matter, and may attach such conditions to the regulations as they may *a priori* judge to be necesary and just to the two Powers, in view of the difficulty pointed out."

Mr. Blaine flamed up again—

"After mature deliberation he (the President) has instructed me to say that he objects to Lord Salisbury's making any reservation at all, and that he cannot yield to him the right to appeal to the arbitrators to decide any point not embraced in the articles of arbitration."

"The President claims the right to have the seven points arbitrated, and respectfully insists that Lord Salisbury shall not change their meaning in any particular. The matters to be arbitrated must be distinctly understood before the arbitrators are chosen."

Lord Salisbury, of course, succumbed, protesting that he had been misunderstood—

"Lord Salisbury entirely agrees with the President in his objection to any point being submitted to the arbitrators which is not embraced in the agreement; and, in conclusion, his Lordship authorizes me to sign the articles of the arbitration agreement, as proposed at the close of your note under reply, whenever you may be willing to do so."

One of the points absolutely essential (even in Lord Salisbury's view) to the fairness of the form of the reference to arbitration, was thus given up by Lord Salisbury; and the other one (enquiry and directions as to regulations for killing on the land) he appears never to have urged. I do not believe that Canada's assent was ever obtained to the reference in the form agreed to. If it was, I am certain that it was given with the greatest reluctance, and for the same old worn-out reason "the interests of the Empire as a whole."

Have I any right in the absence of the suppressed documents to say that? Yes, I have two principal grounds for the assertion—(1) Any other conclusion would be inconsistent with what I have amply shown to have been the position always maintained by Canada; and (2) The Canadian Department, afterwards (1895), forgetting for the moment the necessity for secrecy, printed as part of its annual report, the following—

"THE CANADIAN GOVERNMENT EARNESTLY ENDEAVORED TO KEEP THE QUESTION OUT OF THE REALM OF ARBITRATION, SEEKING A DECISION ON THAT OF RIGHT ALONE."

We see, then, how it came about that a question which ought never to have been referred to arbitration, was so referred. Now let us see how handicapped Canada was, in the discussions before the arbitrators, by Lord Salisbury's admissions and assents.

THE ARBITRATION.—There were five arbitrators—one British (Lord Hannen), one Canadian (Sir John Thompson); two Americans; and three Europeans. They, of course, declared

"that the United States has not any right of protection, or property, in the fur seals frequenting the islands of the United States in Behring Sea, when such seals are found outside the ordinary 3-mile limit."

And having so declared, they proceeded to provide the restrictions upon Canadian rights above mentioned. They said nothing about land-regulations, and nothing about the concurrence or actions of other nations. Prohibition for Canadians on sea without any con-

ditions as to anybody else (*a*); and freedom for Americans to do as they pleased with the herd on land. That was the award, and that, of course, is manifestly unjust. But it was the fault of the form of the reference and not the fault of the arbitrators, for they had nothing to do with either land operations by the United States, or sea operations by anybody but the parties before them.

British advocates, rather cleverly but quite unsuccessfully, endeavored to introduce into the discussion both of Canada's points. In the British counter-case, they said—

"No such regulations can be just or effective *unless accompanied by corresponding and co-relative control over the islands* and over the time, method, and extent of slaughter upon them by the nationals of the United States of America.

To enforce regulations which would shut out British subjects at certain seasons, and from prescribed areas, from the pursuit of pelagic sealing, and at the same time would leave the slaughter of seals on the islands to be pursued according to the mere will of the lessees of those islands or by their government, *would be to establish regulations one-sided in their character and therefore unjust, and also ineffective, for the object in view, namely, for the preservation of seal life.*"

"It is submitted that if any regulations are to be prescribed, they ought to be so framed as only to come into operation through the instrumentallty of a convention at which all the Powers interested shall be represented, and at which proper provisions for their enforcement binding on the nationals of all such Powers shall be formulated, or that they SHOULD BE CONDITIONAL UPON THE ADHESION OF SUCH OTHER POWERS" (*a*).

That is all perfectly true, and being in a document delivered by the British government to the government of the United States, must be taken to be (as it undoubtedly was) the expression of the view of the British government as voiced by its Attorney General. The points are precisely those always maintained by Canada; urged by her upon Lord Salisbury; and by him given up. Now, when too late, they are not only adopted and advanced, officially, but British Counsel are instructed to urge them upon the arbitrators. That they did; but the arbitrators were bound by the form of the reference, and could give no relief.

The discussion, therefore, was reduced to the question of the extent to which Canada was to be forbidden to exercise her declared right to hunt seals in the open sea. Upon that point we were hopelessly handicapped by Lord Salisbury's admissions and attempted agreements, and the American advocates made full use of their advantage. Mr. Phelps read to the arbitrators almost the whole of the damaging correspondence above quoted (*c*); and when he came to Lord Salisbury's statement that although Canada had "appre-

(*a*) The sea-prohibition applied to Americans, but that was in accordance with America's request and in pursuance of America's policy. It was not an imposition.

(*b*) Pp. 160, 161, 162.

(*c*) Proceedings pp. 1861–74. See also the reference to Lord Salisbury's provisional agreement in the opinion read by W. Justice Harlan, one of the American Arbitrators.

hensions" as to the effect of the agreement which he had tentatively agreed to, yet that he

> "was still sanguine of coming to an arrangement, but that time was indispensable" (*a*).

Mr. Phelps made the obvious comment

> "If, as I said, he had been drawn hastily into this agreement, or had entered into some misunderstanding, or if Canada had presented some remonstrance which justified him in ac ing upon it and receding, he would have done so, INSTEAD OF THAT, ALL THROUGH THE SUMMER HE WAS SAYING "TIME ONLY IS NECESSARY; WE SHALL YET BRING IT ABOUT".

British and Canadian advocates were handicapped by Lord Salisbury, and Sir John Thompson's efforts among the arbitrators were embarrassed by the opposition of Lord Hannen. The arbitrators ordered perpetual exclusion from all the sea within 60 miles of the islands; and although Mr. Blaine himself had at one time (16 March 1891) confined his request to 25 miles, and although the United States had never suggested the necessity for prohibition throughout the whole year, Lord Hannen voted against Sir John Thompson's objection to the clause.

Lord Hannen voted, also, in favor of the clause forbidding the use of nets, firearms and explosives with the exception of shot guns outside of Behring Sea.

He also voted for the following absurd provision—

> "The two governments shall take measures to control the fitness of the men authorized to engage in fur-seal fishing; these men shall have been proved fit to handle with sufficient skill the weapons by means of which their fishing may be carried on."

He also voted against Sir John's proposal to permit either government to denounce the regulations after ten years.

But I make no charge or complaint against Lord Hannen. I do not put him in the same category as Lord Alverstone, who (I do not hesitate to say) played Canada (in the Alaska boundary case) a treacherous trick. It was almost impossible that Lord Hannen should not have come to a study of the facts with a strong prepossession in favor of the attitude assumed by Lord Salisbury. All that I do say is that if Lord Salisbury had not shown himself so deferential and complacent, Canada would have had a better chance of securing the support of Lord Hannen. INDEED THE QUESTION OF REGULATIONS WOULD NEVER HAVE COME BEFORE HIM.

The reception given to the award in Canada, may fairly be judged by the comments of the three Ottawa newspapers : *The Citizen* said—

(*a*) See his letter of 3 September, 1888: *ante*, p. 88.

"It may possibly be too early to draw these large inferences from the necessarily imperfect information conveyed by the cable, but it appears at present as though the arbitrators had given us the shell, and handed over the kernel to Uncle Sam."

The Journal said—

"There seems here another instance of the unsatisfactory results of Canadian interests being in the hands of British diplomatists. Lord Hannen, the British arbitrator, gave his vote for the regulations in opposition to the Canadian arbitrator. The Behring Sea dispute would apparently have had little worse result for Canada than this under any conceivable circumstances. It has been the fashion of those opposed to Canadian independence to ask, 'How safe would Canada be against the States without British backing?' And this question has constantly been asked in special connection with this Behring Sea dispute. Let us ask now, 'Could Canada have well had the question settled more injuriously to herself? If, undeterred by respect for Britain, the United States had said to little Canada, 'Go to blazes, Behring Sea is ours, what do you propose to do about it?' Canada would have apparently been little worse off than she is now."

The Free Press said—

"From such 'protection' as that which has been accorded to our interests by Lord Hannen, Canada may well ask to be delivered. The rights of the Dominion are once more sacrificed to placate the Americans. The lesson of the Behring Sea arbitration is that Canada should have the right to deal directly with foreign nations."

V.—SUBSEQUENT HISTORY.

The subsequent history was, in one important respect, unforeseen by everybody. Having found the hunting of seals to be very remunerative, Canadians, excluded (to the extent above mentioned) from their former resorts, crossed the Pacific and attacked the herds that bred upon Russian and Japanese territory. That had been foretold. On the other hand, the Japanese took advantage of the decision of the arbitrators and operated freely in the localities from which Canadians had been ejected. That, too, had been foretold. But nobody had divined that the prohibition of Canadian rifles would lead to what an American Secretary of State described as the

"marvellously increased efficiency of the pelagic seal-hunters in the use of the shot-gun and the spear" (*a*);

and to a preference for the spear, because of its non-disturbance of other seals close by.

After the award, Mr. Phelps (one of the United States' counsel) said that—

"the stringent regulations propounded in restriction of pelagic sealing will amount, in my judgment, to a substantial prohibition of it and give the United

(*a*) Olney to Gough, 24 June 1895.

States all the fruits they could have obtained by a decree in favor of the claim of right" (*a*).

In other words, the United Kingdom had maintained her principles, but the Americans had got the seals (a). A single season's experience of the prohibitions of the award having been sufficient to prove that the United States had miscalculated their effect—that they were not equivalent to total suppression—persistent efforts were made to obtain the assent of the British government to increase their stringency. Canada, on the other hand, wanted greater liberty. For years the matter was debated, and finally (Canada now being strong enough to have her way) a reasonable agreement was made (7 July 1911) between the United Kingdom, the United States, Japan and Russia, the principal terms of which are as follows:—

1. No pelagic sealing north of 35 degree of latitude.
2. The United States to give to Canada 15 per cent. of the skins taken on her territory; and 15 per cent to Japan.
3. Russia to give to Canada 15 per cent. of the skins taken upon her territory; and 15 per cent to Japan.
4. Japan to give to Canada 10 per cent. of the skins taken upon her territory; 10 per cent. to Russia; and 10 per cent to the United States.
5. The agreement to last 15 years.

That is a reasonable arrangement. Pelagic sealing is expensive, and, to some extent (by loss of wounded animals and the killing of females), wasteful. At the same time, it is a profitable industry and one that Canada has a right to engage in. As against proposals for voluntary renunciation of the exercise of that right, she protested and struggled. And now, although meanwhile compelled to suffer the wanton seizures of her ships, and although handicapped by the indifference and concessions of British diplomacy, she has by her pluck and perseverance, and by her increasing assertion of her right to control her own foreign relations, at length succeeded in obtaining a settlement which is not only fair but which is consistent with her self-respect.

When we remember that Lord Salisbury had agreed tentatively, (both in 1888 and 1890) to the voluntary permanent renunciation of Canadian rights in all the waters north of the 47th degree of north latitude between 15 April and 1 November; that he had agreed absolutely, to temporary renunciation of those rights in 1891, 2 and 3; that he had agreed to refer to arbitration the question of the extent to which those rights ought to be voluntarily renounced; that he had

(*a*) The *Empire*, 17 Aug.1893.

so handicapped Canada in the reference, that (1) the arbitrators had no power to regulate the operations of the United States on land; (2) that the arbitrators had no power to make Canadian exclusion conditional upon similar exclusion of other nations; and (3) that the arbitrators were, inevitably, strongly prepossessed in favor of the United States by the admissions and arrangements of Lord Salisbury—when all that is recalled, we must, in order to have been able at last to force the United States to a reasonable settlement, have not only had, originally, an extraordinarily strong case, but have had, as well, a certain amount of good fortune.

Lord Salisbury would have voluntarily given away Canada's rights. By the present arrangement we may get half a million a year, and more, besides retaining our self-respect.

Conclusion—In confirmation, and as partial summation, of what has been said, let us listen to the language made use of by Mr. C. Hibbert Tupper, ten years after the first of the seizures—

have been so persistently practised. But that, also, would be too much to expect, for the hollowness of the pretence is not apparent to them. To British statesmen a few cod-fish on the Atlantic, or a few seals on the Pacific, or a few thousand square miles of Canadian territory are not of much importance. In matters of any moment (by which they mean any interruption of their sovereignty over Canada, or of the benefit which they derive from that sovereignty) they would unanimously assert that "the last man and the last shilling" etc.

I find no fault with British statesmen, but, in view of the facts referred to in this Paper, I do object to a Canadian statesman lauding the advantages of British protection, and talking in the following fashion—

> "In time of dangerous riot and wild terror in a foreign city, a Canadian religious community remained unafraid. Why did you not fear? they were asked; and unhesitatingly came the answer, 'The Union Jack floated over us"(*a*).

That religious community included Canadian [illegible] and Salish

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