

1909.

AGREEMENT

BETWEEN

THE UNITED KINGDOM AND UNITED
STATES OF AMERICA

FOR THE SUBMISSION TO

ARBITRATION

OF

QUESTIONS RELATING TO
FISHERIES ON THE
NORTH ATLANTIC COAST.

Signed at Washington, January 27, 1909.

*Presented to both Houses of Parliament by Command of His Majesty.
September 1909.*

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SPECIAL AGREEMENT FOR THE SUBMISSION OF
QUESTIONS RELATING TO FISHERIES ON
THE NORTH ATLANTIC COAST UNDER THE
GENERAL CONVENTION OF ARBITRATION
CONCLUDED BETWEEN GREAT BRITAIN AND
THE UNITED STATES ON APRIL 4, 1908.

Signed at Washington, January 27, 1909.

ARTICLE I.

WHEREAS by Article 1 of the Convention signed at London on the 20th day of October, 1818, between Great Britain and the United States, it was agreed as follows:—

Whereas differences have arisen respecting the liberty claimed by the United States for the inhabitants thereof, to take, dry, and cure fish on certain coasts, bays, harbours and creeks of His Britannic Majesty's dominions in America, it is agreed between the High Contracting Parties, that the inhabitants of the said United States shall have for ever, in common with the subjects of His Britannic Majesty, the liberty to take fish of every kind on that part of the southern coast of Newfoundland which extends from Cape Ray to the Rameau Islands, on the western and northern coast of Newfoundland, from the said Cape Ray to the Quirpon Islands on the shores of the Magdalen Islands, and also on the coasts, bays, harbours, and creeks from Mount Joly on the southern coast of Labrador, to and through the Straits of Belleisle, and thence northwardly indefinitely along the coast, without prejudice, however, to any of the exclusive rights of the Hudson Bay Company; and that the American fishermen shall also have liberty for ever, to dry and cure fish in any of the unsettled bays, harbours, and creeks of the southern part of the coast of Newfoundland hereabove described, and of the coast of Labrador; but so soon as the same, or any portion thereof, shall be settled, it shall not be lawful for the said fishermen to dry or cure fish at such portion so settled, without previous agreement for such purpose with the inhabitants, proprietors, or possessors of the ground. And the United States hereby renounce for ever, any liberty heretofore enjoyed or claimed by the inhabitants thereof, to take, dry, or cure fish on, or within 3 marine miles of, any of the coasts, bays, creeks, or harbours of His Britannic Majesty's dominions in America not included within the above-mentioned limits; provided, however, that the American fishermen shall be admitted to enter such bays or harbours for the purpose of shelter and of repairing damages therein, of purchasing wood, and of obtaining water, and for no other purpose whatever. But they shall be under such restrictions as may be necessary to

prevent their taking, drying or curing fish therein, or in any other manner whatever abusing the privileges hereby reserved to them.

And whereas differences have arisen as to the scope and meaning of the said Article, and of the liberties therein referred to, and otherwise in respect of the rights and liberties which the inhabitants of the United States have or claim to have in the waters or on the shores therein referred to :

It is agreed that the following questions shall be submitted for decision to a Tribunal of Arbitration constituted as hereinafter provided :—

Question 1. To what extent are the following contentions, or either of them, justified ?

It is contended on the part of Great Britain that the exercise of the liberty to take fish referred to in the said Article, which the inhabitants of the United States have for ever in common with the subjects of His Britannic Majesty, is subject, without the consent of the United States, to reasonable regulation by Great Britain, Canada, or Newfoundland in the form of municipal Laws, Ordinances, or Rules, as, for example, to regulations in respect of (1) the hours, days, or seasons when fish may be taken on the Treaty Coasts ; (2) the method, means, and implements to be used in the taking of fish or in the carrying on of fishing operations on such coasts ; (3) any other matters of a similar character relating to fishing ; such regulations being reasonable, as being, for instance—

(a.) Appropriate or necessary for the protection and preservation of such fisheries and the exercise of the rights of British subjects therein and of the liberty which by the said Article 1 the inhabitants of the United States have therein in common with British subjects ;

(b.) Desirable on grounds of public order and morals ;

(c.) Equitable and fair as between local fishermen and the inhabitants of the United States exercising the said Treaty liberty and not so framed as to give unfairly an advantage to the former over the latter class.

It is contended on the part of the United States that the exercise of such liberty is not subject to limitations or restraints by Great Britain, Canada, or Newfoundland in the form of municipal Laws, Ordinances, or Regulations in respect of (1) the hours, days, or seasons when the inhabitants of the United States may take fish on the Treaty Coasts, or (2) the method, means, and implements used by them in taking fish or in carrying on fishing operations on such coasts, or (3) any other limitations or restraints of similar character—

(a.) Unless they are appropriate and necessary for the protection and preservation of the common rights in such fisheries and the exercise thereof ; and

(b.) Unless they are reasonable in themselves and fair as between local fishermen and fishermen coming from the United States, and not so framed as to give an advantage to the former over the latter class ; and

(c.) Unless their appropriateness, necessity, reasonableness, and fairness be determined by the United States and Great Britain by common accord and the United States concurs in their enforcement.

Question 2. Have the inhabitants of the United States, while exercising the liberties referred to in said Article, a right to employ as members of the fishing crews of their vessels persons not inhabitants of the United States?

Question 3. Can the exercise by the inhabitants of the United States of the liberties referred to in the said Article be subjected, without the consent of the United States, to the requirements of entry or report at custom-houses or the payment of light or harbour or other dues, or to any other similar requirement or condition or exaction?

Question 4. Under the provision of the said Article that the American fishermen shall be admitted to enter certain bays or harbours for shelter, repairs, wood, or water, and for no other purpose whatever, but that they shall be under such restrictions as may be necessary to prevent their taking, drying, or curing fish therein or in any other manner whatever abusing the privileges thereby reserved to them, is it permissible to impose restrictions making the exercise of such privileges conditional upon the payment of light or harbour or other dues, or entering or reporting at custom-houses or any similar conditions?

Question 5. From where must be measured the "3 marine miles of any of the coasts, bays, creeks, or harbours" referred to in the said Article?

Question 6. Have the inhabitants of the United States the liberty under the said Article or otherwise to take fish in the bays, harbours, and creeks on that part of the southern coast of Newfoundland which extends from Cape Ray to Rameau Islands, or on the western and northern coasts of Newfoundland from Cape Ray to Quirpon Islands, or on the Magdalen Islands?

Question 7. Are the inhabitants of the United States whose vessels resort to the treaty coasts for the purpose of exercising the liberties referred to in Article 1 of the Treaty of 1818 entitled to have for those vessels, when duly authorized by the United States in that behalf, the commercial privileges on the treaty coasts accorded by agreement or otherwise to United States trading-vessels generally?

ARTICLE 2.

Either Party may call the attention of the Tribunal to any legislative or executive act of the other Party, specified within three months of the exchange of notes enforcing this Agreement, and which is claimed to be inconsistent with the true interpretation of the Treaty of 1818; and may call upon the Tribunal to express in its award its opinion upon such acts, and to point out in what respects, if any, they are inconsistent with the principles laid down in the award in reply to the preceding questions; and each Party agrees to conform to such opinion.

ARTICLE 3.

If any question arises in the arbitration regarding the reasonableness of any regulation or otherwise which requires an examination

of the practical effect of any provisions in relation to the conditions surrounding the exercise of the liberty of fishery enjoyed by the inhabitants of the United States, or which requires expert information about the fisheries themselves, the Tribunal may, in that case, refer such question to a Commission of three expert specialists in such matters; one to be designated by each of the Parties hereto, and the third, who shall not be a national of either Party, to be designated by the Tribunal. This Commission shall examine into and report their conclusions on any question or questions so referred to it by the Tribunal, and such report shall be considered by the Tribunal and shall, if incorporated by them in the award, be accepted as a part thereof.

Pending the report of the Commission upon the question or questions so referred and without awaiting such report, the Tribunal may make a separate award upon all or any other questions before it, and such separate award, if made, shall become immediately effective, provided that the report aforesaid shall not be incorporated in the award until it has been considered by the Tribunal. The expenses of such Commission shall be borne in equal moieties by the parties hereto.

ARTICLE 4.

The Tribunal shall recommend for the consideration of the High Contracting Parties rules and a method of procedure under which all questions which may arise in the future regarding the exercise of the liberties above referred to may be determined in accordance with the principles laid down in the award. If the High Contracting Parties shall not adopt the rules and method of procedure so recommended, or if they shall not, subsequently to the delivery of the award, agree upon such rules and methods, then any differences which may arise in the future between the High Contracting Parties relating to the interpretation of the Treaty of 1818 or to the effect and application of the award of the Tribunal shall be referred informally to the Permanent Court at The Hague for decision by the summary procedure provided in Chapter IV of The Hague Convention of the 18th October, 1907.

ARTICLE 5.

The Tribunal of Arbitration provided for herein shall be chosen from the general list of members of the Permanent Court at The Hague, in accordance with the provisions of Article 45 of the Convention for the Settlement of International Disputes, concluded at the Second Peace Conference at The Hague on the 18th October, 1907. The provisions of said Convention, so far as applicable and not inconsistent herewith, and excepting Articles 53 and 54, shall govern the proceedings under the submission herein provided for.

The time allowed for the direct agreement of His Britannic Majesty and the President of the United States on the composition of such Tribunal shall be three months.

ARTICLE 6.

The pleadings shall be communicated in the order and within the time following:—

As soon as may be, and within a period not exceeding seven months from the date of the exchange of notes making this Agreement binding, the printed Case of each of the Parties hereto, accompanied by printed copies of the documents, the official correspondence, and all other evidence on which each Party relies, shall be delivered in duplicate (with such additional copies as may be agreed upon) to the Agent of the other party. It shall be sufficient for this purpose if such Case is delivered at the British Embassy at Washington or at the American Embassy at London, as the case may be, for transmission to the Agent for its Government.

Within fifteen days thereafter such printed Case and accompanying evidence of each of the Parties shall be delivered in duplicate to each member of the Tribunal, and such delivery may be made by depositing within the stated period the necessary number of copies with the International Bureau at The Hague for transmission to the Arbitrators.

After the delivery on both sides of such printed Case, either party may, in like manner, and within four months after the expiration of the period above fixed for the delivery to the Agents of the Case, deliver to the Agent of the other party (with such additional copies as may be agreed upon) a printed Counter-Case accompanied by printed copies of additional documents, correspondence, and other evidence in reply to the Case, documents, correspondence, and other evidence so presented by the other Party, and within fifteen days thereafter such Party shall, in like manner as above provided, deliver in duplicate such Counter-Case and accompanying evidence to each of the Arbitrators.

The foregoing provisions shall not prevent the Tribunal from permitting either Party to rely at the hearing upon documentary or other evidence which is shown to have become open to its investigation or examination or available for use too late to be submitted within the period hereinabove fixed for the delivery of copies of evidence, but in case any such evidence is to be presented, printed copies of it, as soon as possible after it is secured, must be delivered, in like manner as provided for the delivery of copies of other evidence, to each of the Arbitrators and to the Agent of the other Party. The admission of any such additional evidence, however, shall be subject to such conditions as the Tribunal may impose, and the other Party shall have a reasonable opportunity to offer additional evidence in rebuttal.

The Tribunal shall take into consideration all evidence which is offered by either Party.

ARTICLE 7.

If in the Case or Counter-Case (exclusive of the accompanying evidence) either Party shall have specified or referred to any documents, correspondence, or other evidence in its own exclusive

possession without annexing a copy, such Party shall be bound, if the other Party shall demand it within thirty days after the delivery of the Case or Counter-Case respectively, to furnish to the Party applying for it a copy thereof; and either Party may, within the like time demand that the other shall furnish certified copies or produce for inspection the originals of any documentary evidence adduced by the Party upon whom the demand is made. It shall be the duty of the Party upon whom any such demand is made to comply with it as soon as may be, and within a period not exceeding fifteen days after the demand has been received. The production for inspection or the furnishing to the other Party of official governmental publications, publishing, as authentic, copies of the documentary evidence referred to, shall be a sufficient compliance with such demand, if such governmental publications shall have been published prior to the 1st day of January, 1908. If the demand is not complied with, the reasons for the failure to comply must be stated to the Tribunal.

ARTICLE 8.

The Tribunal shall meet within six months after the expiration of the period above fixed for the delivery to the Agents of the Case, and upon the assembling of the Tribunal at its first session each Party, through its Agent or counsel, shall deliver in duplicate to each of the Arbitrators and to the Agent and counsel of the other Party (with such additional copies as may be agreed upon) a printed Argument showing the points and referring to the evidence upon which it relies.

The time fixed by this Agreement for the delivery of the Case, Counter-Case, or Argument, and for the meeting of the Tribunal, may be extended by mutual consent of the Parties.

ARTICLE 9.

The decision of the Tribunal shall, if possible, be made within two months from the close of the Arguments on both sides, unless on the request of the Tribunal the Parties shall agree to extend the period.

It shall be made in writing, and dated and signed by each member of the Tribunal, and shall be accompanied by a statement of reasons.

A member who may dissent from the decision may record his dissent when signing.

The language to be used throughout the proceedings shall be English.

ARTICLE 10.

Each Party reserves to itself the right to demand a revision of the Award. Such demand shall contain a statement of the grounds on which it is made and shall be made within five days of the promulgation of the Award, and shall be heard by the Tribunal within ten days thereafter. The Party making the demand shall serve a copy of the same on the opposite Party, and both Parties shall be heard in argument by the Tribunal on said demand. The demand can only be

made on the discovery of some new fact or circumstance calculated to exercise a decisive influence upon the Award and which was unknown to the Tribunal and to the Party demanding the revision at the time the discussion was closed, or upon the ground that the said Award does not fully and sufficiently, within the meaning of this Agreement, determine any question or questions submitted. If the Tribunal shall allow the demand for a revision, it shall afford such opportunity for further hearings and arguments as it shall deem necessary.

ARTICLE 11.

The present Agreement shall be deemed to be binding only when confirmed by the two Governments by an exchange of notes.

In witness whereof this Agreement has been signed and sealed by His Britannic Majesty's Ambassador at Washington, the Right Honourable James Bryce, O.M., on behalf of Great Britain, and by the Secretary of State of the United States, Elihu Root, on behalf of the United States.

Done at Washington on the 27th day of January, 1909.

(L.S.) JAMES BRYCE.

(L.S.) ELIHU ROOT.

Mr. Bryce to Mr. Bacon.

*British Embassy, Washington,
March 4, 1909.*

Sir,

I HAVE the honour to acknowledge the receipt of your note informing me that the Senate of the United States has approved the Special Agreement for the reference to arbitration of the questions relating to the fisheries on the North Atlantic Coast and of the terms of the Resolution in which that approval is given.

It is now my duty to inform you that the Government of His Britannic Majesty confirms the Special Agreement aforesaid, and in doing so confirms also the understanding arrived at by us that Question 5 of the series of questions submitted for arbitration—namely, from where must be measured the "3 marine miles of any of the coasts, bays, creeks, or harbours" referred to in the said Article—is submitted in its present form with the agreed understanding that no question as to the Bay of Fundy, considered as a whole, apart from its bays or creeks, or as to innocent passage through the Gut of Canso, is included in this question as one to be raised in the present arbitration, it being the intention of the Parties that their respective views or contentions on either subject shall be in no wise prejudiced by anything in the present arbitration.

This understanding is that which was embodied in notes exchanged

between your predecessor and myself on the 27th January, and is that expressed in the above-mentioned Resolution of the Senate of the United States.

I have, &c.

JAMES BRYCE.

Mr. Bacon to Mr. Bryce.

*Department of State, Washington,
March 4, 1909.*

Excellency,

I HAVE the honour to acknowledge the receipt of your note of the 4th instant, in which you confirm the understanding in the matter of the Special Agreement submitting to arbitration the differences between the Governments of the United States and Great Britain concerning the North Atlantic fisheries, as expressed in the Resolution of the Senate of the 16th February, 1909, and as previously agreed upon by the interchange of notes with my predecessor of the 27th January, 1909.

I therefore have the honour to inform you that this Government considers the Special Agreement as in full force and effect from and after the 4th day of March, 1909.

I have, &c.

ROBERT BACON
