FUR SEAL ARBITRATION. PROCEEDINGS OF THE TRIBUNAL OF ARBITRATION, CONVENED AT PARIS. VOL. XI

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Trieste

United States.

FUR SEAL ARBITRATION.

PROCEEDINGS

OF THE

TRIBUNAL OF ARBITRATION,

CONVENED AT PARIS

UNDER THE

TREATY BETWEEN THE UNITED STATES OF AMERICA AND GREAT BRITAIN CONCLUDED AT WASHINGTON FEBRUARY 29, 1892,

FOR THE

DETERMINATION OF QUESTIONS BETWEEN THE TWO GOVERNMENTS CONCERNING THE JURISDICTIONAL RIGHTS OF THE UNITED STATES

IN THE

WATERS OF BERING SEA.

VOLUME XI.

WASHINGTON:
GOVERNMENT PRINTING OFFICE.
1895.

FUR-SEAL ARBITRATION.

ORAL ARGUMENTS

ON

THE MOTION OF THE BRITISH GOVERNMENT

FOR THE

PRODUCTION BY THE UNITED STATES OF THE REPORT
OF HENRY W. ELLIOTT,

AND ON

THE MOTION OF THE UNITED STATES

FOR THE

REJECTION OF THE SUPPLEMENTARY REPORT OF
THE BRITISH COMMISSIONERS.

SESSION OF THE TRIBUNAL OF ARBITRATION.

SECOND DAY, APRIL 4TH, 1893.

The PRESIDENT.—The Tribunal has decided to appoint Mr. A. Bailly-Blanchard, and Mr. Cunynghame, as co-Secretaries with Mr. A. Imbert. Also, M. le chevalier Bajnotti, M. Henri Feer, M. le vicomte de Manneville, as assistant Secretaries and these gentlemen are, therefore, to take their seats.

Now, gentlemen, I address both the Agents and I may say that the Tribunal is ready to hear any motion from either of you or your Counsel. If anybody has a motion to present, the Tribunal are ready to hear it.

Sir CHARLES RUSSELL.—I have, on the part of the Government of Her Majesty, to make an application to the Tribunal which is based on Article 4 of the Treaty and also upon the general jurisdiction of this Tribunal to regulate the order of its proceedings. The application is that the representatives of the United States may be called upon to furnish either the original or an authentic copy of an important Report bearing upon seal life, and that they may be so ordered for the assistance of this Tribunal and in support of the contentions to be advanced on behalf of the Government of the Queen. The Report in question is the Report of an American citizen Mr. H. W. Elliott, and its subject is "Seal life".

It is important that the Tribunal should understand why we think it necessary that this Report should be forthcoming and why we think that the authority of Mr. Elliott on this subject should be brought to the attention of the Tribunal. Mr. Elliott is a gentleman who in the diplomatic correspondence leading up to this Treaty has been vouched by successive Ministers of the United States as an authority without any equal. Mr. Bayard, when he was Secretary of the United States, writing upon the 7th of February, 1888, describes Mr. Elliott as "a well known authority on seal life". That communication is to be found in the United States Appendix to their Case, and I can give my friends the reference, if they have not it at hand. Later, on the 1st of March, Mr. Blaine, who was then Secretary of State in America, on that date quotes Mr. Elliott again, in similar language, as an important authority on seal life; and finally on the 3rd of July, 1890, Mr. Goff, Treasury Agent to the United States, cites Mr. Elliott in this language. He says "There is but one authority on the subject of seal life," and he refers to Mr. Elliott as that one authority.

Now as to the Report, the Report which we desire is one which has peculiar importance from the fact that the authority of Mr. Elliott to make this special Report was conferred upon him by an Act of the Legislature of the United States which came into force in April, 1890. He was appointed under a special Act which authorises the Secretary of the Treasury to appoint some person well qualified by experience and education a special agent for the purpose of visiting the various trading

stations and native settlements on the seal Islands and so forth, for the purpose of collecting and reporting to him all possible authentic information upon the present condition of the Seal Fisheries of Alaska and so forth. The Tribunal, therefore, cannot fail to see that, if it be within the competence of this Tribunal to acquire possession of the information which such a Report presumably contains, that it is a matter of considerable importance.

Now how is this document referred to? The document exists, and that is not disputed by my learned friends who represent the United States. The report was made conformably to the Statute that I have cited a special report to the authorities of the United States, to be found, therefore, among the archives of the department to which it specially belongs. Our information, that is to say, the information of Her Majesty's Government, is and can only be secondhand upon the subject of this Report. Our information is derived from a publication made by Mr. Elliott, in which Mr. Elliott himself refers to this Report, and that publication was made on the 17th of November 1890, and is set out on page 53 of the 3rd part of the Appendix to the Case of Her Majesty's Government. Here it is referred to as having appeared in the columns of an American paper called the "Cleveland Leader and Morning Herald", of the 4th of May, 1891; and it is there signed or purports to be there signed "H. W. Elliott." It also purports to be, although so set out in the journal which I have mentioned, a copy of a communication or part of a copy of a communication purporting to be addressed to the Hon. William Windom, Secretary to the Treasury. It is, therefore, in the documents before the Tribunal, first referred to in the Case on behalf of Her Majesty. It is next referred to in the Counter Case of the United States at page 75; and I rely, and I think it right at once to call the attention of my learned friend to it, not merely on the fact of the reference which I am about to read, but upon the character of that reference, as a justification for the application which I am now making.

It is thus referred to. "The Commissioners", that is the British Commissioners, "also rely on a Newspaper extract which purports to be a summary of a report made by Mr. H. W. Elliott in 1890 to the Secretary of the Treasury to establish several alleged facts. One of these statements in this alleged Summary is that there were 250,000 barren female seals in the Pribiloff Islands in 1890. This is cited by the Commissioners to show the lack of virile males in the rookeries in that year." They then proceed. "An examination of the Extract as published in vol. 3, which is the reference I have given to the Tribunal in the Appendix to the case of Great Britain, "discloses the fact that this statement", that is to say the statement of figures, "appears after the signature of H. W. Elliott, and it cannot, therefore, be construed as a portion of such report. Furthermore, how the Commissioners can question Mr. Elliott's power to compute the number of seals on the island as they have done, and still rely at all on his computation as to the number of barren seals, needs explanation." The Tribunal therefore will see, first of all, the fact of the report is not questioned, but what is questioned is the authenticity of, the correctness of, the extract which purports to be given in the paper from which the British Commissioners of Her Majesty's Government in their Case cite.

Now in that state of things Her Majesty's Government considered that it was of moment that the actual report, or an authentic copy of it, should be at the disposition of those who advised the Queen, to use it as they think right, and to place it before this Tribunal if it throws any important light on any part of the discussion in which this

Tribunal is engaged; and accordingly on the 10th February in the present year the Agent of Her Majesty's Government addressed a letter to Mr. Foster, the Agent of the United States, in these terms. It relates to several documents, and I will only read that part of it which refers to this report. "The undersigned Agent of Her Britannic Majesty's Government has the honor, by the direction of Her Majesty's Government, to give notice that he applies for the production by the Agent of the United States of the following documents or copies of the following documents."—And then, under the third head, the document in question is thus described. "A full copy of the report of Mr. Henry W. Elliott in 1850 specified and alluded to on page 75 of the United States Counter Case". The answer of Mr. Foster to that demand was made in writing on the 16th February 1893, and referring to the document in question (I omit the other parts) this is the answer which the Representative of the United States thought proper to make. "The third document" (that is this report) applied for by Her Majesty's Government Agent is a full copy of Mr. H. W. Elliott's report in 1890 specified and alluded to on page 75 of the United States Counter Case.

"The undersigned begs to make the following statement in relation to the document applied for. The reference cited in the notice of the Agent of Her Britannic Majesty is in the following words", And thereupon is repeated the passage which I need not trouble you with reading again. It then proceeds: "The Counter Case of the United States alludes to a newspaper extract, not to Mr. Elliott's Report, and specifically to the same as published in the Appendix to the Case of Her Majesty's Government." The unwarranted construction placed upon the citation by the Agent of Her Britannic Majesty's Government is obvious.

The next paper extract to which reference is made, is cited by the British Commissioners, and therefore, it is to be supposed, is in their possession. If not, it can be as readily obtained by Her Majesty's Government as by the Government of the United States, which has not the same in its own "exclusive possession", which is the condition precedent required by Article 4 for the production of any report or document specified or alluded to. I will come to the construction of Article 4 in a moment. At present I wish to convey to the mind of the Tribunal what this answer amounts to.

First of all, what does it not amount to? It does not challenge the fact that there is an official report in existence made by one specially charged by the United States with the duty of making that report. It does not deny that that report is in existence, and may be made available should this Tribunal see fit so to direct. But what it does say, in effect, is this:—You first referred to this report. You refer to a newspaper extract. That newspaper extract is not exclusively in the possession of the United States. Your production of it shows that it is in your possession, and you have just as good means of getting that newspaper extract as we, the United States. That is their answer. I agree the answer is perfectly correct, as far as the newspaper extract is concerned. It is equally available for both of us; but what we want is to get the report which is referred to in that newspaper extract: to get that report *in extenso*. Our ground for urging as a matter of good sense and of equity that we must have that report is this; that they have in their reference to that extract challenged its correctness, and its authenticity, and have alleged that the statement referred to as a statement of Mr. Elliott is not to be regarded as a statement of Mr. Elliott, because, as appears in the newspaper