

dustries of any people or any other person.

"So great has been the injury to fisheries from the irregular and destructive slaughter of seals in the open waters of Behring Sea by Canadian vessels, whereas the government had allowed a hundred thousand to be taken annually for a series of years, it is now compelled to reduce the number to sixty thousand. If four years of this violation of natural law and neighbors' rights has reduced the annual slaughter of seals by forty per cent, it is easy to see how short a period would be required to work a total destruction of the fisheries.

"The ground upon which her Majesty's government justifies or, at least, defends the course of the Canadian vessels rests upon the fact that they were committing their acts of destruction on the high seas. It is doubtful whether her Majesty's government would abide by the rule if an attempt were made to interfere with the pearl fisheries of Ceylon, which extend more than twenty miles from the shore line, and have been enjoyed by England without molestation ever since their acquisition. So well recognized is the British ownership of those fisheries, regardless of the limit of the three-mile line, that her Majesty's government feels authorized to sell the pearl fisheries right from year to year to the highest bidder. Nor is it probable that the modes of fishing on the grand banks, altogether practicable but highly destructive, would be justified or even permitted by Great Britain on the plea that the vicious acts committed were more than three miles from shore."

He mentions dynamite as one of these destructive methods.

Does her Majesty's government seriously maintain that the law of nations is powerless to prevent such violation of the common rights of man? Are the supporters of justice in all nations to be declared incompetent to prevent wrongs so odious and so destructive? In the judgment of this government the law of the sea is not lawlessness. One step beyond that which her Majesty's government has taken in this direction, and piracy finds its jurisdiction."

"This government has been ready to concede much in order to adjust all the differences of views, and has, in the judgment of the President, already proposed a solution not only equitable but generous. The president now awaits with interest, not unmingled with solicitude, any proposition for a reasonable adjustment which her Majesty's government may submit. The forcible resistance to which this government is constrained in Behring sea is in the president's judgment demanded, not only by the necessity of defending the traditional long established rights of the United States, but also the rights of good government and good morals the world over.

"In this contention the government of the United States has no occasion and no desire to withdraw or modify the position which it has at any time maintained against the

Imperial Government of Russia. The United States will not withhold from any nation privileges which it demanded for itself when Alaska was a part of the Russian Empire, nor is the government of the United States disposed to exercise in those possessions any less power or authority than it was willing to concede to the Imperial Government of Russia when its sovereignty extended there."

On April 30th Pauncefote wrote to Blaine in answer to his invitation for a counter proposal for a settlement, that, as the sole object of the negotiations was the preservation of the fur seal species, regardless of advantage to any particular nation or private interest, it would be strange if there should be a failure to devise means of solving the difficulties which had arisen. In view of the divergent views held, no solution would satisfy opinion in Canada or Great Britain without a full inquiry by a mixed commission of experts. Meanwhile, he was prepared to recommend to his government certain provisional and precautionary measures to remove apprehension of the depletion of the fur seal species, pending the report of the commission. He then cites authorities to show that the number of seals is on the increase. The minister says:

"But in order to quiet all apprehension on that score, he would propose the following provisional regulations. That sealing should be prohibited in Behring sea, the Sea of Okhotsk and adjoining waters during the months of May, June, October, November and December, which may be termed the migration period of the fur seal.

"Second—That all sealing vessels be prohibited from approaching the breeding islands within a radius of ten miles."

The minister then embodies the draft of an agreement for a mixed commission to cover these and other points and report.

The Marquis of Salisbury, under date of May 22nd, in a letter to the British minister, after saying that the negotiations between Blaine and the minister affords a strong reason to hope that the question is in a fair way towards a satisfactory adjustment, undertakes to reply to Blaine's arguments relative to the statement that the seizures were justified by the fact that they engaged in the pursuit "contra mores," the Marquis says:

"It is obvious that two questions are involved. First, whether the pursuit and killing of fur seals in certain parts of the open sea is, from the point of view of international morality, an offense *contra bonos mores*. Secondly, whether, if such be the case, this justifies seizure on the high seas and subsequent confiscation in time of peace of private vessels of a friendly nation."

He says, further, that it is an axiom of international maritime law that such action is only admissible in case of piracy or in pursuance of a special international agreement. This principle has been universally admitted by jur-

ists, and was very distinctly laid down by President Tyler in a special message to Congress, dated February 27, 1843, when, after acknowledging the right to detain and search a vessel on suspicion of piracy, he goes on to say: "With this single exception, no nation has in time of peace any authority to detain the ships of another upon the high seas upon any pretext whatever, outside of its territorial jurisdiction."

"Now, the pursuit of seals in the open sea, under whatever circumstances, has never hitherto been considered piracy by a civilized State. Nor even if the United States had gone so far as to make the killing of fur seals piracy by their municipal law, would this have justified them in punishing offenses against such law committed by any persons other than their own citizens outside the territorial jurisdiction of the United States? In the case of the slave trade, a practice which the civilized world agreed to look upon with abhorrence, the right of arresting the vessels of another country was exercised only by special international agreement, and no one government has been allowed that general control of morals in this respect which Blaine claims in behalf of the United States in regard to seal hunting. But her Majesty's government must question whether this pursuit can be regarded as *contra bonos mores*, unless and until, for special reasons, it has been agreed by the international arrangement to forbid it. Fur seals are indisputably animals *ferae naturae* and have universally been regarded by jurists as *res nullius* until caught. No persons, therefore, can have property in them until he has actually reduced them into his possession by capture. It requires something more than a mere declaration that the government or citizens of the United States, or even other countries interested in the seal trade, are losers by a certain course of protection to render that course immoral.

"Her Majesty's government would deeply regret that the pursuit of fur seals on the high seas by British vessels should involve even the slightest injury to the people of the United States. If the case be proved, they will be ready to consider what measures can be properly taken for a remedy of such injury, but they would be unable on that ground to depart from the principles on which free commerce on the high seas depends."

Respecting Blaine's statement of the exclusive monopoly enjoyed by Russia, the Marquis quotes from John Quincy Adams, United States minister in Russia, which nation in 1821 prohibited all foreign vessels from approaching within three miles from the coast of Behring Straits to the fifty-first degree north latitude, to the effect that the United States could admit no part of these claims. He also cites the case of the United States brig *Lariat* to show that the right of fishing thus asserted included the right of killing fur-bearing animals. The brig was forced by an armed