THE BRITISH-AMERICAN PECUNIARY CLAIMS ARBITRATION

The Joint High Commission, which met in 1898 and endeavored to adjust the numerous differences between the United States and Canada, split upon the rock of the Alaskan Boundary. In 1903 this obstacle was removed from the field of controversy by the award of the London Tribunal, and when Mr. Elihu Root, who became Secretary of State in 1905, renewed the attempt to settle the Canadian questions, he preferred to employ the usual channels of diplomacy rather than to reassemble the international commission.

Among the subjects which had been discussed by the Joint High Commissioners, were numerous private claims, which had been at various times filed in the Department of State at Washington and in the British Foreign Office and which had been presented for settlement by the governments of the claimants. While in 1898 these were confined to claims by Canadians against the United States and by American citizens against Canada because of the limited province of the negotiations of the Joint High Commission, the renewed consideration of the question diplomatically gave opportunity to widen the field of discussion so as to include any outstanding pecuniary claims of private persons against the United States or against Great Britain or one of her colonies. Besides extending the consideration in this manner there were also included a large number of private claims which had been filed with the two governments subsequent to the adjournment of the Joint High Commission.

At an early period in the negotiations, which began in 1906, Secretary Root and Mr. Bryce, the British Ambassador at Washington, agreed that the expedient method for reaching a settlement was to submit the claims to arbitration, at the same time limiting the jurisdiction of the arbitrators to only such claims as should be mutually specified. While this course might prevent a government from submitting certain claims, which it deemed just, it was understood that a provision should be made in the arbitration agreement for the reservation of such claims for future consideration, but that any claim not specified or reserved would be forever barred.

The hundreds of claims, which formed the subject of negotiation, thus would fall into three classes, namely, (1) claims to be arbitrated, (2) claims reserved for negotiation after the arbitration, and (3) claims barred from further discussion. Into which of these three classes each claim on file in the Department of State or in the Foreign Office should be placed was the difficult task which confronted the negotiators.

Among the claims which had been called to the attention of the British Government by the Department of State were a large number of claims of American fishermen based upon the alleged illegal acts of the colonial authorities of Canada and Newfoundland in seizing and detaining their vessels and in imposing upon them customs, light, and harbor dues, while they were enjoying rights and privileges guaranteed to them by the Treaty of 1818 between the United States and Great Britain. The illegality of the acts depended upon the interpretation given to the terms of the treaty, and as to that the two governments had been in disagreement for nearly three-quarters of a century. At the time of the reopening of the negotiations in regard to the pecuniary claims, the policy of Newfoundland had given prominence to the "Fisheries Question" and caused the negotiators to give to it their immediate attention as the most pressing cause of irritation between the United States and the British American colonies. After a prolonged discussion of the subject and a failure to reach an arrangement diplomatically, it was determined to submit the dispute to arbitration at The Hague under the provisions of the general arbitration treaty of April, 1908, between the United States and Great Britain.

In consequence of the effect which the award of the Hague Court would have upon the validity of a large group of American claims, the negotiations in regard to the proposed claims arbitration were delayed until a decision was rendered in the Fisheries Controversy, although the two governments prepared a special agreement providing for an arbitral tribunal to pass upon the claims which should be specifically submitted to it.

This special agreement was signed on August 18, 1910,[1] and three weeks later the Hague Court gave its decision in the North Atlantic Coast Fisheries case. The effect of the decision was to make the Newfoundland Government liable for damages in a large number of cases, and to practically limit the jurisdiction of the proposed claims tribunal to an assessment of damages in such cases.

With the question of legal liability in the majority of the fisheries claims thus removed, the two governments reopened negotiations concerning the specific claims which should be submitted to arbitration. After several months of discussion, a schedule of such claims was drafted and signed on June 6, 1911, and on July 19 the special agreement with

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the schedule and with general terms of submission limiting the tribunal's jurisdiction received the approval of the Senate of the United States.

The date of the first meeting of the tribunal, dependent as it is upon an exchange of notes between the two governments, seems to be uncertain. The special agreement appears to contemplate a second schedule of claims, and it is presumed that each government has in its files many other claims, which it might reasonably expect to submit to arbitration. Whether the two governments will elect to assemble the arbitrators, who have not yet been named publicly, and proceed with the hearings upon the claims already scheduled, or will before organizing the tribunal agree upon a second schedule, is a matter which appears to be undetermined.

The requirement of the special agreement of August 18, 1910, that the claims to be submitted to arbitration shall be listed in schedules agreed upon by the litigant governments, is a departure from the usual practice in the arbitration of private claims of a general character. While it has been customary for either government to have the right to present for adjudication to a tribunal constituted to decide private claims any claim arising within a stated period or belonging to a definite class, there appear to be excellent reasons for the limitation of submission, which the negotiators of the present agreement incorporated in that instrument.

In certain cases a government may well hesitate to submit a principle, upon which the liability for a claim depends, to the decision of an arbitral tribunal, when such decision might deny the government's consistent declaration of the principle, upon which has rested a long established policy. Furthermore, the archives of every office of foreign affairs contains hundreds of claims against foreign governments which possess little or no intrinsic merit or lack sufficient evidence to establish them. It is frequently difficult for various reasons for a government to refuse to present such claims to an international tribunal with a general jurisdiction. As a result the government in submitting a claim of that sort and in seeking a favorable decision is placed in an awkward position, while the labors of the arbitrators and expenses of the proceedings are unduly increased. The plan of specifying the claims removes this embarrassment and will undoubtedly expedite the work of the tribunal.

The claims included in the schedule annexed to the special agreement arise from many causes and present some important and intricate ques-

tions of international law. Some of the American claims to be submitted have to do with land titles and concessions in New Zealand and the Fiji Islands acquired prior to the establishment of British sovereignty; with losses resulting from an uprising of natives in Sierre Leone; and with the deprivation of property rights for which Great Britain is held liable because of her conquest of the South African republics. The claims of American fishermen frequenting the coasts of Canada and Newfoundland form a long list, but the tribunal will only be required in the majority of cases to admeasure the damages. Where, however, the place of seizure or arrest is in controversy it will have to determine whether or not the colonial authorities were acting within their jurisdictions.

The British claims are of an equally diversified character and interest. There are claims arising from the seizure or detention of British Columbian sealing vessels in Bering Sea; for compensation for lands ceded prior to the War of 1812 by Indians, who removed at that time to Canada; for damages sustained by British subjects in Cuba and the Philippines through the operations of the military and naval forces of the United States during the War with Spain; and for losses suffered by British residents in Hawaii at the time of the overthrow of the monarchical government, for which the United States is alleged to be responsible as the successor of the republic then established.

In addition to the claims, which are above referred to, there are others of less pecuniary importance, which will raise some interesting questions as to liability and the measure of damages.

The proceedings and awards of the tribunal, because of the variety of the legal principles involved, can not but arouse the interest of jurists and students of international law in the United States and the British Empire. The declarations as to rules of international liability, which the arbitrators will be required to make in exact terms and to apply to concrete cases, will furnish for such rules a higher authority than any upon which they rest at the present time.

While recognizing the importance of the approaching arbitration in its possible effect upon a certain branch of international law, the agreement of the United States and Great Britain to submit again their rights to an impartial court is convincing proof that they have found international arbitration in the past a satisfactory method of settling differences which have failed to yield to the art of diplomacy.