

PROTECTION OF SUBMARINE CABLES.

FEBRUARY 16, 1888.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. NORWOOD, from the Committee on Foreign Affairs, submitted the following

REPORT:

[To accompany bill H. R. 5614.]

The Committee on Foreign Affairs, to whom was referred the bill (H. R. 5614) "to carry into effect the international convention of the 14th day of March, 1884, for the protection of submarine cables," having considered the same, and having made no amendment thereto, report the bill back with accompanying report and documents, and unanimously recommend the passage of the bill.

[House Report No. 3198, Forty-ninth Congress, first session.]

On the 14th day of March, 1884, a convention was entered into at Paris for the protection of submarine cables between the United States of America and His Majesty the Emperor of Germany, King of Prussia, His Excellency the President of the Argentine Confederation, His Majesty the Emperor of Austria, King of Bohemia, etc., Apostolical King of Hungary, His Majesty the King of the Belgians, His Majesty the Emperor of Brazil, His Excellency the President of the Republic of Costa Rica, His Majesty the King of Denmark, His Excellency the President of the Dominican Republic, His Majesty the King of Spain, His Excellency the President of the United States of Colombia, His Excellency the President of the French Republic, Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, Empress of India, His Excellency the President of the Republic of Guatemala, His Majesty the King of the Hellenes, His Majesty the King of Italy, His Majesty the Emperor of the Ottomans, His Majesty the King of the Netherlands, Grand Duke of Luxemburg, His Majesty the Shah of Persia, His Majesty the King of Portugal and the Algarves, His Majesty the King of Roumania, His Majesty the Emperor of all the Russias, His Excellency the President of the Republic of Salvador, His Majesty the King of Servia, His Majesty the King of Sweden and Norway, and His Excellency the President of the Oriental Republic of Uruguay.

By that convention it was provided that it should "be applicable outside of the territorial waters to all legally established submarine cables landed in the territories, colonies, or possessions of one or more of the high contracting parties."

Article II of the convention is as follows:

"II. The breaking or injury of a submarine cable, done willfully or through culpable negligence, and resulting in the total or partial interruption or embarrassment of telegraphic communication, shall be a punishable offense, but the punishment inflicted shall be no bar to a civil action for damages.

"This provision shall not apply to ruptures or injuries when the parties guilty thereof have become so simply with the legitimate object of saving their lives or their vessels, after having taken all necessary precautions to avoid such ruptures or injuries."

It was further provided that "the courts competent to take cognizance of this convention shall be those of the country to which the vessel on board of which the infraction has been committed belongs," with the understanding that in cases in which

this provision can not be carried out, "the repression of violations of the convention should take place in each of the contracting states, in the case of its subjects or citizens, in accordance with the rules of penal competence established by the special laws of these states, or by international treaties."

The convention was to take effect on a day to be agreed upon, and to remain in force five years from that day, and "in case none of the high contracting parties shall have given notice twelve months previously to the expiration of the said period of five years of its intention to cause its effects to cease, it shall continue in force one year, and so on from year to year.

The remaining provisions of the convention it is not deemed here necessary to quote, but the full text is appended to the proposed act herewith presented. The Senate of the United States ratified the convention on June 12, 1884, and President Arthur on January 26, 1885, and on the 22d of May, 1885, President Cleveland issued his proclamation reciting the facts, and concluding as follows:

And whereas the said convention has been duly ratified by the United States of America on the one hand, and by seventeen of the signatory powers on the other hand, and the respective ratifications were exchanged at Paris on the sixteenth day of April, one thousand eight hundred and eighty-five;

And whereas pursuant to Article XVI of said convention the contracting parties have agreed upon the fifteenth day of January, one thousand eight hundred and eighty-six, as the date on which the same shall go into effect;

Now, therefore, be it known that I, Grover Cleveland, President of the United States of America, have caused the said Convention to be made public, to the end that the same and every clause and article thereof may be observed and fulfilled with good faith by the United States and the citizens thereof.

In witness whereof I have hereunto set my hand and caused the seal of the United States to be affixed.

Done in the city of Washington, this twenty-second day of May, in the year of our Lord one thousand eight hundred and eighty-five, and of the Independence of the United States of America the one hundred and ninth.

[SEAL.]

GROVER CLEVELAND.

By the President:
T. F. BAYARD,
Secretary of State.

It now remains for Congress to carry out the terms of the Convention by appropriate legislation, and to that end the act entitled "An act to carry into effect the International Convention of the 14th of March, 1884, for the protection of submarine cables" has been framed.

This proposed act speaks for itself. Its scope is confined by the terms of the Convention, "outside of the territorial waters, to all legally established submarine cables landed on the territories, colonies, or possessions of one or more of the high contracting parties."

The provisions of the Revised Statutes of the United States from section 4300 to section 4305, inclusive, for the trial of offenses against the navigation laws of the United States, are extended by the proposed act to the trial of offenses against the provisions of articles 5 and 6 of the Convention.

The sections referred to are as follows:

Summary trials for certain offenses against navigation laws.

[Revised Statutes, chapter 9, sections 4300-4305.]

SEC. 4300. Whenever a complaint shall be made against any master, officer, or seaman of any vessel belonging in whole or in part to any citizen of the United States, of the commission of any offense, not capital or otherwise infamous, against any law of the United States made for the protection of persons or property engaged in commerce or navigation, it shall be the duty of the district attorney to investigate the same, and the general nature thereof; and if, in his opinion, the case is such as should be summarily tried, he shall report the same to the district judge, and the judge shall forthwith, or as soon as the ordinary business of the court will permit, proceed to try the cause, and for that purpose may, if necessary, hold a special session of the court, either in term time or vacation.

SEC. 4301. At the summary trial of offenses against the laws for the protection of persons or property engaged in commerce or navigation, it shall not be necessary that the accused shall have been previously indicted, but a statement of complaint, verified by oath in writing, shall be presented to the court, setting out the offense in such manner as clearly to apprise the accused of the character of the offense complained of, and to enable him to answer the complaint. The complaint or statement shall be read to the accused, who may plead to or answer the same or make a counter-state-

ment. The trial shall thereupon be proceeded with in a summary manner, and the case shall be decided by the court, unless, at the time for pleading or answering, the accused shall demand a jury, in which case the trial shall be upon the complaint and plea of not guilty.

SEC. 4302. It shall be lawful for the court to allow the district attorney to amend his statement of complaint at any stage of the proceedings before verdict, if, in the opinion of the court, such amendment will work no injustice to the accused; and if it appears to the court that the accused is unprepared to meet the charge as amended, and that an adjournment of the cause will promote the ends of justice, such adjournment shall be made, until a further day, to be fixed by the court.

SEC. 4303. At the trial in summary cases, if by jury, the United States and the accused shall each be entitled to three peremptory challenges. Challenges for cause, in such cases, shall be tried by the court without the aid of triers.

SEC. 4304. It shall not be lawful for the court to sentence any person convicted on such trial to any greater punishment than imprisonment in jail for one year, or to a fine not exceeding \$500, or both, in its discretion, in those cases where the laws of the United States authorize such imprisonment and fines.

SEC. 4305. All the penalties and forfeitures which may be incurred for offenses against this title may be sued for, prosecuted, and recovered in such court, and be disposed of in such manner as any penalties and forfeitures which may be incurred for offenses against the laws relating to the collection of duties, except when otherwise expressly proscribed.

Congress is given power by the Constitution "to regulate commerce with foreign nations, and among the several States, and with the Indian tribes, to establish post-offices and post-roads," and "to define and punish piracies and felonies committed on the high seas, and offenses against the law of nations" (Art. I). And under section 2, Art. III, of the Constitution, it is provided that "the judicial power shall extend to all cases in law and equity arising under this Constitution, the laws of the United States, and treaties made, or which shall be made under their authority," * * * and "to all cases of admiralty and maritime jurisdiction."

The question being presented whether or not Congress is empowered to pass this bill, it is answered, we think, by citation of the granted powers.

The telegraph extending its lines among the several States, or between the States, or any of them and foreign nations, is an instrument of commerce and of intercommunication, and the powers granted to Congress "are not confined to the instrumentalities of commerce, or the postal service known or in use when the Constitution was adopted, but they keep pace with the progress of the country, and adapt themselves to the new developments of time and circumstances. They extended from the horse and its rider to the stage coach, from the sailing vessel to the steam-boat, from the coach and the steam-boat to the railroad, and from the railroad to the telegraph, as these new agencies are successively brought into use to meet the demands of increasing population and wealth. They were intended for the government of the business to which they relate at all times and under all circumstances." This, the language of Chief-Justice Waite, giving the opinion of the Supreme Court in *Pensacola Telegraph Company v. Western Union Telegraph Company*, in 102 U. S. (2 Otto), 9 shows the meaning of the power to regulate commerce, and is sufficient sanction for the pending measure.

The United States undoubtedly had power to enter into the convention of March 14, 1884, and has therefore power to give jurisdiction for the trial of cases arising under it.

It being, in our opinion, plainly competent for Congress to pass the bill under the quoted clauses of the Constitution, we deem it needless to enter into a further discussion.

A P P E N D I X.

1.—LETTER FROM THE SECRETARY OF STATE.

DEPARTMENT OF STATE,
Washington, May 19, 1886.

SIR: I have the honor to submit herewith a draught of a bill to carry into effect the convention of the 14th of March, 1884, for the protection of submarine cables.

You will observe that in the seventh section of the draught a limitation has been introduced upon the operation of certain of the provisions of the fourth article of the convention. A similar limitation exists in the act which has been adopted by the British Government to carry the convention into effect; and the Cables Conference

which is now in session at Paris has under consideration a corresponding modification of the convention.

It seems to be expedient that the liability of owners of cables for injuries to other cables in laying or repairing their own should be limited to reasonable fathomable depths. Such a limitation is generally desired by the American cable companies, and our minister to France has been instructed, as the representative of the United States in the Paris conference, to advocate an appropriate modification of the fourth article of the convention.

I have the honor to be, sir, your obedient servant,

T. F. BAYARD.

Hon. PERRY BELMONT, M. C.,
*Chairman of the Committee on Foreign Affairs
of the House of Representatives.*

2.—BILL FOR PROTECTION OF SUBMARINE CABLES.

[Forty-ninth Congress, first session. H. R. 9324.]

A bill to carry into effect the international convention of the fourteenth of March, eighteen hundred and eighty-four, for the protection of submarine cables.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this act shall be known as the "Submarine Cables Act of eighteen hundred and eighty-six."

SEC. 2. That the provisions of this act shall be held to apply only to cables to which the convention of the fourteenth of March, eighteen hundred and eighty-four, which is hereto annexed and herein referred to as the convention, for the time being applies; and, subject to the provisions of this act, the provisions of the convention shall be of the same force as if they were embodied in this act, and shall be taken to be a part hereof.

SEC. 3. That any person who shall willfully break or injure, or attempt to break or injure, or who shall in any manner procure, counsel, aid, abet, or be accessory to such breaking or injury, or attempt to break or injure, a submarine cable, in such manner as to interrupt or obstruct, in whole or in part, telegraphic communication, shall be guilty of a misdemeanor, and, on conviction thereof, shall be liable to imprisonment for a term not exceeding two years, and to a fine either in lieu of or in addition to such imprisonment not exceeding five thousand dollars.

SEC. 4. That any person who by culpable negligence shall break or injure a submarine cable in such manner as to interrupt or obstruct in whole or in part telegraphic communication shall be guilty of a misdemeanor, and, on conviction thereof, shall be liable to imprisonment for a term not exceeding three months, and to a fine not exceeding five hundred dollars in lieu of or in addition to such imprisonment.

SEC. 5. That the provisions of this act shall not apply to a person who breaks or injures a cable in an effort to save the life or limb of himself or of any other person, or to save his own or any other vessel: *Provided*, That he takes reasonable precautions to avoid such breaking or injury.

SEC. 6. That the provisions of the Revised Statutes from section forty-three hundred to section forty-three hundred and five, inclusive, for the trial of offenses against the navigation laws of the United States, shall extend to the trial of offenses against the provisions of articles five and six of the convention; and a person convicted of an offense against the provisions of the said articles shall be liable to a fine not exceeding five hundred dollars.

SEC. 7. That the penalties provided in this act for the breaking or injury of a submarine cable shall not be a bar to a suit for damages on account of such breaking or injury.

SEC. 8. That the provisions of article four of the convention, in so far as they relate to the payment by the owner of a cable of the cost of repairs of another cable broken or injured in the attempt to lay or repair the former cable, shall not apply to that part of the latter cable which is laid in a depth of water exceeding one hundred fathoms.

SEC. 9. That for the purpose of carrying into effect the convention, a person commanding a ship of war of the United States or of any foreign state for the time being bound by the convention, or a ship specially commissioned by the Government of the United States or by the Government of such foreign state, may exercise and perform the duties vested in and imposed on such officer by the convention.

SEC. 10. That when an offense against this act shall have been committed by means of a vessel, or of any boat belonging to a vessel, the master of such vessel shall, unless

some other person is shown to have been in charge of and navigating such vessel or boat, be deemed to have been in charge of and navigating the same, and be liable to be punished accordingly.

SEC. 11. That any document drawn up in pursuance of article seven or article ten of the convention shall be admissible in any proceeding, civil or criminal, as prima facie evidence of the facts or matters stated therein.

SEC. 12. That unless the context of this act otherwise requires, the term "vessel" shall be taken to mean every description of vessel used in navigation, in whatever way it is propelled; the term "master" shall be taken to include every person having command or charge of a vessel; and the term "person" to include a body of persons, corporate or unincorporate.

SEC. 13. That the district courts shall have jurisdiction of all suits of a civil nature arising under this act; and from all decrees or judgments in such suits, where the matter in dispute exceeds the sum of \$50, exclusive of costs, an appeal shall be allowed to the circuit court next to be held in such district, and such circuit court is required to receive, hear, and determine such appeal.

Submarine cables convention.

Convention for the protection of submarine cables, made on the 14th of March, 1884, between the United States of America; His Majesty the Emperor of Germany, King of Prussia; His Excellency the President of the Argentine Confederation; His Majesty the Emperor of Austria, King of Bohemia, etc., Apostolical King of Hungary; His Majesty the King of the Belgians; His Majesty the Emperor of Brazil; His Excellency the President of the Republic of Costa Rica; His Majesty the King of Denmark; His Excellency the President of the Dominican Republic; His Majesty the King of Spain; His Excellency the President of the United States of Colombia; His Excellency the President of the French Republic; Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, Empress of India; His Excellency the President of the Republic of Guatemala; His Majesty the King of the Hollenes; His Majesty the King of Italy; His Majesty the Emperor of the Ottomans; His Majesty the King of the Netherlands, Grand Duke of Luxemburg; His Majesty the Shah of Persia; His Majesty the King of Portugal and the Algarves; His Majesty the King of Roumania; His Majesty the Emperor of all the Russias; His Excellency the President of the Republic of Salvador; His Majesty the King of Servia; His Majesty the King of Sweden and Norway; and His Excellency the President of the Oriental Republic of Uruguay.

The following is an English translation of the convention, with the omission of the formal beginning and end:

ARTICLE I.

The present Convention shall be applicable, outside of the territorial waters, to all legally established submarine cables landed in the territories, colonies, or possessions of one or more of the high contracting parties.

ARTICLE II.

The breaking or injury of a submarine cable, done willfully or through culpable negligence, and resulting in the total or partial interruption or embarrassment of telegraphic communication, shall be a punishable offense, but the punishment inflicted shall be no bar to a civil action for damages.

This provision shall not apply to ruptures or injuries when the parties guilty thereof have become so simply with the legitimate object of saving their lives or their vessels, after having taken all necessary precautions to avoid such ruptures or injuries.

ARTICLE III.

The high contracting parties agree to insist, as far as possible, when they shall authorize the landing of a submarine cable, upon suitable conditions of safety, both as regards the track of the cable and its dimensions.

ARTICLE IV.

The owner of a cable who, by the laying or repairing of that cable, shall cause the breaking or injury of another cable shall be required to pay the cost of the repairs which such breaking or injury shall have rendered necessary, but such payment shall not bar the enforcement, if there be ground therefor, of Article II of this Convention.

ARTICLE V.

Vessels engaged in laying or repairing submarine cables must observe the rules concerning signals that have been or shall be adopted, by common consent, by the high contracting parties with a view to preventing collisions at sea.

When a vessel engaged in repairing a cable carries the said signals, other vessels that see or are able to see those signals shall withdraw or keep at a distance of at least 1 nautical mile from such vessel, in order not to interfere with its operations.

Fishing gear and nets shall be kept at the same distance.

Nevertheless, a period of twenty-four hours at most shall be allowed to fishing vessels that perceive or are able to perceive a telegraph ship carrying the said signals, in order that they may be enabled to obey the notice thus given, and no obstacle shall be placed in the way of their operations during such period.

The operations of telegraph ships shall be finished as speedily as possible.

ARTICLE VI.

Vessels that see or are able to see buoys designed to show the position of cables when the latter are being laid, are out of order, or are broken, shall keep at a distance of one-quarter of a nautical mile at least from such buoys.

Fishing nets and gear shall be kept at the same distance.

ARTICLE VII.

Owners of ships or vessels who can prove that they have sacrificed an anchor, a net, or any other implement used in fishing, in order to avoid injuring a submarine cable, shall be indemnified by the owner of the cable.

In order to be entitled to such indemnity, one must prepare, whenever possible, immediately after the accident, in proof thereof, a statement supported by the testimony of the men belonging to the crew; and the captain of the vessel must, within twenty-four hours after arriving at the first port of temporary entry, make his declaration to the competent authorities. The latter shall give notice thereof to the consular authorities of the nation to which the owner of the cable belongs.

ARTICLE VIII.

The courts competent to take cognizance of infractions of this Convention shall be those of the country to which the vessel on board of which the infraction had been committed belongs.

It is, moreover, understood that in cases in which the provision contained in the foregoing paragraph can not be carried out, the repression of violations of this Convention shall take place, in each of the contracting States, in the case of its subjects or citizens, in accordance with the general rules of penal competence established by the special laws of those States, or by international treaties.

ARTICLE IX.

Prosecutions on account of the infractions contemplated in Articles II, V, and VI of this Convention shall be instituted by the State or in its name.

ARTICLE X.

Evidence of violations of this Convention may be obtained by all methods of securing proof that are allowed by the laws of the country of the court before which a case has been brought.

When the officers commanding the vessels of war or the vessels specially commissioned for that purpose, of one of the High Contracting Parties, shall have reason to believe that an infraction of the measures provided for by this Convention has been committed by a vessel other than a vessel of war, they may require the captain or master to exhibit the official documents furnishing evidence of the nationality of the said vessel. Summary mention of such exhibition shall at once be made on the documents exhibited.

Reports may, moreover, be prepared by the said officers, whatever may be the nationality of the inculpated vessel. These reports shall be drawn up in the form and in the language in use in the country to which the officer drawing them up belongs; they may be used as evidence in the country in which they shall be invoked, and according to the laws of such country. The accused parties and the witnesses shall have the right to add or to cause to be added thereto, in their own language, any explanations that they may deem proper; these declarations shall be duly signed.

ARTICLE XI.

Proceedings and trial in cases of infractions of the provisions of this Convention shall always take place as summarily as the laws and regulations in force will permit.

ARTICLE XII.

The High Contracting Parties engage to take or to propose to their respective legislative bodies the measures necessary in order to secure the execution of this Convention, and especially in order to cause the punishment, either by fine or imprisonment, or both, of such persons as may violate the provisions of Article, II, V, and VI.

ARTICLE XIII.

The High Contracting Parties shall communicate to each other such laws as may already have been or as may hereafter be enacted in their respective countries relative to the subject of this Convention.

ARTICLE XIV.

States that have not taken part in this Convention shall be allowed to adhere thereto on their requesting to do so. Notice of such adhesion shall be given, diplomatically, to the Government of the French Republic, and by the latter to the other signatory Governments.

ARTICLE XV.

It is understood that the stipulations of this Convention shall in no wise affect the liberty of action of belligerents.

ARTICLE XVI.

This Convention shall take effect on such day as shall be agreed upon by the High Contracting Parties.

It shall remain in force for five years from that day, and in case none of the High Contracting Parties shall have given notice twelve months previously to the expiration of the said period of five years of its intention to cause its effects to cease, it shall continue in force for one year, and so on from year to year.

In case one of the Signatory Powers shall give notice of its desire for the cessation of the effects of the Convention, such notice shall be effective as regards that power only.

ARTICLE XVII.

This Convention shall be ratified; its ratifications shall be exchanged at Paris as speedily as possible, and within one year at the latest.

In testimony whereof, the respective Plenipotentiaries have signed it, and have thereunto affixed their seals.

Done in twenty-six copies, at Paris, this 14th day of March, 1884.

ADDITIONAL ARTICLE.

The stipulations of the Convention concluded this day for the protection of submarine cables shall be applicable, according to Article I, to the colonies and possessions of Her Britannic Majesty, with the exception of those named below, to wit:

Canada.
Newfoundland.
The Cape.
Natal.
New South Wales.
Victoria.
Queensland.
Tasmania.
South Australia.
West Australia.
New Zealand.

Nevertheless, the stipulations of the said Convention shall be applicable to one of the above-named colonies or possessions, if, in their [its?] name, a notification to that effect has been addressed by the representative of Her Britannic Majesty at Paris to the Minister of Foreign Affairs of France.

Each of the above-named colonies or possessions that shall have adhered to the said Convention, shall have the privilege of withdrawing in the same manner as the contracting powers. In case one of the colonies or possessions in question shall desire to withdraw from the Convention, a notification to that effect shall be addressed by Her Britannic Majesty's representative at Paris to the Minister of Foreign Affairs of France.