

Ocean or from the interior of the continent," the right "forever," "of navigating freely, and without any hindrance whatever, all the rivers and streams which in their course towards the Pacific Ocean may cross the line of demarcation described in article 3 of the present convention."

The seventh article gives to the vessels of the two powers for ten years the liberty of frequenting "without any hindrance whatever, all the inland seas, gulfs, havens and creeks on the coast mentioned in Article 3"—i.e., the coast of the continent—"for the purpose of fishing and trading with the natives."

The eighth article declares that "the port of Sitka shall be open to the commerce and vessels of British subjects for the space of ten years," and if an extension of that term is "granted to any other power," the "same shall be granted to Great Britain."

The ninth article excepts trade in spirituous liquors, fire arms, gunpowder and warlike stores "with the natives of the country."

The tenth article secures to every British and Russian vessel navigating the Pacific Ocean, the right, if compelled by storms or accident, to take shelter and refit in any of the ports of the respective parties and to provide itself with all necessary stores without paying any other than port and lighthouse dues, which are to be the same as those charged to vessels of the nation to which the port belongs, and the eleventh article declares that in case of an infraction of any of the articles of the convention the civil and military authorities of both parties are prohibited from taking forcible measures, and shall make an exact and circumstantial report of the matter to their respective courts who engage to settle the same in a friendly manner according to the principles of justice.

As the assignee of Russia the United States is bound to observe the provisions of the treaty here quoted from, and bound to grant to British subjects navigating, fishing or trading in the North Pacific the rights and privileges guaranteed to them by treaty.

How can the provisions of the treaty negotiated by Canning and Nesselrode, in 1824, be reconciled with Mr. Blaine's contention that the United States purchased from Russia the right to exclude British vessels from Behring Sea altogether? The Anglo-Russian treaty of 1825—the stipulations and conditions of which, so far as Great Britain and Canada are concerned, are still in force—did not concede to Russia any territorial rights or property in Behring Sea or the North Pacific Ocean. On the contrary the right of British vessels to navigate and "fish" in those waters is expressly conceded by Russia.

By the purchase of Alaska in 1867 the United States acquired what Russia had power by the law of nations to convey; nothing more. Russia did not own and therefore had no authority to sell or convey any part of Behring Sea or the Pacific Ocean, excepting the littoral waters to the extent of a marine league from her shores. And it has not been even asserted that Russia undertook or endeavoured, when she sold Alaska, to transfer anything more, or to abrogate the treaty of 1825, or any of its articles.

With respect to the argument that Behring Sea is a *mare clausum*, it is absurd to contend that any Russian Czar could, by a mere "ukase," take possession of international waters, and prevent vessels from other nations from coming within 100 miles of Russian territory. Russia had neither the right to assert such a power nor the means to enforce it.

Canada's view of the course of the United States in asserting sovereignty over Behring Sea, while denying Canada's jurisdiction over the waters anywhere beyond three miles of her shores, was well expressed by Hon. David Mills, M. P., ex-Minister of the Interior, in a recent speech in the Canadian House of Commons. Mr. Mills said:—

"So far as I am concerned I am ready to deal liberally with the neighbouring republic in everything relating to our commercial relations with them, but with regard to our sovereign rights I would not surrender to them a piece of territory if it were fit for no other purpose than for fishermen to dry their nets upon. Look at the difference between the conduct of our Government in this matter (the Atlantic coast fisheries) and the conduct of the neighbouring republic with regard to another matter in dispute. Take the case of their claim to sovereignty over Behring Sea. Here is a body of water that is over four thousand miles in width. It is part of the open ocean that has been recognized from the time of its discovery, until Russia put up a certain pretension, as part of the open sea, equally open to the ships of all nations. Within the past few years the Government of the United States has claimed a sovereignty over that sea, and they have seized our vessels, they have confiscated the property of seal hunters in the open sea, far beyond the limits that international law usually recognizes, and this new pretension, this pretension contrary to the ancient practice, has been allowed to go practically into operation. On our eastern shores there are land-locked bays, and what is the contention of the United States with respect to these? It is that if a bay is more than six miles wide that that portion which lies more than three miles from the shore is a part of the open sea and equally accessible to the ships of all nations for every possible purpose."

The action of the British Government in assenting to the *modus vivendi* of last year is regarded in Canada as a partial surrender of national rights, inasmuch as Great

Britain thereby conceded, temporarily at least, the right of the United States Congress to make laws governing the business of killing seals in Behring Sea. What justice was there in agreeing to the enforcement of laws which the Congress of the United States has no power, whatever, to enact? The acquiescence of the British Government, even for a specified period, in the pretensions of the United States with respect to Behring Sea proprietorship has no doubt encouraged the Americans to assert those pretensions with greater persistence.

In the negotiations between Great Britain and the United States, which preceded the war of 1812, with respect to "the Right of Search" claimed by the British Government over American vessels navigating "the narrow seas," the United States Government strongly denied the right of Great Britain or any other power to attempt to exercise jurisdiction over waters more than three miles from land, or over waters which could not, by the law of nations, be appropriated by any power. Yet Mr. Blaine has claimed for the United States the right not only to search but to seize and confiscate British vessels found seventy miles from land.

Chancellor Kent, that eminent American jurist, whose commentaries upon international law are high authority in England as well as in America, tells us that "the free use of the ocean for navigation and fishing is common to all mankind, and the public jurists generally and explicitly deny that the main ocean can ever be appropriated."

Mr. Blaine's contention that the waters lying between Alaska and the Russian Asiatic coasts were subject to the territorial jurisdiction of Russia prior to the purchase of Alaska, is absurd. As well might Great Britain claim exclusive jurisdiction over that portion of the North Atlantic Ocean lying between the British Islands and British North America. The Aleutian Islands are separated in some instances by hundreds of miles of ocean.

How far does a nation's jurisdiction extend from its coasts over the high seas? In the case of the *Queen vs. Keyn*, tried in England in 1876, the court, consisting of fourteen eminent judges, held that even the waters within three miles of the English coast were "the high seas," and that a foreign vessel in that case was not amenable to the laws of England for a collision resulting in the death of a British subject. On that occasion Chief Justice Cockburn said that "the claim to exclusive dominion over the narrow seas and consequent jurisdiction over foreigners was extravagant and unfounded, and the doctrine of the three-mile jurisdiction has taken the place of all such pretensions." Chancellor Kent, as quoted by Chief Justice Cockburn, says "the general jurisdiction extends into the sea as far as cannon shot will reach and no farther, and this is generally calculated to be a marine league. And the Congress of the United States has recognized this limitation."

As to the statement that Russia excludes all foreigners from the privilege of killing seals in the western half of Behring Sea, two wrongs do not make one right, and an illegal and improper exercise of power by Russia on the Siberian coasts is neither authority nor justification for Mr. Blaine's assertion of supreme dominion over Behring Sea and the marine animals which swim therein.

The treaty of 1825 between Russia and England entirely ignored Emperor Paul's ukase, and Russia agreed not to molest or trouble British subjects "in any part" of the Pacific Ocean, or "in fishing therein." Does not the term "fishing" in Article I of the treaty include seal-killing?

Let it be assumed, then, that the United States Government has abandoned its pretension that Behring Sea is a *mare clausum* and its claim to exclusive jurisdiction over the eastern half of the North Pacific Ocean, and limited its pretensions to a right to protect the fur seal fisheries. Then comes the question: By what right or authority does the Congress of the United States undertake to make and enforce laws and regulations affecting something over which it has no jurisdiction whatever? The plea is that it is necessary to prevent the fur seals from being exterminated. Upon the same grounds Congress might assume the right to make laws placing restrictions upon the mackerel fisheries of the North Atlantic, or the seal fishing of the Newfoundland coasts.

Of course the United States Congress has a right to make regulations restraining the killing of marine animals on the islands or coasts of Alaska, or within three miles of such islands or coasts, but beyond that it has no power or jurisdiction to interfere with the actions of subjects of other nations.

And it may be remarked that while Mr. Blaine's revenue cutters have been seizing Canadian schooners in Behring Sea and confiscating them for fishing at distances more than seventy miles from land, it has been found almost impossible to reconcile American fishermen and statesmen to the idea that they have not a natural and inalienable right to fish close to the coast of Nova Scotia and Prince Edward Island.

The Congress of the United States has no more right to make laws governing the killing of seals in the waters of Behring Sea, outside of the three-mile limit, than the Parliament of Great Britain, the Parliament of Canada, or the German Reichstag has. The pretext that because the fur seals breed upon the Pribylov Islands, that therefore the United States has jurisdiction over the animals while they are on their way to or from, or are swimming about, those islands, is extremely sophistical. As well might Canada claim jurisdiction over the flocks of wild geese

which hatch around Hudson Bay or the shoals of mackerel which spawn within three miles of her Atlantic coasts.

Granting that, in the general interest, regulations for the protection of the fur seal fisheries of the north Pacific are necessary, it does not follow that the Congress of the United States has the right to make regulations affecting the rights of subjects of other nations. The Parliament of Great Britain has just as good a right to prescribe the terms upon which citizens of the United States shall take seals in Behring Sea, outside the three-mile limit, as the Congress of the United States has to make laws touching or limiting in any way whatsoever the liberty of British subjects in that regard.

It is not pretended on behalf of the United States that the British vessels seized and confiscated for taking seals in Behring Sea were captured within three miles of the coast. On the contrary, the testimony of the naval officer who made the seizure (quoted by Lord Salisbury in his letter of 10th September, 1887) shows that they were seized 70, 75 and 115 miles respectively from St. George's Island.

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TWO KNAPSACKS:

A NOVEL OF CANADIAN SUMMER LIFE.

BY J. CAWDOR BELL.

CHAPTER XVIII.—(Continued).

BRIDESDALE was lit up again, for nobody cared to go to bed. The ladies came down to see that the belligerents were safe, and Miss Carmichael and her brave companions received the meed of praise and thanks their splendid services deserved. Sorry for the injuries of the would-be robbers, and perhaps murderers, the Squire was nevertheless relieved in mind by the success of the night's work. In his satisfaction he entered the kitchen, and ordered late supper for his allies in that quarter. Then he summoned Constable Rigby from the stable, bidding him bring his prisoner with him, and give him something to eat. The constable declined to sit in a prisoner's presence in an unofficial capacity, but had no objection to feeding him. When, therefore, the young intruder had eaten his supper, his gaoler standing by, he was reconducted to the separate stable, handcuffed, chained, and locked in, the key being deposited in the constable's pocket. Then, and only then, did Mr. Rigby unbend, and, after supper, indulge with his five companions, male and female, in the improving geographical game of cards. The dining-room bell occasionally called Tryphosa away, when, as a matter of course, Timotheus played for her. The colonel, with a cigar in his lips, and a substitute for fine old Bourbon in his hand, went up-stairs to enlighten his dear boy as to the doings of the night, and, especially as to dear Cecile's magnificent courage. The dominie was terribly concerned about that lady's single-handed contest with the desperate robber, and would not be satisfied until she came in person to let him know she was not hurt in the least, that Marjorie deserved all the credit of the capture, and that the unhappy youth had seemed so taken aback by the character of his hall assailants as to be almost incapable of resistance. The colonel smoked, and sipped, and smiled incredulously, as much as to say, You may believe this young person if you like, my dear boy, but there is somebody who knows better, and can make allowance for a young lady's charming self-depreciation. Mrs. Carruthers, grateful for the safety of her husband and her father, and Mrs. Carmichael, for that of her brother and Mr. Errol, were prepared to be hospitable to a degree. The minister had another opportunity of praising the toddy which the latter lady brewed, and Mr. Perrowne said: "It isn't half bad, you know, but I don't know what Miss Crimmage's Band of Howpe would think of it, if she knew the two temperance champions were imbibing at three o'clock in the morning." The minister remarked that he didn't care for all the Crimmages in the world, nor the Crummages either, whatever he meant by that, for there was no such name in the neighbourhood. "Basil," said Miss Halbert, "you had better take care. I shall not allow you any toddy, remember, but shall subscribe for the *Montreal Weekly Witness*." Mr. Perrowne put a little out of the decanter into his tumbler, with a practised air very unlike that of a Band of Hope patron, saying: "Drowned the miller, Fanny! Must take time by the forelock, if you are going to carry out your threats. But I think I'll drop you, and ask Mrs. Carmichael to have compassion on me. She wouldn't deprive a poor man of his toddy, would you now, Mrs. Carmichael?"

"Mrs. Carmichael," said Mr. Errol, answering for that lady, "would hae mair sense," which shut the parson effectually out of conversation in that quarter.

Miss Carmichael listened to the conversation, and beheld the minister renewing his youth. She heard Mr. Bangs entertain her uncle with stories about a certain Charley Varley, and Mr. Terry say to Mrs. Du Plessis, "Whin I was in Sout Ameriky wid the cornel, God save him." She saw her friend Fanny exciting the lighter vein in the affianced Perrowne, and knew that Cecile was upstairs, the light of the dominie's eyes. There was a blank in the company, so she retired to the room in which she had found the burglar, and looked at the knapsacks there. She knew his; would it be wrong to look inside? She would not touch Mr. Wilkinson's for wealth untold,