

desire at present to exclude them from it, nor to impose any narrow construction on the word "unsettled." A bay containing a few isolated houses is not to be considered as "settled" for the purpose of this clause of the Convention.

On the other hand, naval officers should be aware that Americans who exercise their right of fishing in Colonial waters in common with subjects of Her Majesty, are also bound, in common with those subjects, to obey the law of the country, including such Colonial laws as have been passed to insure the peaceable and profitable enjoyment of the fisheries by all persons entitled thereto.

The enforcement of the Colonial laws must be left, as far as the exercise of rights on shore is concerned, to the Colonial authorities, by whom Her Majesty's Government desire they shall be enforced with great forbearance, especially during the present season. In all cases they must be enforced with much forbearance and consideration, and they must not be enforced at all by Imperial officers if they appear calculated to place the Americans at a disadvantage in comparison with British fishermen in the waters which, by the Treaty of 1818, are opened to vessels of the United States. On the contrary, their unequal operation should, in this case be reported to their Lordships, a copy of the report being at the same time sent to the Governor of the Colony.

II. Fuller explanation is necessary respecting that part of the Convention by which the United States renounce the right of fishing, except within the permitted limits—"on or within three miles of any of the coasts, bays, creeks, or harbours" of British North America, and are forbidden to enter such bays or harbours, except for certain defined purposes.

The Act of Parliament (59 Geo. III, cap. 38), already mentioned, subjects to forfeiture any foreign vessel which is found fishing, or having fished, or preparing to fish, within the prohibited limits, and authorizes the enforcement of this forfeiture by the like means and in the same Courts as may be resorted to under any Act of Parliament in the case of any offence against the laws relating to Customs, or the laws of trade and navigation.

The statutory mode of enforcing the law against Customs offences committed in the Colonies will be found in the Act 16 and 17 Vict., cap. 107, and particularly in the 2nd, 183rd, 186th, and 223rd clauses. But as it would probably be held under this Act that a vessel could only be seized safely by a naval officer "duly employed for the prevention of smuggling" (section 223), it will be probably more convenient for naval officers to take advantage of the procedure authorized by the 103rd clause of the Merchant Shipping Act, which is a law relating to "trade and navigation."

Under that clause* any commissioned officer on full pay in the military or naval service of Her Majesty may seize any ship subject to forfeiture, and bring her for adjudication before any Court having Admiralty jurisdiction in Her Majesty's dominions.

It will probably be advisable, as a general rule, that officers of the navy should proceed against vessels engaged in unlawful fishing under the Act of Geo. III and the Merchant Shipping Act, which extend to all the closed waters of British North America, and do not require the officer's authority to be fortified by any Colonial commission or appointment. But more extended powers are conferred by the above-mentioned local Acts of Nova Scotia, New Brunswick, and Prince Edward Island, on persons commissioned by the Lieutenant-Governors of these Colonies, and any officer who is permanently charged with the protection of the fisheries in the waters of any of these Colonies may find it useful to obtain such a commission.

It will invest him with a special authority in the waters of the Colony to which it relates, to bring into port any foreign vessel which continues within these waters for twenty-four hours after notice to quit them, and, in case she shall have been engaged in fishing, to prosecute her to condemnation. It will also enable him to prosecute the forfeiture of the vessel, if it shall be found to have prohibited goods on board. But this power it would be undesirable to exercise, as Her Majesty's Government do not at present desire officers of the navy to concern themselves with the prevention of smuggling.

These being the powers legally exercisable by officers of Her Majesty's Navy, it follows to consider within what limits and under what conditions they should be exercised.

Her Majesty's Government are clearly of opinion, that by the Convention of 1813, the United States have renounced the right of fishing, not only within three miles of the Colonial shores, but within three miles of a line drawn across the mouth of any British bay or creek. But the question what is a British bay or creek is one which has been the occasion of difficulty in former times.

It is, therefore, at present, the wish of Her Majesty's Government neither to concede, nor, for the present, to enforce, any rights in this respect which are in their nature open to any serious question. Even before the conclusion of the Reciprocity Treaty, Her Majesty's Government had consented to forego the exercise of its strict right to exclude American fishermen from the Bay of Fundy; and they are of opinion that during the present season that right should not be exercised in the body of the Bay of Fundy, and that American fishermen should not be interfered with either by notice or otherwise, unless they are found within three miles of the shore or within three miles of a line drawn across the mouth of a bay or creek which is less than ten geographical miles in width, in conformity with the arrangement made with France in 1839.† American vessels found within these limits, should be warned that by engaging or preparing to engage in fishing they will be liable to forfeiture, and should receive the notice to depart which is contemplated by the laws of Nova Scotia, New Brunswick, and Prince Edward Island, if within the waters of one of these Colonies under circumstances of suspicion. But they should not be carried into port except after wilful and persevering neglect of the warnings which they may have received; and in case it should become necessary to proceed to forfeiture, cases should, if possible, be selected for that extreme step in which the offence of fishing has been committed within three miles of land.

* 17 and 18 Vict., cap. 104, sec. 103.

† Hertslet, vol. v, p. 89; Convention of August 2, 1839, Articles IX and X.