

proceedings, which might not be burdensome for merchantmen, have, with reference to fishing vessels, obstructed the course of justice. Through the intervention of counsel employed by the Secretary of State for observing the trials of the "David J. Adams" and the "Ella M. Doughty," there have been received practical lessons in the difficulties surrounding fishing vessels under the statutes and proceedings of the courts of the Dominion. As already explained, these had been allowed to thrive so long without any successful effort on the part of the United States to prevent their growth, that they had become too deeply rooted in the general mass of Canadian legislation to permit their being entirely drawn out. It is believed, however, that so far as this article may fail to remove all these difficulties detail by detail, its limitation of penalties, except for illegal fishing or preparation therefor, will do very much to prevent injustice under any circumstances; while as to vessels poaching, it is for the interest of each Government that they shall be restrained by severe punishments.

To follow out the matter more in detail: A fishing vessel is seized in the Bay of St. Ann's or up in the Gulf of St. Lawrence. Under existing statutes, first of all, and before she can claim a trial or take testimony or other steps towards a trial, she is required to furnish security for costs not exceeding \$240. The practical experience is that fishing vessels taken into strange ports are rarely provided with funds or credit, and therefore they are compelled to communicate with their owners for assistance, and by reason of the consequent delay are unable to take even the preliminary steps before the shamesmen scatter and the witnesses are lost; because shamesmen, not being ordinarily on wages, can not be held to a vessel moored to a pier. This provision of the Canadian law is not singular; in our own admiralty courts no person can ordinarily claim a fishing vessel, or whatever vessel she may be, without furnishing like security. Under the treaty this disappears; and in practice this relief will be found to be of great benefit to our fishermen.

Next, the courts into which all the cases of these fishing vessels have been brought are not provincial, but are Imperial vice-admiralty courts, established and governed by the uniform rules of the Imperial statute, although presided over by a local judge designated for that purpose. As a consequence, all the paraphernalia and fees of Imperial courts are met, and the progress of the trial requires the early disbursement of large sums of money common in all of them, but unknown in our own and in the provincial courts. These are necessarily so large that our consular correspondence shows the burden of securing the costs and advancing fees was alone sufficient in some instances to compel owners to abandon the defence of vessels of moderate value. The statutes to which we have already referred, moreover, stipulated that no vessel should be released on bail without the consent of the seizing officer; and, although it must be admitted that in practice this has not yet been found to create difficulty, it is annulled by the treaty. While it is impossible to anticipate or prevent all causes of legal delays and expenditures, yet there is no reasonable ground for denying that this thirteenth article will essentially moderate these enumerated rigors.

The punishment for illegally fishing in the prohibited waters has always been forfeiture of the vessel and cargo aboard at the time of seizure. It was not possible, nor was it for the interests of either country, to demand that the penalty imposed on actual poachers should not be severe; but this article provides that only the cargo aboard at the time of the offense can be forfeited, and the provincials can not lie back until a vessel has taken a full cargo, and then sweep in the earnings of the entire trip for an offense committed perhaps at its inception. Moreover, the article provides the penalty shall not be enforced until reviewed by the governor-general in council, giving space for the passing away of temporary excitement and for a calm consideration of all mitigating circumstances.

Also, from the passage of the statute of 1819 the penalty for illegally "preparing to fish" has been forfeiture. This has at times been construed to extend not only to preparing to fish illegally, but also to a preparation with the Dominion waters for fish-

part "of His Britannic Majesty's dominions in America?" This having been ascertained, another question arises, whether any bay which was not jurisdictional in A. D. 1818 has since become so inclosed by the growth of population that, on the principles by which we claim as our exclusive waters Chesapeake and Delaware bays and Long Island Sound, we may properly concede it to Great Britain according to its existing circumstances, as an inducement to a suitable and just arrangement of all questions of delimitation? With reference to this question, and indeed with reference to all this branch of the case, the United States, with its extensive coasts, its numerous bays, its rapidly increasing population and commercial interests can not wisely permit a narrow precedent.

The bay of Chaleur, the shores of which in A. D. 1818 were uninhabited, has by the advance of population become a part of the adjacent territory for all jurisdictional purposes; and it has ceased to be of special value to our vessels except for shelter or supplies. The same observations apply with greater force to the bay of Miramichi. The bays of Egmont and St. Ann's are hardly more than mere sinuosities of the coast; but they and the excluded parts of the Newfoundland bays are of no value to our vessels for fishing. It is not unreasonable to grant the release of all of them, in view of the fact that as to all other waters we remove long-standing disputes. It is not to be overlooked that all these bays have long been claimed by Great Britain as of right.

At the mouths of all the bays designated in the treaty by name, the fourth article make special lines of delimitation. There seems to be an impression with some that the exclusion is three miles seaward therefrom; but this is plainly erroneous. Each of these lines is run from one powerful light to another, except one terminus at Cape Smoke, which is a promontory over seven hundred feet in height. The external periphery of visibility of these lights overlap each other very considerably on each of these lines, so that for our vessels danger is not where bays have been specifically released. This will be found at the three-mile limit from the open shore, where it always has been. There is, however, confusion about this, and some debit the treaty just negotiated with the inevitable hazards consequential on the principles of that of 1818. If the commission of delimitation is appointed as the treaty provides, this commission, of course, will, as Mr. Seward and Mr. Fish foresaw, diminish the danger on the open coast, by giving on the charts which it prepares bearings of lights and other marked points; so that vessels by the aid of these bearings will be able to protect themselves in some degree. Nevertheless, there are the nights and thick weather, but the consequences of these are inherent in the principles of the convention of 1818, and will be diminished and not enlarged by the practical workings of the present treaty.

In the case of the "Washington," Mr. Bates referred to the treaty between France and Great Britain of 1839, excluding from the common right of fishing all bays, the mouths of which did not exceed ten miles in width, and indorsed this as a proper limit. In the treaty between France and Great Britain of 1867 the same limit was adopted; and it was approved by the common judgment of Great Britain, the German Empire, Belgium, Denmark, France, and the Netherlands, in the treaty concerning the North Sea Fisheries, signed at The Hague May 6, 1882. With the weight of international consensus in its favor, and in view of the interest of the United States to aid precedents which will enable us to afford proper protection to our extensive coasts, and admitting the necessity of finding some practical method of delimitation, this rule seems on the whole convenient, wise, and not unjust. Moreover considering the inability of our mackerel vessels, substantially all of which use the purse seine to fish in shallow waters along the coast, and that very few American fishermen, perhaps none, in the pursuit of halibut or cod desire to fish there, it is impossible to believe that this rule surrenders anything of essential value to us.

It is fair to add that the ten-mile rule was apparently not congenial to Canada. In the proposals made to Great Britain in the autumn of A. D. 1886, Mr. Bayard, after reciting substantially the suggestions made by Mr. Seward, and elaborating them, of-

Secretary of State, to Mr. Adams, minister at London, of April 10, A. D. 1887, Mr. Seward suggested a mixed commission for the following purposes:

"(1) To agree upon and define a series of lines the limits which shall separate the exclusive from the common of fishing on the coasts, and in the adjacent, of the British North American colonies, in conformity with the first of the convention of 1818; the said lines to be regularly numbered, duly described, also clearly marked on charts prepared and duplicate for the purpose.

"(2) To agree upon and establish regulations as may be necessary and to secure to the fishermen of the United States the privilege of entering British harbors for the purpose of shelter, repairing damages therein, of purchasing wood and of obtaining water, and upon and establish such restrictions as may be necessary to prevent the abuse of the privilege reserved by said convention to the fishermen of the United States.

"(3) To agree upon and recommend penalties to be adjudged, and such punishments and jurisdiction as may be necessary to secure a speedy trial and judgment as little expense as possible for the torts of rights and the transgressors limits and restrictions which may be adopted."

The "memorandum" prepared by the Department of State for the information of the commissioners who, on the part of the United States, assisted in negotiating the treaty of Washington of 1871; contains suggestions for adjustment in the following language:

"(1) By agreeing upon the terms which the whole of the reserved grounds may be thrown open to American fishermen, which might be accomplished with a repeal of the obnoxious laws the abrogation of the disputed reservations as to ports, harbors, etc.; or, failing that,

"(2) By agreeing upon the construction of the disputed renunciation, upon principles upon which a line should be drawn by a joint commission to exhibit the terms from which the American fishermen should be excluded, and by repealing the obnoxious laws, and agreeing upon the means to be taken for enforcing the same, the penalties to be inflicted for forfeiture of the same, and a mixed commission to enforce the same. It may also be considered whether it should be agreed that the fish taken in the open to both nations shall be admitted of duty into the United States as British North American colonies."

It will be observed that the suggestions Mr. Seward were substantially repeated in the instructions of A. D. 1871, and were so embraced almost in terms in the sales accompanying the dispatch of Mr. Seward to Mr. Phelps of November 1871 and the treaty just negotiated, it is believed accomplishes all which was contemplated.

Mr. Bayard's Reply to Invitation to Speak at Boston.

WASHINGTON, D. C., March 14,

My Dear Sir:—I have to thank you for your note of the 9th inst., with which I received an invitation signed by a number of the representative men of New England, of different political parties, to visit and "deliver an address on the scope and purpose of the treaty recently submitted to the United States Senate for ratification."

The "settlement upon just and equitable terms of the questions in dispute between Great Britain and the United States concerning the rights of American fishermen in British North American waters and fisheries" is a subject upon which I have bestowed much of my present office, and the efforts to promote such a settlement embodied in the treaty now before the Senate. But the treaty has been prepared