

beyond a doubt. This is smoothly delusive. Courts of law are not arbitrators to review the foreign policy of their governments. They must take the construction of a treaty as the executive for the time being gives it. Such construction has been made by Canada. The Hon. George E. Foster, Minister of Marine and Fisheries, on March 5, 1886, issued a "warning" declaring "that, by virtue of the treaty provisions and act of Parliament above recited (Canada, 1868), all foreign vessels or boats are forbidden from fishing or taking fish by any means whatever, within three marine miles of any of the coasts, creeks or bays of Canada, or to enter such bays, harbors and creeks except for the purpose of shelter and of repairing damages therein, of purchasing wood and obtaining water, and for no other purpose whatever. Of all which you will take notice and govern yourselves accordingly."

In June a statute, ratified in November, enlarged this prohibition and declared entering British waters a cause of forfeiture.

With the treaty thus construed by official Canada, and I am not sure but I may say by official Great Britain, this law will supersede in Canadian courts the acts elsewhere referred to. The function of the court is reduced, like that of a prize court, to rendering judgment against the property of the foreigner, leaving the crown to satisfy the unfortunate claimants' government of the lawfulness of the spoliation. Canada says, practically, but one law covers an American vessel entering British waters, the law of confiscation.

This statute of 1886 professes to be "an act to regulate fishing by foreign vessels," and hides from cursory observation, with great adroitness, the impaling barbs which lacerate the rights of navigation and commercial relations.

It is believed that no case has yet arisen under its provisions.

The British Parliament, in creating the present Canada, said she should have powers to perform the obligations of Canada, as a province of the British Empire, toward foreign countries, arising under any treaties between the empire and such foreign country. But who empowered her to define the obligations of the other party to a treaty not made with Canada, or to exact them from the citizens of such party?