

cerned, for American fishermen were thereby excluded from all territory lying within three miles of the coast, or lying within three miles of any bays, creeks, or harbours. By Article III. of the Treaty now in question, it is provided that "The three marine miles mentioned in Article I. of the Convention of October 20, 1818, shall be measured seaward from low water mark, but at every bay, creek, or harbour, not otherwise specially provided for in this Treaty, such three marine miles shall be measured seaward from a straight line drawn across the bay, creek, or harbour, in the part nearest the entrance *at the first point where the width does not exceed ten marine miles.*" The operation of this Article is somewhat limited by the provisions of Article IV., which latter Article enumerates about a dozen bays and sets special lines of delimitation applicable thereto, the effect of which is to include within our exclusive territorial jurisdiction a number of bays having a width at their mouths varying from fourteen to twenty-two miles. In this connection must also be noticed the provisions of Article V., which are as follows: "Nothing in this Treaty shall be construed to include within the common waters any such interior portions of any bays, creeks, or harbours, as cannot be reached from the sea without passing within *the three marine miles mentioned in Article I. of the Convention of October 20, 1818.*" This latter Article (V.) is unhappily framed, and it is not improbable that it will give rise to fresh controversies. It appears to have been inserted at the instance of the British Commissioners, and we are unable to conceive why they thought it necessary or expedient to ask for it. It has been suggested that its effect by implication is to open as common waters all such interior portions of bays, creeks, and harbours, as are over six miles wide, provided that such interior portion can be reached without passing within three miles from the shore. We do not think that this contention can prevail, for upon turning to Article III. we find that "*such three marine miles* shall be measured seaward from a straight line drawn across the bay, creek, or harbour, in the part nearest the entrance, at the first point where the width does not exceed ten marine miles." This clearly closes the mouths of all bays having a width at their mouths not exceeding ten miles, and no foreign ship is entitled without our permission to pass through our territorial waters. So also with regard to the bays enumerated in Article IV. That Article does not purport to set any new limit to our territorial waters, but purports rather to define the three mile limit mentioned in the Convention of 1818; the mouths, therefore, of such bays are closed on the lines indicated in Article IV., and the line of delimitation closing the mouths as well of the bays referred to in Article III., as of those enumerated in Article IV., purports to be drawn upon the three mile limit mentioned in Article I. of the Convention of 1818. The only grant by implication which can be inferred from the wording of Article V. is that the American fishermen shall have in common with British subjects the right to take fish in such interior portions of any bays, creeks, or harbours, as can be reached from the sea without passing within the three marine miles mentioned in Article I. of the Convention of 1818, and as we have pointed out, it is by the delimitation of these three marine miles that the mouths of all of our bays and harbours are closed. The headland doctrine has