

If there had been no decision but that of Judge Hazen, it was obvious, if he was correct, that there was a *casus omissus* and that there was a necessity for a statutory provision to make effective the negative terms of the convention and to impose, as had been contemplated by its framers, such restrictions as might be necessary to prevent any abuse of its provisions. Admit the necessity of protecting fishery limits when fleets of prohibited fishing vessels are near, and the necessity and wisdom of legislation is admitted.

The day after the convention was ratified, Parliament might, in ratifying and rendering it operative, have plainly said, as the Act of Canada now does, that vessels shall be forfeited for violating its provisions.

The statute does not conflict with the words or spirit of the convention. Such a provision had been suggested by the Law officers of the Crown, in their opinion given September 25, 1852. They had advised that there could be no forfeiture excepting for fishing or preparing to fish, that for other infractions of the convention there only existed the remedy by collecting the penalty provided by the Imperial Act, which it is clear was useless, and the remedy given by nature of warning fishermen off and compelling them to desist from fishing and to depart, by the exercise of whatever force was reasonably necessary for that purpose, which would indeed, in the words of Edmund Burke, be like "shearing wolves." The Law officers had advised, by way of remedy, that if it should be deemed expedient that a power should be conferred to seize vessels in other cases of infringement than those already covered by the statute. It might be done by Order in Council. Such an Act, before it received the royal approval, for which this one was specially reserved, must pass the scrutiny of Her Majesty's advisers. It seems not out of place to mention this, and on account of it a passing reference may be made to a despatch frequently cited by eminent United States authorities. The despatch referred to is that of Lord Kimberly, Colonial Secretary, to the Governor General of Canada, of February, 1871, in which the British Government of that day felt bound to state, that it seemed to them an extreme measure, inconsistent with the general policy of the Empire, to exclude American fishermen from Canadian ports except for one of the four purposes mentioned in the convention, and that they were disposed to concede this point to the United States Government, under such restrictions as might be necessary to prevent smuggling and to guard against any substantial invasion of the exclusive rights of fishing which may be reserved to British subjects. The answer to the despatch might well be, that no restrictions to prevent smuggling and to guard against the substantial invasion of the exclusive rights of fishing reserved to British subjects, could be adopted, other than that of the exclusion of the United States fishermen from the limits, for any other than the four specified purposes.

The despatch was a mere suggestion from Lord Kimberly. The suggestion was met by a remonstrance from the Canadian Government, and has not, in any way, been adopted as part of the policy of Her Majesty's Government.