

This is a sound construction. The statute professes to regulate fishing in certain limits, not customs. The offense defined as "preparing to fish within such limits," is the sequent of the prohibition "to take, dry or cure fish within such limits," and in no sense is a regulation of customs. Broadly, every movement of a fishing vessel, even procuring wood, water, repairs or shelter, or sailing outward bound, is a preparation for fishing, but not for fishing within the limit assigned as British waters. Thus Judge Hazen's legitimate discrimination, that the clause is to protect the fish in the three-mile limit, saves the clause of the statute from positive antagonism to the Treaty of 1818.

In neither of these cases did the pleadings raise the point that subsequent laws and proclamations had opened the trade of the colonies to foreign vessels; and, consequently, had the act of 1819 intended what the Crown claimed it did, it would still be superseded by the later acts, legalizing such trade in bait, and fall into limbo with the act of 12 Charles II. Consequently neither of the judges expressed any opinion on this point.

There is, however, a decision of some consequence on the point. In 1877, before the joint commission which awarded \$5,500,000 damages against the United States, Canada made a claim that buying bait in port was an incident of the Treaty of 1871, and should be valued. The counsel for the United States claimed that it was a commercial privilege which did not spring from this treaty.

The commission decided unanimously for the United States, and Canada and Great Britain acquiesced in the decision, one of the members, Sir A. Galt, protesting and acquiescing.

From 1877 to 1886 our vessels continued without opposition to buy bait in Canadian ports. This is proof that she considered that the proclamations of 1830 had opened her trade with American fishing vessels. But in May, 1886, without making a new, or repealing an old law, Canada interfered with and seized American vessels for buying bait in her ports and taking it on board, justifying her spoliation on that abandoned and exploded ground, that it was a "preparing to fish."

Her eyes were blind and her ears were deaf to that fifty-six years of open trade, in the enjoyment of which at the very day