

Memorandum of the Undersigned, and in the Report of the Minister of Marine and Fisheries, that the application was for a specific statement of the charges, and that it was made to an officer who had neither the legal acquirements nor the authority to state them in a more specific form than that in which he had already stated them. The Commander of the "Lansdowne" requested the Consul-General to make his request to the Minister of Marine and Fisheries, and, if he had done so, the specific statement which he had desired could have been furnished in an hour. It is hoped that the explanation already made, and the precautions which have been taken against even the appearance of discourtesy in the future, will, on consideration, be found to be satisfactory.

*Incidents of the Customs Seizure.*

Mr. Phelps presents the following views with respect to the claim that the "David J. Adams," besides violating the Treaty and the Statutes relating to "fishing by foreign vessels," is liable to be detained for the penalty under the Customs Law:—

1. That this claim indicates the consciousness that the vessel could not be forfeited for the offence against the Treaty and Fishing Laws. This supposition is groundless. It is by no means uncommon in legal proceedings, both in Canada and the United States, for such proceedings to be based on more than one charge, although any one of the charges would in itself, if sustained, be sufficient for the purpose of the complainant. The success of this litigation, like that of all litigation, must depend not merely on the rights of the parties, but on the proof which may be adduced as to a right having been infringed. In this instance it appears from Mr. Phelps' letter that the facts which are to be made the subject of proof are evidently in dispute, and the Government of Canada could, with propriety, assert both its claims, so that both of them should not be lost by any miscarriage of justice in regard to one of them. This was likewise the proper cause to be taken, in view of the fact that an appeal might at any time be made to the Government by the owners of the "David J. Adams" for remission of the forfeiture incurred in respect of the Fishery Laws. The following is a section of the Canadian Statute relating to fishing by foreign vessels:—

"In cases of seizure under this Act, the Governor in Council may direct a stay of proceedings, and, in cases of condemnation, may relieve from the penalty in whole or in part, and on such terms as are deemed right."—31 Vict., cap. 61, sec. 19.

It seemed necessary and proper to make at once any claim founded on infraction of the Customs Laws, in view of the possible termination of the proceedings by executive interference under this enactment. It would surely not be expected that the Government of Canada should wait until the termination of the proceedings under the Fishery Acts before asserting its claim to the penalty under the Customs Act. The owners of the offending vessel and all concerned were entitled to know as soon as they could be made aware what the claims of the Government were in relation to the vessel, and they might fairly urge that any which were not disclosed were waived.

2. Mr. Phelps remarks that this charge is "not the one on which the vessel was seized," and "was an afterthought." The vessel was seized by the Commander of the "Lansdowne" for a violation of the Fishery Laws before the Customs authorities had any knowledge that such a vessel had entered into the port, or had attempted to leave it, and the Commander was not aware at that time whether the "David J. Adams" had made proper entry or not. A few hours afterwards, however, the Collector of Customs at Digby ascertained the facts, and on the facts being made known to the Head of his Department at Ottawa, was immediately instructed to take such steps as might be necessary to assert the claim for the penalty which had been incurred. The Collector did so.

3. Mr. Phelps asserts that the charge of breach of the Customs Law is not the one which must now be principally relied on for condemnation. It is true that condemnation does not necessarily follow. The penalty prescribed is a forfeiture of 400 dollars, on payment of which the owners are entitled to the release of the vessel. If Mr. Phelps means by the expression just quoted that the Customs offence cannot be relied on in respect to the penalty claimed, and that the vessel cannot be detained until that penalty is paid, it can only be said that in this contention the Canadian Government does not concur. Section 39 of the Customs Act, before quoted, is explicit on that point.

4. It is also urged that the offence was, at most, "only an accidental and clearly technical breach of a Custom-house Regulation, by which no harm was intended and from which no harm came, and would in ordinary cases be easily condoned by an apology and perhaps payment of costs." What has already been said under the heading "The Offence (as to Customs Laws)" presents the contention opposed to the offence being