

British Government has repeatedly refused to allow interference with American fishing-vessels, unless for illegal fishing, and has given explicit orders to the contrary."

"Judicial authority upon the question is to the same effect. That the purchase of bait by American fishermen in the provincial ports has been a common practice is well known, but in no case, so far as I can ascertain, has the seizure of an American vessel ever been enforced on the ground of the purchase of bait or of any other supplies. On the hearing before the Halifax Fishery Commission in 1877-78, this question was discussed, and no case could be produced of any such condemnation. Vessels shown to have been condemned were in all cases adjudged guilty either of fishing or preparing to fish within the prohibited limits."

Although Mr. Phelps is under the impression that "in the hearing before the Halifax Fishery Commission in 1877 this question was discussed, and no case could be produced of any such condemnation," the fact appears in the records of that Commission, as published by the Government of the United States, that on a discussion which there arose, the instances above mentioned were nearly all cited, and the Judgment of Sir William Young in the case of the "J. H. Nickerson" was presented in full, and it now appears among the papers of that Commission (see vol. iii, Documents and Proceedings of Halifax Commission, p. 3398, Washington edition). The decision in the case of the "J. H. Nickerson" was subsequent to that in the case of the "White Pawn" mentioned, to the exclusion of all the other cases referred to by Mr. Phelps. Whether that decision should be reaffirmed or not is a question more suitable for judicial determination than for discussion here.

*Right of the Dominion Parliament to make Fishery Enactments.*

Mr. Phelps deems it unnecessary to point out that it is not in the power of the Canadian Parliament to alter or enlarge the provisions of the Act of the Imperial Parliament, or to give to the Treaty either a construction or a legal effect not warranted by that Act.

No attempt has ever been made by the Parliament of Canada, or by that of any of the Provinces, to give a "construction" to the Treaty, but the Undersigned submits that the right of the Parliament of Canada, with the Royal Assent given in the manner provided in the Constitution, to pass an Act on this subject to give that Treaty effect, or to protect the people of Canada from the infringement of the Treaty provisions, is clear beyond question. An Act of that Parliament duly passed, according to constitutional forms, has as much the force of law in Canada, and binds as fully offenders who may come within its jurisdiction, as any Act of the Imperial Parliament.

The efforts made on the part of the Government of the United States to deny and refute the validity of Colonial Statutes on this subject have been continued for many years, and in every instance have been set at naught by the Imperial authorities and by the Judicial Tribunals.

In May 1870 this vain contention was completely abandoned; a Circular was issued by the Treasury Department at Washington, in which Circular the persons to whom it was sent were authorized and directed to inform all masters of fishing-vessels that the authorities of the Dominion of Canada had resolved to terminate the system of granting fishing licences to foreign vessels.

The Circular proceeds to state the terms of the Treaty of 1818, in order that United States' fishermen might be informed of the limitation thereby placed on their privileges. It proceeds further to set out at large the Canadian Act of 1868, relating to fishing by foreign vessels, which has been hereinbefore referred to.

The fishermen of the United States were by that Circular expressly warned of the nature of the Canadian Statute, which it is now once more pretended is without force, but no intimation was given to those fishermen that these provisions were nugatory and would be resisted by the United States' Government. Lest there should be any misapprehension on that subject, however, on the 9th June of the same year, less than a month after that Circular, another Circular was issued from the same Department, stating again the terms of the Treaty of 1818, and then containing the following paragraph: "Fishermen of the United States are bound to respect the British Laws for the regulation and preservation of the fisheries to the same extent to which they are applicable to British and Canadian fishermen." The same Circular, noticing the change made in the Canadian Fishery Act of 1868 by the amendment of 1870, makes this observation: "It will be observed that the warning formerly given is not required under the amended Act, but that vessels trespassing are liable to seizure without such warning."