

*The Canadian Contention.*

The legal effect of the 1st Article of the Treaty of 1818 may be sketched in outline in this wise :—

All the British coast, shores, bays, harbours, and creeks in America were, by that Article, separated into two portions, which were bounded, defined, and indentified. The two may be marked, respectively, as (A) and (B). In the sixth volume of "Papers relating to the Treaty of Washington," published by the Department of State in 1874, is a Map of New Brunswick, Nova Scotia, Newfoundland, and Prince Edward Island, coloured in a way to plainly exhibit these two portions. In all that portion marked (A) it was agreed that the inhabitants of the United States shall have for ever, in common with British subjects, the liberty to take fish of every kind; but as to the portion marked (B), the United States renounced for ever any liberty theretofore enjoyed or claimed to take, dry, or cure any fish. It was stipulated, nevertheless, that "the American fishermen shall be permitted to enter" the portion marked (B) for the purpose of shelter, repairing damages, purchasing wood, obtaining water, and "for no other purpose whatever."

The entire Article referred to inshore fishing. No right, and no liberty whatever, that might concern deep-sea fishermen, did the United States, by the Treaty of 1818, renounce.

This obvious intent and purpose of the Article is confirmed by the last words of the section, which declares: "But they" (the American fishermen) "shall be under such restrictions as may be necessary to prevent their taking, drying, or curing fish therein" (in portion B), "or in any other manner abusing the privileges hereby reserved to them." The "restrictions" to be imposed upon the American fishermen, while in portion (B), are expressly limited, not to such as concern navigation or revenue, but to such as were specifically renounced, namely, to such as "may be necessary to prevent their taking, drying, or curing fish therein, or in any other manner whatever abusing the privileges hereby reserved to them," in order to take, dry, or cure fish therein.

Was it not clearly the intention of the negotiators of this Treaty that the character of these restrictions should be agreed upon by the parties to the Treaty? Is it reasonable to assume that the American negotiators intended that the Canadian provinces, or even the British Government, should have the exclusive power to prescribe "restrictions" which might entirely destroy the value of any unrenounced right and liberty theretofore claimed and enjoyed, or of any conceded "privileges" thereby reserved to American fishermen in portion (B)?

These preliminary explanations will assist to measure the force and bearing upon American deep-sea fishermen of the interpretation put upon the Treaty by the Canadian Dominion during the last summer.

The following extracts are taken from the Message of the President to Congress of the 8th ultimo.

*What Canada has Said.*

On the 5th June, 1886, the Canadian Minister of Marine and Fisheries declared :—

"It appears the 'Jennie and Julia' is a vessel of about 14 tons register, that she was to all intents and purposes a fishing vessel, and, at the time of her entry into the port of Digby, had fishing gear and apparatus on board, and that the Collector fully satisfied himself of these facts. According to the master's declaration, she was there to purchase fresh herring only, and wished to get them direct from the weir fishermen. The Collector, upon his conviction that she was a fishing-vessel, and, as such, debarred by the Treaty of 1818 from entering Canadian ports for the purposes of trade, therefore, in the exercise of his plain duty, warned her off.

"The Treaty of 1818 is explicit in its terms, and by it United States' fishing-vessels are allowed to enter Canadian ports for shelter, repairs, wood and water, and 'for no other purpose whatever.'

"The Undersigned is of the opinion that it cannot be successfully contended that a *bonâ fide* fishing-vessel can, by simply declaring her intention of purchasing fresh fish for other than baiting purposes, evade the provisions of the Treaty of 1818, and obtain privileges not contemplated thereby. If that were admitted, the provision of the Treaty which excludes United States' fishing-vessels for all purposes, but the four above mentioned would be rendered null and void, and the whole United States' fishing fleet be at once lifted out of the category of fishing-vessels, and allowed the free use of Canadian ports for baiting, obtaining supplies, and transshipping cargoes.

"It appears to the Undersigned that the question as to whether a vessel is a fishing-vessel or a legitimate trader or merchant-vessel is one of fact, and to be decided by the