

OWNER OF THE *THOMAS F. BAYARD* (UNITED STATES)  
*v.* GREAT BRITAIN

*(November 6, 1925. Pages 573-574.)*

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This is a claim for damages by reason of refusal of Newfoundland authorities to permit an American vessel, enrolled and licensed for the fisheries, to exercise the right of fishing in Bonne Bay on the treaty coast of Newfoundland. The American case is that while the vessel was fishing for halibut off the coast of Newfoundland bait became exhausted and it put into Bonne Bay to obtain a fresh supply. Upon arrival the customs officer gave the master a printed notice as follows:

"I am instructed to give you notice that the presence of your vessel in this port is in violation of the articles of the International Convention of 1818 between Great Britain and the United States, in relation to fishery rights on the coast of Newfoundland, and of the laws in force in this country for the enforcement of the articles of the convention, and that the purchase of bait or ice, or other transaction in connexion with fishery operations, within three miles off the coast of this colony, will be in further violation of the terms of said convention and laws."

The master testifies that he showed the collector a copy of the provision of the Treaty of 1818 and argued that he had a right to take bait under the treaty, but was told by the collector that the latter had an official duty to perform. Fearing that the vessel would be seized if he remained in the bay, and that the halibut already taken would spoil if he went elsewhere in search of bait, the master returned to Gloucester, losing 38 days of fishing before he could get back to the fishing grounds.

It is argued that the notice in question meant only that the master would not be allowed to buy bait, and that he was not precluded from catching it, as he had a right to do under the treaty. We think the answer to this contention is to be found in the attitude of Newfoundland prior to the decision of the Permanent Court of Arbitration at The Hague in the North Atlantic Coast Fisheries Arbitration. The sixth question put to that Tribunal was:

"Have the inhabitants of the United States the liberty under the said articles or otherwise to take fish in the bays, harbours, and creeks on that part of the southern coast of Newfoundland which extends from Cape Ray to Rameau Islands, or on the western and northern coasts of Newfoundland from Cape Ray to Quirpon Islands or on the Magdalen Islands?"

That question grew out of the claim of Newfoundland that the fishing privilege, conceded by the Treaty of 1818, did not include the taking of fish in bays, harbors, and creeks on the Treaty Coast. Great Britain on behalf of Newfoundland so contended before The Hague Tribunal. The notice in question was drawn up in view of this contention, and we have no doubt that any attempt of the vessel to catch bait fish in Bonne Bay would have been followed by serious consequences. The very language of the notice declaring that the mere presence of the American fishing vessel in Bonne Bay was unlawful and forbidding any "transaction in connexion with fishery operations within three miles of the coast" shows that the Newfoundland authorities were asserting and were prepared to maintain the claim as to the limits of the fishing

privilege of the United States which the Permanent Court of Arbitration at The Hague, by its answer to the sixth question in the North Atlantic Coast Fisheries Arbitration, has held to have been unwarranted.

As to the damages, the claim is set forth with unusual precision of detail and is substantiated by affidavits, receipts, and documents as to each item. We are entirely satisfied with this proof and award the sum of \$3,212.98, as claimed.

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