

expressed by the learned Chief Justice have not been supported by subsequent decision of that august tribunal over which he presided. As Professor John Bassett Moore has happily said:

It is not, however, by any means essential to Marshall's pre-eminence as a judge to show that his numerous opinions are altogether free from error or inconsistency. In one interesting series of cases, relating to the power of a nation to enforce prohibitions of commerce by the seizure of foreign vessels outside territorial waters, the views which he originally expressed, in favor of the existence of such a right (*Church v. Hubbard*, 2 Cranch, 187), appear to have undergone a marked if not radical change in favor of the wise and salutary exemption of ships from visitation and search on the high seas in time of peace (*Rose v. Himely*, 4 Cranch, 241) — a principle which he affirmed on more than one occasion. (*The Antelope*, 10 Wheaton, 66.)<sup>3</sup>

In view, therefore, of the circumstances of the case and the unjustifiableness of the seizure of a Japanese vessel, although in Chinese waters, beyond the 3-mile limit, it is gratifying to note that China has receded from its untenable position and that the Chinese Government accepts the five conditions presented by Japan for the peaceful settlement of the incident:

1. An apology, with the saluting of the Japanese flag in the presence of the consul;
2. Unconditional release of the vessel;
3. Payment of the actual cost of the arms under detention;
4. China to engage to investigate the circumstances of the seizure and take suitable measures against the responsible persons;
5. An indemnity for the actual losses.

The *London Times* of March 14, 1908, from which the preceding conditions are quoted, further states that —

Upon the acceptance by China of the above conditions, Japan undertakes to cooperate in the task of preventing the smuggling of arms into China.

The incident, therefore, seems to be closed in accordance with enlightened theory and practice.

#### THE FORTIFICATION OF THE ALAND ISLANDS

Since the days when Peter the Great, after having vanquished his rival, Charles XII, seized these islands Russia and Sweden have been desirous of securing possession of them. These islands command the entrance to the Gulf of Bosnia, and the largest, from which the group

<sup>3</sup> Moore's *International Law Digest*, Vol. VII, p. 312.

takes its name, is admirably adapted by nature for the location of a strong naval and military base dominating the approach to Finland and to Stockholm.

The islands were definitely acquired by Russia by the treaty of Frederikshamm, signed September 11, 1809. The Swedish plenipotentiaries were reluctant to give up the Aland Islands at all, but wished in any event an agreement on the part of Russia not to fortify them. Russia, however, refused.

The fortifications which Russia erected were razed by the French and English during the Crimean war. At the Congress of Paris, which met at the conclusion of the war, the allies asked Russia to agree not to undertake any military or naval construction upon the islands. The Russian plenipotentiary, Count Orloff, assented, but wished to sign a separate agreement between France, Great Britain, and Russia, the only Powers who had taken part in the operations in the Baltic; but at the suggestion of the Austrian plenipotentiaries the separate act was annexed to the general treaty.

The question now arises, Has Sweden or any power not signatory to the special agreement a right to protest against the use of the islands as a military base? It must have been evident that Russia's object in signing a special agreement was to limit her obligation to the five Powers which signed with her, and that she would, as soon as possible, throw over this restriction, rejected in 1809, could not be doubted.

However, on the other hand, it may be said that even if some of the signatories to the agreement should object, the fact that this agreement is annexed to a treaty of such general purport as to regulate relations of the European powers adds to it something of the force of that treaty. That Russia was justified in throwing off the restrictions upon her sovereignty in the Black Sea is generally accorded. A humiliating and galling condition imposed after defeat will only be endured until the power is strong enough to disregard it. But the Aland matter is not identical, first, because there is nothing humiliating about its observance, and, secondly, because the observance of the agreement is of such importance to the security of Sweden.

Treaties which the great European powers make between themselves have certain advantages for those powers; for it leaves them free to declare either that they acted as the agents of all Europe, and hence bound by their action the nonparticipating powers, or to maintain that the treaty concerns the signatories alone — all other states being third parties.