

one resulting from the custom and usage of each individual nation, as shown by their treaties and their general and time-honoured practice.

The well-known words of Bynkershoek might be very appropriately recalled in this connection when so many and divergent opinions and authorities have been recited: "The common law of nations," he says, "can only be learnt from reason and custom. I do not deny that authority may add weight to reason, but I prefer to seek it in a constant custom of concluding treaties in one sense or another, and in examples that have occurred in one country or another." (*Quæstiones Juris Publici*, vol. i, cap. 3.)

It is to be borne in mind in this respect that the Tribunal has been called upon to decide, as the subject matter of this controversy, the construction to be given to the fishery treaty of 1818 between Great Britain and the United States. And so it is that from the usage and the practice of Great Britain in this and other like fisheries, and from treaties entered into by them with other nations as to fisheries, may be evolved the right interpretation to be given to the particular convention which has been submitted. In this connection the following treaties may be recited:—

Treaty between Great Britain and France, 2nd August, 1839. It reads as follows:—

"Article 9. The subjects of Her Britannic Majesty shall enjoy the exclusive right of fishery within the distance of three miles from low water mark along the whole extent of the coasts of the British Islands.

"It is agreed that the distance of three miles fixed as the general limit for the exclusive right of fishery upon the coasts of the two countries shall, with respect to bays, the mouths of which do not exceed ten miles in width, be measured from a straight line drawn from headland to headland.

"Article 10. It is agreed and understood that the miles mentioned in the present convention are geographical miles, whereof 60 make a degree of latitude." (*Hertslet's Treaties and Conventions*, vol. v, p. 89.)

Regulations between Great Britain and France, 24th May, 1843:—

"Art. 2. The limits within which the general right of fishery is exclusively reserved to the subjects of the two king-