

For the further purpose of such proof it is contended by the United States:—

(2) That the liberties of fishery, being accorded to the inhabitants of the United States “for ever,” acquire, by being in perpetuity and unilateral, a character exempting them from local legislation.

The Tribunal is unable to agree with this contention:—

(a.) Because there is no necessary connection between the duration of a grant and its essential status in its relation to local regulation; a right granted in perpetuity may yet be subject to regulation, or, granted temporarily, may yet be exempted therefrom; or being reciprocal may yet be unregulated or being unilateral may yet be regulated; as is evidenced by the claim of the United States that the liberties of fishery accorded by the Reciprocity Treaty of 1854 and the treaty of 1871 were exempt from regulation, though they were neither permanent nor unilateral;

(b.) Because no peculiar character need be claimed for these liberties in order to secure their enjoyment in perpetuity, as is evidenced by the American negotiators in 1818 asking for the insertion of the words “for ever.” International law in its modern development recognizes that a great number of treaty obligations are not annulled by war, but at most suspended by it;

(c.) Because the liberty to dry and cure is, pursuant to the terms of the treaty, provisional and not permanent, and is nevertheless, in respect of the liability to regulation, identical in its nature with, and never distinguished from, the liberty to fish.

For the further purpose of such proof, the United States allege:—

(3.) That the liberties of fishery granted to the United States constitute an international servitude in their favour over the territory of Great Britain, thereby involving a derogation from the sovereignty of Great Britain, the servient State, and that therefore Great Britain is deprived, by reason of the grant, of its independent right to regulate the fishery.

The Tribunal is unable to agree with this contention:—

(a.) Because there is no evidence that the doctrine of international servitudes was one with which either American or British statesmen were conversant in 1818, no English