

which extends from Cape Ray to the Rameau islands, on the western and northern coast of Newfoundland, from the said Cape Ray to the Quirpon Islands on the shores of the Magdalen Islands, and also on the coasts, bays, harbors and creeks from Mount Joly, on the southern coast of Labrador, and to and through the straits of Belisle, and thence northwardly indefinitely along the coast, without prejudice, however, to any of the exclusive rights of the Hudson's Bay Company. And that the American fishermen shall also have liberty, for ever, to dry and cure fish in any of the unsettled bays, harbors and creeks, of the southern part of the coast of Newfoundland heretofore described, and of the coast of Labrador; but so soon as the same, or any portion thereof shall be settled, it shall not be lawful for the said fishermen to dry or cure fish at such portion so settled, without previous agreement for such purpose with the inhabitants, proprietors or possessors of the ground. And the United States hereby renounce forever any liberty heretofore enjoyed or claimed by the inhabitants thereof, to take, dry or cure fish, on or within three marine miles of any of the coasts, bays, creeks or harbors of His Britannic Majesty's dominions in America, not included in the above-mentioned limits; provided, however, that the American fishermen shall be admitted to enter such bays or harbors for the purpose of shelter and of repairing damages therein, of purchasing wood and of obtaining water and for no other purposes whatever. But they shall be under such restrictions 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.

Now, in reference to the Washington Treaty you will find this language used in the commencement of the 18th Article :—

"It is agreed by the High Contracting parties that, in addition to the liberty secured to the United States fishermen by the Convention between Great Britain and the United States, signed at London on the 20th day of October, 1818, of taking, curing and drying fish on certain coasts of the British North American Colonies therein defined, the inhabitants of the United States shall have in common with the subjects of her Britannic Majesty, the liberty for the term of years mentioned in Article XXXIII of this Treaty, to take fish of every kind, except shell-fish, on the sea-coasts and shores, and in the bays, harbors and creeks of the Provinces of Quebec, Nova Scotia and New Brunswick and the Colony of Prince Edward Island, and of the several islands thereunto adjacent, without being restricted to any distance from the shore, with permission to land upon the said coasts and shores and islands, and also upon the Magdalen Islands, for the purpose of drying their nets and curing their fish; provided that in so doing they do not interfere with the rights of private property, or with British fishermen, in the peaceable use of any part of the said coasts in their occupancy for the said purpose. It is understood that the above-mentioned liberty applies solely to the sea fishery and that the salmon and shad fisheries, and all other fisheries in the rivers and mouths of rivers are hereby reserved exclusively for British fishermen.

I call attention to the fact that in this very Treaty of Washington, the framers have made as the basis of it, not only the Convention of 1818, but the 1st section of it, and in that section are contained the strong and positive declaration that the Americans shall have the right, (and only that right)—of coming into British waters, for the purposes of obtaining shelter, repairing damages, and of securing wood and water, and *for no other purpose whatever*. I will now read article 18 of the Washington Treaty, and the argument, I wish to found upon it, is this :—That the High Contracting Parties, or rather the High Commissioners had before them, when they framed that Treaty, the Convention of 1818, the first Article of which contains these words :—

"That the American Fishermen shall be admitted to enter such bays or harbors for the purpose of shelter and of repairing damages therein, of purchasing wood, and of obtaining water, and *for no other purpose whatever*."

One would suppose that under ordinary circumstances, it would have been sufficient to have stopped with the statement, that they should be admitted "for the purpose of shelter, &c., and of obtaining water," but the framers of the Convention of 1818 were particular to add,—*"and for no other purpose whatever."*

They not only so restricted the Americans by affirmative words, but also by negative words. The High Contracting parties having this before them, gave the Americans the liberty of coming upon our shores to fish on equal terms with our fishermen, and to take bait, &c. To my mind, the High Commissioners considered that the framers of the Convention of 1818 deemed it necessary to insert the words, "*and for no other purpose whatever*," to make it absolutely certain that the Americans could only come in for shelter, repairs, wood, and water, and should enjoy no rights as incidental to that privilege, and that they purposely omitted those words in the Treaty of Washington. It may therefore be well supposed, that if the Americans were to be restricted to the very letter of the Treaty, the same negative words would have been used, and undoubtedly had those words been used in the Treaty, there would be an end of the argument. If that had been the intention of the High Commissioners, they would have gone on in this Treaty to state in Article 18th,—

"It is agreed by the High Contracting Parties that, in addition to the liberty secured to the United States fishermen by the Convention between Great Britain and the United States, signed at London on the 20th day of October, 1818, of taking, curing, and drying fish on certain coasts of the British North American Colonies therein defined, the inhabitants of the United States shall have, in common with the subjects of Her Britannic Majesty, the liberty for the term of years mentioned in Article XXXIII of this Treaty, to take fish of every kind, except shell-fish, on the sea-coasts and shores, and in the bays, harbours, and creeks of the Provinces of Quebec, Nova Scotia, and New Brunswick, and the colony of Prince Edward Island, and of the several islands thereunto adjacent, without being restricted to any distance from the shore, with permission to land upon the said coasts, and shores, and islands, and also upon the Magdalen Islands, for the purpose of drying their nets and curing their fish, and *for no other purpose whatever*." But these words were not used.

Now these are the words which the learned agent of the United States, and the learned counsel who are associated with him, seek in my judgment, to interpolate into this Treaty. The framers of the Convention of 1818, were very cautious as to its wording; the framers of the Treaty of Washington had that Convention before them, and it must, therefore, I think, be fairly assumed that if it had been the intention of either of the high contracting parties, in this instance, that the Americans should simply have the bare rights named in the Treaty and nothing else, they would have followed the example set before them by the Convention of 1818 and used these strong negative words, "*and for no other purpose whatever*." I say that this argument is a fair and just one, of course its weight is to be determined by this tribunal.—I am by no means putting it forward as a conclusive argument, but still the fact that they did not do so is of great weight in my mind, though to what extent its weight will affect the decision of this tribunal is not for me to say, but it does appear to me to be a very strong argument indeed. Had it been intended to restrict the United States fishermen, and, to use the language of Mr. Foster, confine them merely to what was mentioned in the bond, the High Commissioners would have added "*and for no other purpose whatever*;" and therefore their leaving that language out is open to the construction that the Americans were entitled to all the incidental advantages which that Treaty would necessarily be understood to confer.

Is it not a rather extraordinary argument on the part of the United States that this privilege of theirs, related only to their right of coming in and fishing on equal terms with our citizens, and to landing and to drying their nets and curing their fish, and that the moment they had dried their nets and cured their fish they were forthwith to take to their boats and go back to their vessels, and that by landing for any other purpose whatever—they are clearly liable for infraction of the provisions of this Treaty. It is certainly a curious view which Mr. Foster presents with regard to their mode of bartering along the coast when he intimates that they land merely to exchange a gallon or two of kerosene oil or a barrel of flour for fish, and in effect declares—for this is the result of his argument—that for so doing the Americans are liable to punishment.

Mr. FOSTER :—I said that they could be excluded by statute.