

Considering that the right to regulate the liberties conferred by the treaty of 1818 is an attribute of sovereignty, and as such must be held to reside in the territorial sovereign, unless the contrary be provided; and considering that one of the essential elements of sovereignty is that it is to be exercised within territorial limits, and that, failing proof to the contrary, the territory is coterminous with the sovereignty, it follows that the burden of the assertion involved in the contention of the United States (viz., that the right to regulate does not reside independently in Great Britain, the territorial sovereign) must fall on the United States. And for the purpose of sustaining this burden, the United States have put forward the following series of propositions, each one of which must be singly considered.

It is contended by the United States:—

(1) That the French right of fishery under the treaty of 1763 designated also as a liberty, was never subjected to regulation by Great Britain, and therefore the inference is warranted that the American liberties of fishery are similarly exempted.

The Tribunal is unable to agree with this contention:—

(a.) Because although the French right designated in 1713 merely "an allowance" (a term of even less force than that used in regard to the American fishery) was nevertheless converted, in practice, into an exclusive right, this concession on the part of Great Britain was presumably made because France, before 1713, claimed to be the sovereign of Newfoundland, and in ceding the island, had, as the American argument says, "reserved for the benefit of its subjects the right to fish and to use the strand;"

(b.) Because the distinction between the French and American right is indicated by the different wording of the statutes for the observance of treaty obligations towards France and the United States, and by the British Declaration of 1783;

(c.) And, also, because this distinction is maintained in the treaty with France of 1904, concluded at a date when the American claim was approaching its present stage, and by which certain common rights of regulation are recognized to France.