

QUESTION V.

From where must be measured the "three marine miles of any of the coasts, bays, creeks, or harbours" referred to in the said article?

In regard to this question, Great Britain claims that the renunciation applies to all bays generally and

The United States contend that it applies to bays of a certain class or condition.

Now, considering that the treaty used the general term "bays" without qualification, the Tribunal is of opinion that these words of the treaty must be interpreted in a general sense as applying to every bay on the coast in question that might be reasonably supposed to have been considered as a bay by the negotiators of the treaty under the general conditions then prevailing, unless the United States can adduce satisfactory proof that any restrictions or qualifications of the general use of the term were or should have been present to their minds.

And for the purpose of such proof the United States contend:—

1. That while a State may renounce the treaty right to fish in foreign territorial waters, it cannot renounce the natural right to fish on the high seas.

But the Tribunal is unable to agree with this contention. Because though a State cannot grant rights on the high seas it certainly can abandon the exercise of its right to fish on the high seas within certain definite limits. Such an abandonment was made with respect to their fishing rights in the waters in question by France and Spain in 1763. By a convention between the United Kingdom and the United States in 1846, the two countries assumed ownership over waters in Fuca Straits at distances from the shore as great as 17 miles.

The United States contend, moreover:—

2. That by the use of the term "liberty to fish," the United States manifested the intention to renounce the liberty in the waters referred to only in so far as that liberty was dependent upon or derived from a concession on the part of Great Britain, and not to renounce the right to fish in those waters where it was enjoyed by virtue of their natural right as an independent State.