

It is contended on the part of the United States that the exercise of such liberty is not subject to limitations or restraints by Great Britain, Canada, or Newfoundland in the form of municipal laws, ordinances, or regulations in respect of (1) the hours, days, or seasons when the inhabitants of the United States may take fish on the treaty coasts, or (2) the method, means and implements used by them in taking fish or in carrying on fishing operations on such coasts, or (3) any other limitations or restraints of similar character—

(a.) Unless they are appropriate and necessary for the protection and preservation of the common rights in such fisheries and the exercise thereof; and

(b.) Unless they are reasonable in themselves and fair as between local fishermen and fishermen coming from the United States, and not so framed as to give an advantage to the former over the latter class; and

(c.) Unless their appropriateness, necessity, reasonableness, and fairness be determined by the United States and Great Britain by common accord and the United States concurs in their enforcement.

Question I, thus submitted to the Tribunal, resolves itself into two main contentions:—

1st. Whether the right of regulating reasonably the liberties conferred by the treaty of 1818 resides in Great Britain;

2nd. And, if such right does so exist, whether such reasonable exercise of the right is permitted to Great Britain without the accord and concurrence of the United States.

The treaty of 1818 contains no explicit disposition in regard to the right of regulation reasonable or otherwise; it neither reserves that right in express terms, nor refers to it in any way. It is therefore incumbent on this Tribunal to answer the two questions above indicated by interpreting the general terms of Article I. of the Treaty and more especially the words "the inhabitants of the United States shall have, for ever, in common with the subjects of His Britannic Majesty, the liberty to take fish of every kind." This interpretation must be conformable to the general import of the instrument, the general intention of the parties to it, the subject matter of the contract, the expressions actually used and the evidence submitted.

Now in regard to the preliminary question as to whether the right of reasonable regulation resides in Great Britain:—