

it was re-established in a limited form by the Convention of 1818; and that it might not be confounded with the former privilege, an express renunciation of the special portion of the former privilege which had not been re-established, was inserted after the grant, so that the exclusive rights of British subjects to take fish in the waters of His Britannic Majesty's dominions in America *not included in the above-mentioned limits* might henceforth rest not merely on the general law of nations, but be protected from any question by this special Treaty-arrangement.

The ambiguity in the privilege granted by the Convention of 1818; which is assumed to exist by the construction contended for on the part of the United States, disappears with the application of the general principles of the Law of Nations (1) that the right of fishery is *not a servitude* which may be enjoyed by one nation without any prejudice to the territorial jurisdiction of the other nation, within whose territory the fishery exists, and (2) consequently no foreign subjects or citizens may fish within the waters of an independent State without the consent of the Sovereign of that State. The territorial jurisdiction of an independent State over waters of the open sea extends, by the comity of nations, to the distance of three marine miles seaward from the territory itself; and as all creeks, bays, and harbours of His Majesty's dominions are portions of Her Majesty's territory, citizens of the United States are, by the same comity of nations, excluded from fishing within three marine miles seaward from the mouth or entrance of all such bays, creeks, or harbours, as the open sea commences at such mouth or entrance. This absolute rule of the law of nations rests on a basis independent of the renunciation contained in the Convention. It never can be contended, with any show of reason, that the effect of that renunciation has been to limit the absolute rights of the British Crown growing out of the general Law of Nations on the subject of fisheries, more especially as by the subsequent words of the Treaty American citizens are expressly prohibited from *entering* any such bays, creeks, or harbours for any such purpose as that of fishing.

In the case where a province of the United States approaches a province of the British Crown nearer than six marine miles, a different principle under the same general law of nations prevails, which annexes to the territory of either nation the waters as far as the middle of the passage between the two provinces.

The renunciation of the Convention of 1818 has accordingly left untouched the rights of citizens of the United States to fish within their own waters, when the channel between the two provinces is less than six marine miles; but in cases where the channel exceeds that width, it has established, by express words beyond a doubt, that they are not to take or cure fish within three marine miles of the entirety of any of the bays, creeks, or harbours of His Britannic Majesty's dominions in America, except those specifically mentioned in the Convention.

Upon the above considerations, I beg to report to your Lordship my decided opinion, that the Government of the United States is not justified in contending that the United States fishermen are permitted by the first Article of the Convention of 1818 to fish in the bays, creeks, or harbours of Her Britannic Majesty's dominions, provided that they do not approach within three marine miles of the *shore* of any such bay, creek, or harbour, and that on the contrary the Government of Great Britain is justified in maintaining that the United States' fishermen are by that Article prohibited from fishing within three marine miles of the *entrance* of any of the bays, creeks, or harbours of Her Britannic Majesty's dominions in America, with the exception of those bays, creeks, or harbours previously specified in the earlier part of the same article.

I have, &c.,
(Signed) TRAVERS TWISS,

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LETTER from the SECRETARY of STATE for the COLONIES to the LORDS of the ADMIRALTY.

My Lords,

Downing Street, April 12, 1866.

THE determination of the Reciprocity Treaty contracted in 1854 between Great Britain and the United States revives the 1st Article of a Convention of the 20th of October, 1818, with various Imperial and Colonial Acts enumerated in the margin, of which the operation had been suspended during the continuance of the Treaty by the Imperial Act 18 and 19 Vict., cap. 3, sec. 1, or otherwise.

The precise provisions of that Article will be seen by reference to the Convention. Its general result is as follows:—

1. American fishermen may fish, "in common with the subjects of Her Britannic Majesty," in certain specified parts of Newfoundland and Labrador, and on the shores of the Magdalen Islands, with liberty to dry and cure fish on the shores of certain of the unsettled—or with the consent of the inhabitants of the settled bays, harbours, and creeks of Newfoundland and Labrador.

2. Except within the above limits American fishermen are not to take, dry, or cure fish on or within three miles of the coasts, bays, creeks, and harbours of British North America. But they may enter such bays and harbours for certain specified purposes under such restrictions as may be necessary to prevent abuse by fishing or otherwise.

I. With regard to Newfoundland and Labrador, the Convention does but continue with certain geographical limits, and subject to the qualification in respect to the curing of fish, the privileges which have hitherto been exercised under the Reciprocity Treaty. It does not, therefore, call for much observation. It is only requisite to say that although the privilege of drying and curing fish on the Magdalen Islands is not expressly given to American fishermen, Her Majesty's Government have no