

possible pretension on the part of the inhabitants of the United States to liberties of fishery exclusive of the right of British subjects to fish.

The Tribunal is unable to agree with this contention:—

(a.) Because such an interpretation is inconsistent with the historical basis of the American fishing liberty. The ground on which Mr. Adams founded the American right in 1782 was that the people then constituting the United States had always, when still under British rule, a part in these fisheries and that they must continue to enjoy their past right in the future. He proposed “that the subjects of His Britannic Majesty and the people of the United States shall continue to enjoy unmolested the right to take fish.....where the inhabitants of both countries used, at any time heretofore, to fish.” The theory of the partition of the fisheries which, by the American negotiators, had been advanced with so much force, negatives the assumption that the United States could ever pretend to an exclusive right to fish on the British shores; and to insert a special disposition to that end would have been wholly superfluous;

(b.) Because the words “in common” occur in the same connection in the treaty of 1818 as in the treaties of 1854 and 1871. It will certainly not be suggested that in these treaties of 1854 and 1871 the American negotiators meant by inserting the words “in common” to imply that without these words American citizens would be precluded from the right to fish on their own coasts and that, on American shores British subjects should have an exclusive privilege. It would have been the very opposite of the concept of territorial waters to suppose that, without a special treaty provision, British subjects could be excluded from fishing in British waters. Therefore that cannot have been the scope and the sense of the words “in common”;

(c.) Because the words “in common” exclude the supposition that American inhabitants were at liberty to act at will for the purpose of taking fish, without any regard to the co-existing rights of other persons entitled to do the same thing; and because these words admit them only as members of a social community, subject to the ordinary duties binding upon the citizens of that community, as to the regulations made for the common benefit; thus avoiding the *bellum omnium contra*