

1818; but this privilege was not identical with the privilege under Article III of the Treaty of 1783. The latter privilege, which the citizens of the United States had enjoyed since the Treaty of 1783, until hostilities broke out between the United States and Great Britain, was a privilege to take and cure fish on all the coasts, bays, and creeks of His Britannic Majesty's dominions in America, just as the subjects of Great Britain, under Article VIII of that Treaty, had enjoyed the privilege of navigating the River Mississippi from its source to the ocean in common with the citizens of the United States.

The latter privilege in behalf of British subjects to navigate the waters of the Mississippi in common with the citizens of the United States ceased with the occurrence of war between the two countries, and was not re-established in any form by any subsequent Treaty.

The fishery privilege in behalf of American citizens ceased in like manner at the same time; but 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.