

American fishermen in the British maritime territory as specified in Article 18, and the United States regulations *quoad* fishing do not affect British fishermen in the United States maritime territory specified in Article 19.

The principle of international law recognised by Great Britain and the United States is that a State exercises over its maritime territory as full and complete sovereignty and jurisdiction as over its land territory.

Lawrence's Wheaton, p. 320.

1 Phillimore, Int. Law, § 333, 2nd ed.

1 Twiss, Law of Nations, § 159.

"The right of jurisdiction civil and criminal over all persons and things within the territorial limits, which is incident to a State relatively to its own subjects and their property, extends also as a general rule to foreigners commorant in the land."

1 Phillimore, § 333.

Certain exceptions to this general rule are recognised.

Foreign sovereigns, ambassadors, and their suites, public armed vessels and armies in their permitted transit through foreign territory are regarded as extraterritorial.

Woolsey, Int. Law, § 64.

Exemption from local jurisdiction has been granted to foreigners from christian lands resident in certain non-christian countries, by virtue of treaties vesting in certain functionaries of foreign Governments exclusive civil and criminal jurisdiction over the subjects of the States appointing such functionaries.

Woolsey, § 65.

But between Christian States it seems to be admitted that, where subjects of the one are permitted either expressly by treaty or impliedly through custom to enter into the territory of another State and there trade, such foreigners so trading are subject to the operation of the laws in force therein, and that the State does not by giving liberty to foreigners to trade within its limits, relinquish its right to bind them by laws thereafter to be passed regulating such trade.

To entitle the State to which foreigners belong to maintain the pretension that by such permission to trade the State granting renounces the right to regulate that trade *quoad* foreigners, it must be shewn that such renunciation is express, it cannot be implied from the presence in a treaty of words granting the liberty to trade.

The sovereignty of the State granting a liberty to fish or trade to foreigners in its territory in common with its own subjects is not in the slightest degree impaired by such concession. The liberty given is to share in a right possessed by each of its subjects; it is not a right transferred to another State. The persons entitled to avail themselves of such liberty are themselves the subjects of another State, and cannot pretend to exercise any sovereign power in the territory wherein they are licensed to fish or trade.

The very words "shall have in common with the citizens of the United States the liberty to take fish of every kind," &c., show that nothing in the nature of the right of sovereignty over the territory mentioned in Article 19 of the Treaty of Washington was intended to be conveyed by the United States to Great Britain.

Thus Vattel, B. 1, c. 22, § 273, says: "In the same manner, rights ceded by the proprietor of anything are considered as ceded without prejudice to the other rights that belong to him, and only so far as they are consistent with these latter, unless an express declaration or the very nature of the right determine it otherwise."

But it may be urged that the liberty granted by Arts. 18 and 19 of the Treaty of Washington are in the nature of international servitudes, and as such vest in each of the contracting parties certain sovereign rights in the maritime territory of the other.

International servitudes are considered by the authors as one of the most complicated questions of International Law. In Great Britain and the United States but little has been written on the subject. In Phillimore's International Law there are but seven paragraphs treating on the subject, and in but few of the other works is there even any reference to it. By the German writers it is treated of at greater length, but even they seem to consider it as unsettled in the extreme. Thus Bluntschli, § 353, says: "On donne le nom de servitudes internationales à toute restriction conventionnelle et perpétuelle apportée à la souveraineté territoriale d'un état, en faveur d'un autre état ou exceptionnellement aussi en faveur d'une corporation ou d'une famille placées sans la protection spéciale du droit international."

On ne peut appliquer ici qu'avec prudence la théorie des servitudes prédales; car il ne s'agit pas de questions dépendant de la volonté ou du caprice de simples étrangers; il s'agit du bien des peuples. La sûreté et l'indépendance des états est tout autre chose que l'inviolabilité de la propriété foncière; les restrictions apportées aux premières ont des effets très-différents de ceux des servitudes privées."

Klüber in his work, "Droit des Gens Moderne de l'Europe" (Ott's Ed.) says § 138: "1. Pour qu'un droit puisse être réputé servitude *publique*, il est nécessaire que les deux parties contractantes soient des Etats indépendants. 2. Il est également essentiel que celui auquel le droit appartient soit, quant à son exercice, indépendant de l'Etat chargé de la servitude. 3. Toute servitude publique est *réelle*, de côté et d'autre. 4. Les servitudes peuvent avoir pour objet, non seulement des droits de souveraineté, mais aussi des droits régis par les lois civiles pourvu que la servitude accorde en même temps la souveraineté pour l'exercice de ces mêmes droits. Au contraire, les droits privés soumis à la souveraineté du pays, qui appartiendraient à un souverain étranger, ou à l'administration financière d'un état étranger, p. e., des fonds de terre, rentes, droits de pâturage, etc., ne constituent jamais des servitudes publiques. 5. Les droits, même régalien, et les immunités qui sont concédés par le droit public intérieur à certains sujets ou à certaines classes de sujets, ne peuvent pas non plus être considérés comme servitudes passives de l'Etat."

Heffter, "Droit International Public de l'Europe," § 43, says: "A côté des servitudes naturelles, on rencontre des servitudes positives consenties librement par les Etats (*servitudes juris gentium voluntariae*) elles ont pour objet l'établissement d'un droit restrictif du libre exercice de la souveraineté territoriale au profit d'un Etat ou d'un particulier étrangers. Autrefois elles étaient

d'une application plus fréquente, surtout en Allemagne, qu'elles ne le sont aujourd'hui.

Ces servitudes ont pour objet exclusif des droits souverains ou régalien, et généralement le domaine public, non le domaine privé de l'Etat, ni la propriété privée de ses regnicoles, bien que celle-ci puisse se trouver indirectement atteinte par une servitude semblable."

Taking for granted that the liberty to fish granted by Acts 18 and 19 of the Treaty of Washington created international servitudes *quoad* fishing in favour of foreigners in the maritime territories therein described, it is submitted that the sovereign power of the United States and Great Britain to regulate the mode of fishing in the said maritime territories was never thereby renounced by, much less made common to, both powers.

"Les traités constitutifs des servitudes internationales s'interprètent d'après le sens clair et strict des termes y employés. Il n'est pas permis de tirer de la concession d'un droit de souveraineté une induction en faveur d'un autre; et dans le doute c'est seulement le droit le plus faible qu'il faudra admettre."

Heffter, § 43.

"6. Une servitude ne peut être fondée que sur un titre spécial. Donc la règle ou la présomption est toujours en faveur du gouvernement du pays. 7. Toute servitude étant une exception de la règle, elle s'interprète par les principes de l'interprétation stricte."

Klüber, § 139, continuation.

"On doit, dans le doute, présumer toujours en faveur de la souveraineté complète d'un état, et interpréter dans un sens restrictif les droits exceptionnels que confère la servitude reconnue."

Bluntschli, § 358.

"The entire liberty which each State naturally possesses over its own property cannot be curtailed upon presumption. The *jus in re aliena* is a derogation from the general principle of law, and requires, as a special and extraordinary right, the strictest proof of its existence."

1 Phillimore, § 282.

It would seem from the expressions made use of by Mr. Evarts that he admits the power to make the regulations resides in the State to which the maritime territory belongs, but that the exercise of the power is restricted in such a manner as to prevent any regulation being made without the consent of the other contracting party.

(To be continued.)

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## THE OMNISCIENT JENKINS.

Not Edward of that ilk this time, but a person whose vast knowledge and critical power would make even the Member for Dundee confess that there are more things in earth and heaven than his philosophy hath dreamed of. The doings and sayings of some of the "gentlemen of the press" who for the past week have been keeping Canada informed about the Marquis of Lorne and the Princess, give proof to the full that old-fashioned loyalty still seems to live—even in Montreal, notwithstanding free advertisements and plutocratic vulgarity: so the chronicler of small beer is with us always to delight Canadian Mrs. Malaprops with his nice "derangements of epitaphs." On this occasion he has excelled even that most excellent being himself. Promotion to the rank of "special correspondent"; temporary admission to a "social circle"—as he would call it—of whose ways and ideas he had heretofore about as much knowledge as of those of the inhabitants of the moon; intercourse with aides-de-camp, railway managers, Cabinet Ministers, and the Marquis's servants; fellowship with a real New York *Herald* reporter—that incarnation of reportorial ambition; champagne and cigars *ad libitum* from admirers; and all this was too much for him. Hence the extraordinary flow of what he imagines to be descriptive writing, remarkable for its abundance of adjectives and absence of grammar, its extraordinary portrayal of the customs of society and the public must be humoured, or papers would not be sold; and it is idle to pretend that this rubbish does not imply a demand. Indeed it may in justice to the reporter be said that his ignorance is wisdom compared with that of many of his readers, who are quite ready to take all he says as true history, and to believe that they are really reading just such a description as men of the class of the English "special"—gentlemen, trained writers, and acute journalists—would furnish. But we should be sorry to think that Canadians as a rule are content with the crude thoughts, cruder language and flippant conceit of our local Jenkinsons. We have enough ignorance and vulgarity among us; that is never plainer than at festive times like last week, when a loyal and hearty welcome has to struggle out of a mass of curiosity and snobbery, jealousy and bad breeding. But in all the absurdity and bad taste that have been displayed since the Princess put foot on shore at Halifax, nothing has equalled the accounts in the daily newspapers. To begin with, we had much highflown writing in histories of the Campbells and lives of the Marquis and Princess. This would have been well enough, and we could have made allowance for the good intentions and limited means of information of the writers, had they but taken some little pains to spare us the agony of unconnected sentences and misspelt names in every second line. Their intimate personal relations with the Royal Family and the House of Argyle may also be condoned, in spite of the studied carelessness of the manner in which the allusions are intended to convey the compiler's own connection with the aristocracy. Few of us have anything but a second-hand knowledge in this respect, and all of us have our little varieties. It is better, too, that people should know something about their future rulers than nothing; and the loyalty that finds expression in ungrammatical gush is not therefore to be totally despised. It is when he gets to details that the Canadian Jenkins is most repulsive, although to say the truth also very amusing in his profound ignorance. When we are told that the Princess looked "pinched and petulant" it is not hard to understand that no aspersions upon her temper are meant, but that the absence of a dictionary has led the reporter into an incautious alliteration. And again, this opinion was formed without the opportunity for cool reflection which another correspondent