

"in common" with British subjects. That means, probably, not to the exclusion of, but concurrently with, British subjects.

But the words may mean much more. They may have this sense, that the inhabitants of the United States should continue to enjoy the right of fishing which had been theirs before the Declaration of Independence, that is to say, as though they were still British subjects. If the people of the two nations have rights of fishery "in common," as before the War of Independence, it might be a fair measure of the rights of one to ask what are the rights of the other. May a British subject employ a foreigner in taking fish in the treaty waters? May a Newfoundlander, for instance, employ a Norwegian to catch fish for him? If he may, why may an inhabitant of the United States not do the same thing?

On the other hand, the Legislature of Newfoundland can undoubtedly pass a law binding on all Newfoundlanders that they shall not employ foreigners in any capacity in the fishery in the territorial water of the colony, though it is doubtful if such a law could be made binding on other British subjects fishing in these waters.

It was at all times essential that the inhabitants of the United States should exercise their treaty rights, if at all, by the use of vessels, with crews of hired men, and it is not probable that any thought as to the nationality of crews ever occurred to the treaty makers. It cannot be denied that Newfoundland may make it unlawful for her fishermen to employ on board American vessels, and may punish them for disobedience by fine and imprisonment, but her recent attempt to enact a law confiscating American vessels for allowing Newfoundlanders to fish as their crew is within treaty waters, when they had been hired outside these waters, is a very different matter.

It is contended by some that rules as to the kind and size of nets, etc., are merely police regulations, the power to make which is inherent in the authority possessed by the Sovereign power within the territory where the fishery is exercised. An obvious objection is that such rules could be so framed as to destroy in effect the liberty granted.