

Newfoundland crews on board of American vessels may be landed free of duty just as though they had been taken by American crews. The effect of that ruling has been to give to the merchants of Gloucester, Massachusetts, what amounts to a monopoly of the United States herring market, independent competition being impossible in the face of an import duty equivalent to 25 per cent. of the value, which American traders are enabled to evade.

I would once again revert to the despatch of Governor Sir George Des Vœux to the Colonial Office, at the time that the Act under which this prohibition is enforced was before His Majesty's Government. You will please remember that this Act has been on the Statute Book for 20 years. Sir George Des Vœux said, in speaking for his Government :—

“ The people of Newfoundland, like those of Canada, desire to use the right to withhold a supply of bait as a means of inducing the American Government to remove the import duty on British fish. . . . In a word, the principle that the Colonists desire to maintain is ‘ live and let live,’ and they merely object to that of ‘ let others live by killing us.’ ”

When the prohibitive import duty is removed, the restriction imposed by the Bait Act, 1887, will cease to be enforced; for Newfoundland is prepared to compete with the fishermen of the United States or of any country upon equal terms, but she objects to give free access to her unrivalled bait supplies to those who debar her from their markets by prohibitive tariffs worked in so unjust and evasive a manner as that set forth in the Treasury Order to which I have referred.

Just a few words more and I have done. I submit that there is nothing in the Treaty of 1818 which conveys a right to the United States to employ Colonial fishermen to fish for them. I have heard it argued that “ what one does by another one does by himself.” That is a maxim which applies entirely to the law of agency.

Under the Treaty of 1818, the privilege of a fishery in common with British subjects was granted to “ the inhabitants of the United States,” and the privilege was to “ take ” fish (not to buy or procure it in any other way). The word “ take ” was used in its special and restricted meaning to distinguish the liberty from the rights which the British subjects enjoyed, namely, to use the land as well as the sea, and to buy, sell, trade, or deal in any way with the products of the fisheries. I submit that the United States can only “ take ” fish and can only take it in common, that is to say, by the same implements of capture as British subjects and subject to the same restrictions, regulations, or laws that govern their conduct.

The permission to enter and fish cannot be construed as conferring upon the admitted foreigner a right, but only a liberty or a privilege.

In considering the Treaty of 1818, it is important to remember the class to whom the concession is given, namely, the American fishermen named in the article. (1) *They must be inhabitants of the United States.* (2) *They must be American fishermen,* and the liberty granted to them is to take, dry, and cure fish. The word shows the privileged class to whom the Treaty applies, and the vessels employed therefor, and the special Treaty privilege of fishing in the territorial waters of Newfoundland. There is no maxim of the law better known than that which affirms that the “ express mention of one person or thing is the exclusion of another.” It would, therefore, follow that the mention of “ inhabitants of the United States,” “ American fishermen,” named in the Treaty, excludes all others. But we are not left to ourselves to place the interpretation on this Treaty, as to the class to whom the privileges are granted. It has been so read by the inhabitants of the United States for the last hundred years, and no later than last July, Mr. A. P. Gardner, the

Fifteenth Day.
14 May 1907.

NEWFOUNDLAND
FISHERY.
(Sir R. Bond.)