

The second of these *Servitutes Voluntariae* was conceded to the United States by the Treaty of Independence of 1783; but as its fishery article was abrogated by the War of 1812; it will only be necessary to quote the construction given to it by Lord Bathurst, the British Foreign Secretary, in a despatch dated 30th October, 1815, addressed to Mr. J.Q. Adams, then American Minister in London; in which, after enforcing the British declaration that the War of 1812 had abrogated the fishery article of the Treaty of 1783, he said: "The undersigned begs to call the attention of the American Minister to the wording of the third article.....In the third article Great Britain acknowledges the right of the United States to take fish on the banks of Newfoundland, and other places in the Sea, from which Great Britain had no right to exclude any independent nation. But they were to have the liberty to cure and dry fish on certain unsettled places within His Majesty's territory, dependent on the will of British subjects in their character of inhabitants, proprietors, or possessors of the soil, to prohibit its exercise altogether."

Mr. Adams while conceding this latter right, argued that the War of 1812 had not abrogated the fishery article, claiming that, "The treaty was not simply a treaty of peace; it was a treaty of partition between two parts of one nation agreeing thenceforth to be separated into two distinct sovereignties;" and was a partition of "rights and liberties enjoyed before the separation of the two countries;"⁶ and which he claimed, "were in no respect grants from the King of Great Britain to the United States," and, therefore, "the Government of the United

to Britain,"—contained the following renunciation of French sovereignty: "Nor shall the most Christian King, His Heirs and Successors, or any of their subjects, at any time hereafter, lay claim to any right to the said island or islands, or to any part of it, or them." (Hartslet's Treaties, vol. 1, p. 237.

⁶"The analogy suggested between the treaty of 1783 and a partition among co-owners of their lands, and the rights issuing therefrom, is more fanciful than sound. That treaty created and conferred a liberty, and did not merely recognize a subsisting right to fish in the Canadian territorial waters." American Law Review, 1870-1, vol. 5, page 421.