

of nations as a good equivalent, moving from each to the other, for the concessions mutually made. This doctrine is also applied by the courts as between individuals to support agreements based on the consideration of yielding or settling disputed claims.

In contrast with the assertion of the utter want of reason in the claims of Great Britain, based on the headland theory, we find many strong declarations of our Government. Mr. Monroe, Secretary of State, on December 30, 1816, admitted that a discussion of *rights* should be avoided when mutual *concessions were necessary to bring the treaty powers to a mutual agreement*. He said to Mr. Bagot:

In providing for the accommodation of the citizens of the United States engaged in the fisheries on the coasts of His Britannic Majesty's colonies on conditions advantageous to both parties, I concur in the sentiment that it is desirable to avoid a discussion of *their respective rights*, and to proceed, in a spirit of conciliation, to examine *what arrangement will be adequate to the object*. The discussion which has already taken place between our Governments has, it is presumed, *placed the claim of each party in a just light*.

Our claim then was that we had a common right of fishery, on all the coasts, with the people of the British North American Possessions.

The British Government then claimed that the war of 1812-'15 had destroyed all our claims in such fisheries. On the 28th of May, 1818, Mr. Adams, Secretary of State, instructed Mr. Gallatin and Mr. Rush as follows:

The President authorizes you to agree to an article whereby the United States will desist from the liberty of fishing, and curing, and drying fish *within the British jurisdiction generally*, upon condition that it shall be secured as a permanent right, not liable to be impaired by any future war, *from Cape Ray to Ramea Islands, and from Mount Joli, on the Salvador coast, through the straits of Belle Isle, indefinitely north, along the coast; the right to extend as well to curing and drying the fish as to fishing*.

This instruction was certainly much more liberal to the subjects of Great Britain than the first article of the treaty that was made under it. But the instruction stated the demand of the United States, and the British have a right to argue, at least, that the treaty was intended to conform to it as to the principles involved in it.

Claiming absolutely the right to enjoy these fisheries in common with the Canadians, and basing our claim upon the highest considerations of justice, we were met with the counter-claim of Great Britain, that all our fishing rights in Canadian waters were granted to us by the treaty of 1783, and that that treaty had been abrogated by war. In this dispute, which was vital, we found so much reason for an adjustment, that