

publicists employing the term before 1818, and the mention of it in Mr. Gallatin's report being insufficient;

(b.) Because a servitude in the French law, referred to by Mr. Gallatin, can, since the Code, be only real and cannot be personal (Code Civil, article 686).

(c.) Because a servitude in international law predicates an express grant of a sovereign right and involves an analogy to the relation of a *prædium dominans* and a *prædium serviens*; whereas by the treaty of 1818 one State grants a liberty to fish, which is not a sovereign right, but a purely economic right, to the inhabitants of another State;

(d.) Because the doctrine of international servitude in the sense which is now sought to be attributed to it originated in the peculiar and now obsolete conditions prevailing in the Holy Roman Empire of which the *domini terræ* were not fully sovereigns; they holding territory under the Roman Empire, subject at least theoretically, and in some respects also practically, to the courts of that Empire; their right being, moreover, rather of a civil than of a public nature, partaking more of the character of *dominium* than of *imperium*, and therefore certainly not a complete sovereignty. And because in contradistinction to this quasi-sovereignty with its incoherent attributes acquired at various times, by various means, and not impaired in its character by being incomplete in any one respect or by being limited in favour of another territory and its possessor, the modern State, and particularly Great Britain, has never admitted partition of sovereignty, owing to the constitution of a modern State requiring essential sovereignty and independence;

(e.) Because this doctrine being but little suited to the principle of sovereignty which prevails in States under a system of constitutional government such as Great Britain and the United States, and to the present international relations of sovereign States, has found little, if any, support from modern publicists. It could therefore in the general interest of the community of nations, and of the Parties to this treaty, be affirmed by this Tribunal only on the express evidence of an international contract;

(f.) Because even if these liberties of fishery constituted an international servitude, the servitude would derogate from the sovereignty of the servient State only in so far as the exercise of the rights of sovereignty by the servient State would