

the United States, and out of the jurisdiction of any particular State; &c., give great additional weight to the suggestion that the 'high seas' meant the open, unenclosed ocean, or that portion of the sea which is without the *fauces terræ* on the sea-coast, in contradistinction to that which is surrounded or enclosed between narrow headlands or promontories; for if the 'high seas' meant to include other waters, why should the supplemental words, 'arm of the sea, river, creek, bay,' &c., have been used?" (United States v. Grush, 5 Mason's Admiralty Reports, p. 298.)

This view of Mr. Justice Story is in accordance with Pothier's rule, "Lorsqu'une clause est susceptible de deux sens, on doit plutôt l'entendre dans celui dans lequel elle peut avoir quelque effet, que dans celui dans lequel elle n'en pourrait avoir aucun." (*Obligation*, No. 92.)

The word "bay" itself has also received a *plain and positive meaning* in a judicial decision of a most important case before the Supreme Court of the United States, upon the construction of the 8th section of the Act of 1790, cap. 9:—A murder had been committed on board the United States' ship of war "Independence," lying in Massachusetts Bay, and the question was whether any Court of the State of Massachusetts, or only the Circuit Court of the United States, as a Court of Admiralty and Maritime Jurisdiction, had jurisdiction over a murder committed in such a bay. Chief Justice Marshall in delivering the opinion of the Court defined "bays" to be "*inclosed parts of the sea.*" (United States v. Beran, 3, Wheaton's Reports, p. 387.)

Again, Mr. Justice Story, in a question of indictment for assault with intent to kill, under the Crimes Statute of 1825, cap. 276, sec. 22, which declares, "that if any person or persons upon the high seas, or in any arm of the sea, or in any river, haven, creek, basin, or bay within the Admiralty jurisdiction of the United States, and out of the jurisdiction of any particular State, on board any vessel, shall commit an assault," &c., decided, that the place where the murder was committed (the vessel lying at such time between certain islands in the mouth of the Boston river) was an arm of the sea.

"An arm of the sea," he further said, "may include various descriptions of waters, where the tide ebbs and flows. It may be a river, harbour, creek, basin, or bay." (United States v. Grush, 5 Mason, 299.)

It would thus appear that the word "bay" has received a positive definition as a term of jurisprudence, which is in accordance with the common use of the term in text-books on the Law of Nations, which invariably speak of "bays" as "*portions of sea enclosed within indents of coasts*, and not as indents of coast.

Assuming, therefore, as established beyond reasonable doubt, that the word "bay" signifies an arm or elbow of the sea enclosed within headlands or peaks, and not an indent of the coast, we may consider what is the true intention of the expression "within three marine miles of a bay." Are such miles to be measured from the outer edge or chord of the bay, or from the inner edge or arc of the bay? In the first place it may be observed, that the inner edge or arc of a bay touches the coast, and if the distance is to be measured from the shore of the bay, the word "bay" itself has virtually no distinct signification from "coast," and has no supplemental force; *primâ facie*, therefore, this interpretation does not recommend itself on the grounds already stated.

Again: the interpretation which is given to the measure of distance from bays, must be given to the measure of distance from creeks and harbours, both of which, by the Municipal Law of the United States, equally as of Great Britain, are *infra corpus comitatûs*, and their waters are subject to the provisions of the Municipal Law precisely as the shores of the land itself. But it may assist in determining this question to keep in mind the rule that in contracts, "on doit interpréter une clause par les autres clauses contenues dans l'acte, soit qu'elles précèdent, ou qu'elles suivent." (Pothier, *Obligations*, No. 96.) In other words, a subsequent clause may serve to interpret a former clause, if the latter be at all ambiguous. Accordingly we find the renunciation of the liberty to fish within three marine miles of any of the bays, creeks, or harbours of His Britannic Majesty's dominions, followed by the *proviso* that American fishermen shall be permitted to enter such bays and harbours for certain specified purposes other than taking fish. In other words they may prosecute their voyage for other purposes than fishing *within the entrance* of any bay or harbour, but may not take fish within three marine miles of any bay or harbour, *i.e.*, within three marine miles of the *entrance* of any bay or harbour. If this interpretation be not adopted, the *proviso* would be absurd; for if American fishermen are *implicitly* permitted to fish within three marine miles of the *shore* of any bay or harbour, they are permitted to enter such bay or harbour, if the breadth of the mouth be more than six miles, and the distance of the head of the bay or harbour from the entrance be more than three miles, for another purpose than for the purpose of shelter, or of repairing damages, or of purchasing wood, or of obtaining water. But the Convention expressly says, "*for no other purpose whatever.*" If, therefore, they cannot enter any bay or harbour for the purpose of prosecuting their occupation of fishing, it cannot be intended that they should be allowed to fish within three marine miles of the *shore* of any bay or harbour, as the two provisions would be inconsistent. Accordingly, as the question resolves itself into the alternative interpretation of *shore* or *entrance*, it follows that the correct interpretation, which makes the language of the entire Article consistent with itself, is within three marine miles of the *entrance* of any bay, such entrance or mouth being, in fact, *part of the bay itself*, and the bay being approachable by fishing-vessels only in the direction of the mouth or entrance.

That a bay of sea-water wider than six miles at its mouth may be within the body of a county, is laid down by Lord Hale in his Treatise *De Jure Maris et Brachiorum ejusdem* (Hargrave's Tracts, chap. 4): "An arm or branch of the sea which lies within the *fauces terræ*, where a man may reasonably discern between shore and shore, is, or at least may be, within the body of a county." This doctrine has been expressly adopted by Mr. Justice Story in *De Lovio v. Boit* (2 Gallison's Reports, p. 426, 2nd Ed.), in which, to use the language of Mr. Wheaton's argument in *United States v. Beran* (3 Wheaton's Reports, p. 358), "all the learning on the civil and criminal jurisdiction of the Admiralty is collected together." There is, consequently, no doubt that the jurisdiction of the Municipal Law over bays is not limited to bays which are less than six miles in breadth or three miles in depth, since the general rule is, as was observed by the same eminent judge in *United States v. Grush* (5 Mason,