

any exclusive right to the waters of Passamaquoddy Bay. These waters were common to all the subjects of the realm, and just as much a part of our right and inheritance as of any other of the British dominions. The American colonies used them on all occasions, and the province of Massachusetts, which was contiguous to the bay, and perpetually used the waters for the *purpose of navigation and trade, and passage*, might just as well be deemed the proprietor as the province of New Brunswick or as the realm of England. In truth, the Law of Nations must, under such circumstances, be presumed to prevail, and annex the bay to the middle of the stream to the territories of the adjacent provinces; and as there was at all times a common right of passage and navigation exercised over the whole bay, and it was necessary for the convenience of all parties, the whole waters must be deemed common for these purposes. When the separation took place by the American Revolution and the Treaty of Peace, if nothing was stipulated on either side, the *status ante bellum* prevailed, and there was a continuance of the old rights and privileges.

“The Treaty of Peace of 1783 contains nothing definite on this subject. It fixes generally the eastern boundary line of the United States on the Bay of Fundy, of which Passamaquoddy Bay is part, but it is silent as to the exact line and the use of the waters. No subsequent Treaty has changed, or in any shape regulated, the general rights growing out of the Law of Nations on this subject, and, therefore, as I conceive, they remain in full force.

“In the negotiations which have taken place between the Governments of Great Britain and the United States as to this boundary, and which ended in Conventions which, though not ratified, are not understood to have involved any real difference of opinion on this particular point, the view taken by both Governments seems entirely in harmony with that of this Court. The Conventions of 1803 and 1807 take the middle of the channel between the islands belonging to the respective nations to be the true and proper line. (6 Wait's *State Papers*, 387 to 394; 10 Wait's *Confidential State Papers*, p. 470.) This is the same rule which results in the general Law of Nations.

“Upon the whole my opinion is, that the