

the sea where the distance between the two sides does not exceed twelve miles. But the learned association very wisely added a proviso to the effect "that bays should be so considered and measured *unless a continuous and established usage* has sanctioned a greater breadth." Many great authorities are agreed as to that. Counsel for the United States proclaimed the right to the exclusive jurisdiction of certain bays, no matter what the width of their entrance should be, when the littoral nation has asserted its right to take it into their jurisdiction upon reasons which go always back to the doctrine of protection. Lord Blackburn, one of the most eminent of English judges, in delivering the opinion of the Privy Council about Conception Bay, in Newfoundland, adhered to the same doctrine when he asserted the territoriality of that branch of the sea, giving as a reason for such finding, "that the British Government for a long period had exercised dominion over this bay, and its claim had been acquiesced in by other nations, so as to show that the bay had been for a long time occupied exclusively by Great Britain, a circumstance which, in the tribunals of any country, would be very important." "And moreover," he added, "the British Legislature has, by Acts of Parliament, declared it to be part of the British territory and part of the country made subject to the legislation of Newfoundland." (*Direct United States Cable Company v. the Anglo-American Telegraph Company*, Law Reports, 2 Appeal Cases, 374.)

So it may be safely asserted that a certain class of bays, which might be properly called the historical bays, such as Chesapeake Bay and Delaware Bay, in North America, and the great estuary of the River Plate, in South America, form a class distinct and apart, and undoubtedly belong to the littoral country, whatever be their depth of penetration and the width of their mouths, when such country has asserted its sovereignty over them, and particular circumstances, such as geographical configuration, immemorial usage, and, above all, the requirements of self-defence, justify such a pretension. The right of Great Britain over the bays of Conception, Chaleur, and Miramichi are of this description. In what refers to the other bays, as might be termed the common, ordinary bays, indenting the coasts, over which no special claim or assertion of sovereignty has been made, there does not seem to be any other general principle to be applied than the