

coasts of Labrador and Newfoundland, reference was made to the exclusive right of the Hudson's Bay Co. The waters inside of Hudson's Straits are not mentioned in the treaty. The natural inference from this would be that the Americans recognized the existence of those exclusive rights and are debarred from now calling them in question.

The several questions then which must be faced in dealing with this matter are, first: Had the British Government the right to treat the waters of Hudson's Bay as *mare clausum*, and therefore to confer upon the Hudson's Bay Company the sole trade and traffic of Hudson's Bay. If that can be established no further argument is necessary. Again by the treaty of 1818 did not the Americans recognize that right? If so, are they not precluded from now calling in question the sovereignty of Canada in these waters.

Taking the first point into consideration, the nearest approach that we can find to a parallel case is that of Conception Bay in Newfoundland—a sheet of water forty or fifty miles long, and over twenty miles wide at its mouth. In *Direct United States Cable Company v. Anglo-American Telegraph Company* 2 App. Cas. 394 (1877), it was held, on appeal to the Privy Council, that this bay was a British Bay, and a part of the territorial waters of Newfoundland, in opposition to the contention that the bay was part of the open sea, and not *mare clausum*.

In giving judgment Lord Blackburn said, at p. 419, "Passing from the common law of England to the general law of nations, we find a universal agreement that harbours, estuaries and bays land-locked belong to the territory of the nation which possesses the shores round them, but no agreement as to what is the rule to determine what is a bay for this purpose". Speaking of the test of occupation his lordship says that most writers refer to defensibility from the shore as the test, some suggesting a width of one cannon shot from shore to shore, or three miles; some a cannon shot from each shore or six miles; some an arbitrary distance of ten miles. All of these rules if adopted would exclude Conception Bay from the territory of Newfoundland, though he goes on to say the diplomatists of the United States in 1793 claimed a territorial jurisdiction over much more extensive bays. He further says: "It does not appear to their Lordships that jurists and text-