

## RUSSIA'S CLAIM.

Thus it appears that Russia claimed 100 miles from the coasts of all the islands, as well as the mainland of Behring Sea, and south to 45° 50'. It was this claim that led to the indignant remonstrance of the United States and Great Britain, and to the treaties before referred to, and shows that Behring Sea was included in the term "Pacific Ocean." The pretensions of Russia were never revived, and the citizens of Great Britain as well as the United States had free access at all times to these waters in navigating and fishing without any restriction. And Russia's claim was never revived until she purported to cede to the United States a portion of Behring Sea. Russia could not sell what she did not own, and the United States could not claim that which it was not in the power of Russia to sell. The treaty with England has never been abrogated, and was in force when the cession to the United States took place, and there was no need to protest against the extravagant pretensions of Russia in purporting to dispose of the high seas, as until last year no attempt has been made to enforce such a claim. The United States have always been the strongest upholders of the law of nations, and on this head Kent's Commentaries, page 28: "The open sea is not capable of being possessed as private property; the free use of the ocean for navigation and fishing is common to all mankind, and the public jurists generally and explicitly deny that the main ocean can ever be appropriated." He also refers to the claim of Russia, and in another place he states that "the United States have recognized the limitation of a marine league for general territorial jurisdiction by authorizing the district courts to take cognizance of all captures made within a marine league of the American shore." See Act of Congress, June 5, 1794. And in Wharton's International Law Digest, page 32, the author says: "The limit of one sea league from shore is provisionally adopted as that of the territorial sea of the United States," and "our jurisdiction has been fixed to extend three geographical miles from our shore, with the exception of any waters or bays which are so land-locked as to be unquestionably within the jurisdiction of the United States, be their extent what they may." Behring Sea is not a gulf or bay, and is not land-locked by the lands of the United States. Wharton again states that "a vessel on the high seas beyond the distance of a marine league from the shore is regarded as part of the territory of the nation to which she belongs." And Mr. Seward in a letter to Mr. Tassara, December 16, 1862, tersely states the principle as follows:—"There are two principles bearing on the subject which are universally admitted, (1) that the sea is open to all nations, and (2) that there is a portion of the sea adjacent to every nation over which the sovereignty of that nation extends to the exclusion of every other political authority.

A third principle bearing on the subject is that the exclusive sovereignty of a nation abridging the universal liberty of the seas extends no further than the power of the nation to maintain it by force stationed on the coast extends. "*Terræ dominium finitur, ubi finitur armorum vis*" (the sovereignty of the coast ends where the power to control it by force of arms terminates). It thus appears that by the comity of nations, sanctioned and approved by American jurists, that the high seas are open to all, that the territorial authority only extends to a marine league or, at all events, not further than a force on shore can protect the coasts.

It also appears that the United States, in claiming sovereignty over the Behring Sea, is claiming something beyond the well-recognized law of nations, and bases her claim upon the pretensions of Russia which were successfully repudiated by both Great Britain and the United States. A treaty is valid and binding between the parties to it, but it cannot affect others who are not parties to it. It is an agreement between nations and would be construed in law like an agreement between individuals. Great Britain was no party to it and therefore is not bound by its terms.

It is therefore contended that the proceedings taken against the present defendants are *ultra vires* and without jurisdiction. But, in order to press the matter further, it may be necessary to discuss the Act itself under which the alleged jurisdiction is assumed. The Act must be construed by what appears within its four