

"Rivers might be held in property; though neither where they rise, nor where they discharge themselves be within our territory, but they join to both, or the sea. It is sufficient for us, that the larger part of water, that is, the sides, is shut up in our banks, and that the river, in respect of our land, is itself small and insignificant." Grot. b. 2. c. 3. f. 7, and Barbegroe, in his note subjoins, that neither of those is necessary.

"Rivers may be the property of whole states." Puff. b. 3. c. 3. f. 4.

"To render a thing, capable of being appropriated, it is not strictly necessary, that we should inclose it, or be able to inclose it within artificial bounds, or such as are different from its own substance; it is sufficient if the compass and extent of it can be any way determined. And therefore Grotius hath given himself a needless trouble, when, to prove rivers, capable of property, he useth this argument, that although they are bounded by the land at neither end, but united to the other rivers or the sea; yet it is enough, that the greater part of them, that is, their sides, are enclosed. Puff. b. 4. c. 5. f. 3.

"When a nation takes possession of a country in order to settle there, it possesses every thing included in it, as lands, lakes, rivers," &c. Vattel, b. 1. c. 22. f. 266.

To this list might be added Bynkerhock and Selden. But the dissertation of the former, *de dominio maris*, cannot be quoted with advantage in detachment; and the authority of the latter on this head may, in the judgment of some, partake too much of affection for the hypothesis of *mare clausum*. As Selden, however, sinks in influence on this question; so must Grotius rise, who contended for the *mare liberum*; and his accurate commentator, Rutherford, confirms his principles in the following passage, "A nation, by settling upon any tract of land, which at the time of such settlement had no other owner, acquires, in respect of all other nations, an exclusive right of full or absolute property, not only in the land, but in the waters likewise, that are included within the land, such as rivers, pools, creeks or bays. The absolute property of a nation, in what it has thus seized upon, is its right of territory, 2 Ruth. b. 2. c. 9. f. 6.

Congress too have acted on these ideas, when, in their collection-laws, they ascribe to a state the rivers, wholly within that state.

It would seem, however, that the spot of seizure is attempted to be withdrawn from the protection of these respectable authorities, as being in the *Bay* of Delaware, instead of the *River* Delaware.

Who can seriously doubt the identity of the *River* and *Bay* of Delaware? How often are different portions of the same stream denominated differently? This is sometimes accidental; sometimes for no other purpose, than to assist the intercourse between man and man, by easy distinctions of space. Are not this *River* and this *Bay* fed by the same springs from the land, and the same tides from the ocean? Are not both doubly flanked by the territory of the United States? Have any local laws at any time provided variable arrangements for the *River* and the *Bay*? Has not the jurisdiction of the contiguous states been exercised equally on both?

But suppose that the *River* was dried up, and the *Bay* alone remained, Grotius continues the argument of the 7th section, of the 3d chapter, of the 2d book above cited, in the following words:

"By this instance it seems to appear, that the property and deminion of the sea might belong to him, who is in possession of the lands on both sides, though it be open above, as a gulph, or above and below, as a streight; provided it is not so great a part of the sea, that, when compared with the lands on both sides, it cannot be supposed to be some part of them. And now, what is thus lawful to one king or people, may be also lawful to two or three, if they have a mind to take possession of a sea, thus enclosed within their lands; for 'tis in this manner, that a river, which separates two nations, has first been possessed by both, and then divided."

"The gulphs and channels, or arms of the sea are, according to the regular course, supposed to belong to the people, with whose lands they are encompassed," Puff. b. 4. c. 5. f. 8.