

SPEECH
OF
MR. SOULE, OF LOUISIANA,
ON THE
AMERICAN FISHERIES.

DELIVERED IN THE SENATE OF THE UNITED STATES, AUGUST 12, 1852.

The Senate having under consideration the message of the President in relation to the subject of the Fisheries on the coast of North America—Mr. SOULE said—

Mr. PRESIDENT: In delivering out my sentiments, with reference to the difficulties which have arisen lately between our fishermen and Her Majesty's colonial subjects of North America, and in passing an opinion on the course which it has pleased Her Majesty's ministers to pursue in relation to those difficulties, I shall endeavor to express myself with the utmost moderation and reserve.

The subject is one of considerable moment and delicacy, involving interests of vast national importance which we can neither barter away nor surrender, and raising questions of momentous bearing, but too well calculated to stimulate and augment the excitement and irritation already produced by the high-handed measures which have occasioned this debate; and it is not to be supposed that I am willing to approach the grave questions which it suggests, without keeping in view the high responsibilities under which I speak. No, sir; I know too well the unhandy materials with which I have to deal, and you need not apprehend that I will be for a moment unguarded in the use which I may have to make of them.

We live in strange times, Mr. President, that we have to witness occurrences like those through which a nation, with whom we are at peace, and seemingly, at least, on terms of reciprocal kindness and amity, attempts to signify her disregard of the protest which we have so often and so solemnly entered against her assuming the rights which she claims to exercise, to the exclusion of others, over regions of the sea which are of all nations, and which she can only make hers as long as she is permitted to cover them, unquestioned and unmolested, with her armed steamers, her sloops, and her men-of-war, and to ride triumphantly upon their waters in the gorgeous display of her supremacy; and, like that Van Tromp, of Holland, to whom my honorable friend from Maine so happily alluded the other day, with a broom at the mast-head

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of her ships, to sweep away from their approaches whomever she finds within sight of the shore under colors not her own.

The first notice we have of these unaccountable proceedings on the part of England, is to be found in the LETTER-PROCLAMATION issued by our Secretary of State, and officially dated, *State Department, Washington, July 5th, 1852.*

Among other things copied in that letter, from a circular communication, addressed on the 1st of May preceding, by Her Majesty's present Colonial Minister to the Governors of the North American Colonies, I note what follows :

"Her Majesty's Ministers are desirous of removing all grounds of complaint on the part of the Colonies in consequence of encroachments of the fishing-vessels of the United States upon waters from which they are excluded by the terms of the convention of 1818; and they, therefore, intend to despatch, as soon as possible, a small naval force of steamers or other small vessels, to enforce the observance of that convention."

We find in the same paper that "in the mean time, and within ten days of its date, an American fishing vessel called the Coral, belonging to Machias, in Maine, has been seized in the Bay of Fundy, near the Grand Menan, by the officer commanding Her Majesty's cutter Nettle, already arrived in that bay, for an alleged infraction of the fishing convention, and the fishing vessel has been carried to St. John, New Brunswick, where proceedings have been taken in the admiralty court with a view to her condemnation and entire forfeiture."

It informs us, also, that the United States having, by the first article of the convention of 1818, "renounced forever any liberty theretofore enjoyed or claimed by their inhabitants, to take, dry, or cure fish within three marine miles of any of the coasts, bays, creeks, or harbors of His Britannic Majesty's dominions in North America," not included in "that part of the coast of Newfoundland which extends from Cape Ray to the Rameo Islands, on the western and northern coast of the said Newfoundland, from the said Cape Ray, to the Quirpon Islands, on the shores of the Magdalen Islands, and also in the coasts, bays, harbors, and creeks, from Mount Jolly, on the coast of Labrador, to and through the straits of Belle Isle, and thence northwardly, along the coast;" and that "being permitted to enter the bays or harbors" first named, only "for the purpose of shelter and of repairing damage therein, and purchasing wood, and obtaining water," *it would appear by a strict and rigid construction of the article, that fishing vessels of the United States are precluded from entering into such bays and harbors of the British Provinces, for any other purpose.*

That the British authorities insist that England has a right to draw a line from headland to headland, and to capture all American fishermen who may follow their pursuit inside of said line.

That the opinion delivered by certain officers of the Crown is that "by the terms of the convention, American citizens were excluded from any right of fishing within three miles from the coast of British America; and that the prescribed distance of three miles is to be measured from the *headlands* or extreme

'points next to the sea; and that consequently no right exists, on the part of American citizens, to enter the Bay of Nova Scotia, there to take fish, although fishing, *being within the bay, may be at a GREATER DISTANCE THAN THREE MILES, from the shore of the bay.*'

Such is the pretension which England sets up, and which she threatens to enforce with the one hundred and fifty guns which she carries boastingly, mounted, loaded, and primed, on board the nineteen vessels now decking the sea at the entrance and in the environs of the Bays of Chaleurs and Fundy; and we are told, sir, and told by our Secretary of State, in language most solemn and impressive, that our fishermen must look out and **BE UPON THEIR GUARD.**

Sir, is England right? Are we wrong in all this? And why is it that from the very outset we look so humble, so dejected, so submissive, so enduring?

It is not denied, is it, that the liberties which England now attempts thus violently to wrest from us have been practised by our fishermen from time immemorial? They were liberties acknowledged in the treaty of 1783, as pre-existing to it; liberties retained against most insidious and daring pretensions at the peace of Ghent, where they were not even suffered to be drawn into question; liberties enjoyed before and after the convention of 1818; liberties *allowed*, though under an ungracious, but unadmitted proffer of favor and grace, in 1845; and yet, all at once, without previous remonstrance, or the least notice, this, our long possession, this, our solemnly-stipulated right, without whose recognition the peace of 1783 could have never been concluded; which our negotiations protected against the attain of a query or a doubt in 1814; which our envoys thought they had enerved and strengthened by the convention of 1818; which Lord Stanly, through sufferance, at least, consented to let us enjoy after 1845, as we had enjoyed it before, is to be brutally torn away from us, as usurpation and encroachment upon waters from which it would seem we are to be excluded; our vessels are captured, condemned, and sold before an explanation is sought and obtained, or asked and refused; and all this in the midst of the most profound peace, and when England is incessantly receiving at the hands of our Government most profuse tokens and manifestations of condescendence, and is allowed, there, to turn to her advantage and profit the good will which a sister Republic bears us, and the influence which that good will enables us to wield over her affairs—as in the case of Nicaragua, a State all American in spirit and feelings, unmercifully spoliated to enrich Costa Rica, but a British Province in all her associations and tendencies; and here to introduce her bankers in our Treasury, and give them charge of our concerns, and institute them our disbursing agents, as in the case of the two last instalments of the indemnity due to Mexico, that British creditors might get a chance of paying themselves off doubtful claims; and political

marauders in Mexico be enabled to pounce *in transitu* upon the emaciated treasure; and, with its remnants, to bring about in that doomed country a crisis and a revolution. Sir, I repeat it again, these are strange times indeed!

Is England right? If we trust the Secretary of State, in the view which he takes of her claims, it would seem as if the terms, the letter of the treaty, were on her side. This, Mr. Webster most peremptorily admits, while others but debate it upon mere technicalities of language.

Mr. Webster says that "it was undoubtedly *an oversight* in the convention of 1818 *to make so large a concession to England*, since the United States had usually considered that these vast inlets or recesses of the ocean ought to be open to American fishermen, as free as the sea itself, to within three miles of the shore." Here the whole is surrendered; there is no escape from the admission. IT WAS AN OVERSIGHT TO MAKE SO LARGE A CONCESSION TO ENGLAND!

The concession was then made, was it not? If so, the dispute is at an end; and yet, even then, it were a hard task to justify the summary process through which England had sought to compel us to compliance with the concession, particularly as she had, to say the least of it, suffered our fishermen to haunt the Bay of Fundy, by express allowance, in 1844, and to make their haunting other bays rightful, by a continuous, open, and public enjoyment of them, ever since the convention of 1818. But to this I shall presently revert.

"The precise words of the treaty," says my friend from Maine, in the remarkable speech he delivered the other day, "may, at first view, seem to carry that construction;" but he denies immediately that the construction be correct; and so does the distinguished Senator from Michigan, who has shed so much light on this controversy, and handled with so rare a dexterity all the questions of secondary right arising under the treaty of 1818.

The honorable Senator from Massachusetts grants, that "by the terms of the treaty American fishermen are excluded from the coasts, bays, harbors, and creeks," &c. "The British Government," says he, "raise a question of construction, namely, that we cannot fish within three miles of any of these bays; that we are excluded, to a distance of three miles, not only from the coasts, but also from the bays, including in that term the Bay of Fundy and other larger bays." But with that peculiar energy which characterizes his manner of argument, he also denies that such be the term of the exclusion, predicates his own understanding of the article upon the obvious meaning which its whole context bears, and strenuously contends for the American construction placed upon it.

For my own part, Mr. President, I consider that the terms of the treaty need, in no wise, be defended upon such collateral issues. Their true import stands on firmer ground than that of philological discrimination or inferential argument. They are

most clear and precise; the very terms, the appropriate terms, for expressing that which it was intended they should convey. Had our negotiators spoken of bays and harbors, without specifying what bays and harbors they meant we should remain excluded from, there might be room for doubt and for dispute. But they did not so speak. On the contrary, they distinctly pointed to the specific places of exclusion; *the bays, creeks, and harbors of His MAJESTY'S DOMINIONS*; and the question recurs: which are the bays over which His Majesty could claim dominion?

This question, though not a novel one, still has its merits and attractions, and may, perchance, be deemed not altogether unworthy of notice. I shall proceed briefly to its consideration.

England has, from time out of mind, attempted to arrogate to herself the sovereignty of the ocean. She once ruled it supreme. But the sceptre has fallen from her hands, and the sea has resumed its freedom. It is of all, and belongs to none. Who dares to claim, at this day, to be the owner of it? Who presumes to command to its waves, and to its currents, and to its storms?

"The earth," says the Psalmist, "was given to the children of men; but the sea is of God alone." The sea is, from its very nature, unsusceptible of human ownership. The idea of ownership implies that of exclusive possession; and, of consequence, the right of using the thing owned at will—and not only that, but the right of excluding others from its possession, and the necessity of so excluding them, that the possessor may make his all the advantages it can yield. The sea has none of the characters that could constitute it in ownership of any man or nation. Its immensity, its fluidity, must forever prevent its being subject to possession. It may be turned to profit, it is true, but by each and by all of the human species, without its enjoyment by some, impairing or diminishing its enjoyment by others. Its capacity is incommensurable. There is no volume that can exhaust it. Thousands of fleets may be sunk in it to day, and to-morrow it will again engulf millions of others, without ever being filled or notably compressed. There are no signs, no marks through which to attest its occupancy. Even those frightful, though majestic, leviathans that now plough it over, in all directions, leave not behind them any trace of their passage. The rolling wave paddled back, as they move on, wafts away from its surface the last vestiges of their march.

To make a thing yours by possession, you must possess in continuity the same thing. Identity in the thing owned constitutes one of the main elements of possession. A field, a forest, may be upturned, and altered, and transformed; they will still be the same field, the same forest. Not so with the ocean, so unceasingly changing in its form, place and surface; now sinking its upper layers in the uttermost recesses of the deep, and then upheaving others from her lowest bed to the surface, as if to spread them to the light of Heaven in glorious exultancy. Its inexhaustibility renders its exclusive enjoyment not only useless but impossible.

You may take from it for years and ages, with thousands and millions of men ; you may seize upon its pearls, and its corals, and its salts, and its fishes—you but develop its powers of production and multiply the yieldings of the mine from which you draw. By the decrees of God, the ocean is of all men. Nations may undertake to explain and interpret those decrees ; they cannot abrogate them.

However, sir, nations have claimed ownership over it, or such a supremacy as seemed to constitute it in a sort of monarchy. They would have other nations call them the queens of the sea. Yes, sir, they have claimed to appropriate to themselves the sea and to subject it to their exclusive dominion. The discovery of America, and the vast development of commerce and navigation incident on it, gave zest to, and became a powerful stimulus for such assumptions. Thus Venice arrogated to herself the Adriatic ; Genoa, the Ligurian sea ; the Portuguese and the Spanish, the sea of the two Indies ; and, in the eighteenth century, England claimed to be the mistress and sovereign of *all the seas in communication with those* surrounding her coast, which, of course, was no less than to claim sovereignty over all the seas in the world, as they all communicate with each other. But these arrogant assumptions on the part of powerful States, never were assented to by those whom they excluded from the common domain. The history of England furnishes us with a striking example of her own susceptibility, whenever such claims were set up against her. At a time when, though powerful on the ocean, she could not yet pretend to rule her rivals out of it, and when Spain, in the palmiest days of her strength and glory, and aided by the bulls of the Pope, was claiming titles to all the lands and seas of the two Americas, this latter nation sent her ambassadors to the English court and loudly complained of the devastations which an illustrious navigator, Sir Francis Drake, was committing on her domains. Here is the answer which the supercilious and unbending Elizabeth made to her complaints :

“The use of the sea and of the air is common to all. No people nor private person can claim any power over the ocean ; for neither its nature nor its public usage will allow its being occupied.”

We find, it is true, in all ages, nations who, being more especially addicted to commerce and navigation, obtained, for a time, what the writers on the law of nations would call a *prepotency* over the sea ; but, even under that prepotency, they never pretended to be the sole tenants of it. Tyre, Rhodes, Athens, Lacedæmon, Carthage, and Rome herself never claimed its absolute and exclusive enjoyment, but suffered other nations to enjoy it with them. Though it was said of the Carthagenians that they exercised such a power over the sea as to render its navigation dangerous—*adeo potentes mari, ut omnibus navigatio periculosa esset*—yet they but aimed at a nominal supremacy ; and therefore it is that according to Strabo, “they carried ‘their commercial jealousy so far as to interdict the nations who

‘contested with her for that supremacy, from landing upon their
‘coasts, and to sink all vessels with which her own met, directing
‘their course towards Sardinia, or towards what was called after-
‘wards Gibraltar.”

I read in a most lucid and interesting treatise on the right of property, by Comte, that the shores of the sea which formed part of the Roman Empire were considered the property of the Roman people; the use of them was held to be common to all mankind for fishing and navigation purposes; and though the authority of the Prætor was necessary to warrant the construction thereon of any buildings, the want of such an authority did not involve the destruction of the works, if not injurious to fishing or navigation, or the cause of damage to others; and the sole object of the authority required seems to have been to ascertain and establish the sovereignty of the Roman people over coasts which formed part of their territories.

THE SEA AND ITS SHORES ARE AS COMMON AND FREE TO ALL MEN AS THE AIR ITSELF, AND NO PERSON CAN BE PROHIBITED FROM FISHING IN IT. So speaks the Roman law, and therefore the Emperor Antoninus, to whom remonstrances were made against the inhabitants of the Cyclades, who interrupted the navigation of their neighbors, appropriately answered that he was the lord of the land; but that law alone was sovereign over the sea.

In more modern times, the Dutch gave a remarkable proof of their pertinacity to resist the claims of England over the immediate seas bordering on her coast. It is somewhat curious to see how the records of that struggle speak of the constancy, valor, and energy with which they asserted their right to haunt every part of the ocean, and to fish within the very waters that washed the proud island. I hold in my hand a short extract from a musty book, exhibiting, in a striking light, the genius and temerity of that once great nation.

I crave the attention of the Senate to its contents. I read from Selden:

“On the 6th day of May, 1609, James I. wishing to put an end to the liberties enjoyed by Holland to fish in the British seas, as they were then called, issued a proclamation wherein, among other things, is what follows:

“‘We have resolved first to give notice to all the world that our express pleasure is, that from the beginning of the month of August next coming, no person of what nation or quality soever, being not our natural-born subject, be permitted to fish upon any of our coasts and seas of Great Britain, Ireland, and the rest of the Isles adjacent, *where most usually heretofore any fishing had been*, until they have orderly demanded and obtained licenses from us, or such of our commissioners as we have authorized in that behalf; which licenses our intention is shall be yearly demanded for so many vessels and ships, and the tonnage thereof, as shall intend to fish for that whole year or any part thereof, upon any of our coasts and seas aforesaid, upon pain of such chastisement as shall be fit to be inflicted upon such wilful offenders.’

“Nowwithstanding this proclamation, the Netherlanders proceeded still in their way of encroachment upon the British seas and coasts through the whole reign of King James, and were at length so bold as to contest with him and endeavor to quarrel his Majesty out of his rights, pretending, because of the long connivance of himself and Queen Elizabeth, that they had a right of their own by immemorial possession; which some commissioners of theirs who were sent to London had the confidence to plead *in-terminis* to the King and his Council. And though the King, *out of his tenderness to them,*

insisted still upon his own right, by his council to those commissioners, and by his ambassador to their superiors, yet they made no other use of his indulgence than to tire out his whole reign and abuse his patience by their artificial delays, pretences, shifts, &c.

"In a letter of Secretary Naunton's to the British ambassador, dated Whitehall, December 21st, 1618, M. Naunton says:

" 'The States' commissioners and deputies both having attended his Majesty at New Market, and there presented their letters of credence, returned to London on Saturday was a sevensnight, and upon Tuesday had audience in the council chamber, where, being required to communicate the points of their commission, they delivered their meditated answer at length. The Lords, upon perusal of it, appointed my Lord Bining and me to attend his Majesty for directions, what reply to return to this answer of theirs, which I presented to their lordships yesterday to this effect: That his Majesty found it strange that they, having been so often required by your lordship, his Majesty's ambassador, &c., to send commissioners fully authorized to treat and conclude not only of all differences grown between the subjects of both States touching the trade to the East Indies, but withal to take order for a more indifferent course of determining other questions growing between our merchants and them about their draperies and the tare, and more especially to determine his Majesty's right for the sole fishing upon all the coasts of his three kingdoms, into which they had of late times encroached further than of right they could; and lastly, for the reglement and reducing of their coin, &c. &c., all which they confessed your lordship had instanced them for in his Majesty's name; that after all this attention on his Majesty's part, and so long deliberation on theirs, they were come at last with a proposition to speak only to the two first points. They would decline all debate of the fisheries on his Majesty's coasts. They profess their loathness to call their right in doubt or question, claiming an immemorial possession,

SECONDED BY THE LAW OF NATIONS.'

"In his answer Lord Ambassador Carlton says:

" 'I told the Prince of Orange that howsoever his Majesty, both in honour of his crown and person and interest of his kingdom, neither could or would any longer desist from having his rights acknowledged.' * * * 'especially finding the same openly oppugned both by their statesmen and men-of-war, as the writings of Grotius and the taking of *John Brown*, the last year, may testify; yet this acknowledgment of right was no exclusion of grace and favor.' * * * 'and that such was his Majesty's well-wishing to this State, (the Netherlands) that he presumed of his permission to suffer them to continue their course of fishing, which they might use thereby with more freedom and less apprehension of molestation than before, and likewise spare the cost of some of their *men-of-war*, which they yearly sent out to maintain that by force which they may have of courtesy.'

"The Prince answered that, for himself, at his return from Utrecht, he would do his best endeavor to procure His Britannic Majesty's contentment." * * * "And touching their men-of-war, he said they must still be at the same charge with them, because of the pirates.

"By another letter, of January 21st, 1618, from Secretary Naunton to the Lord Ambassador Carlton, the latter was instructed to desire the States not to suffer and tolerate the growing abuses committed on the coasts and seas of Scotland, and to issue a proclamation inhibiting their subjects from fishing within fourteen miles of His Majesty's coast this year.

"Now, what effect the ambassador's negotiation with the States had, appears by a letter of his from the Hague, of February 6th, 1618, to King James himself, where, among other passages, he has this:

" 'I find, likewise, in the manner of proceeding, that by treating by way of proposition here, nothing can be expected but their wonted dilatory and evasive answers, &c. &c. The way, therefore, (under correction,) to effect your Majesty's intent, is to begin with the fishers themselves, by publishing, against the time of their going out, your resolution, at what distance you will permit them to fish, whereby you will force them to have recourse to their council of fishery, that council to the States of Holland, and those of Holland to the States-General, who then, in place of being sought unto, will, for contentment of their subjects, seek unto your Majesty.'

"On the 16th of April, 1635, Secretary John Cook, writing to Sir William Boswell, the King's resident then at the Hague, after remarking that, 'Whosoever will encroach upon the King by sea, will do it by land also, when they see their time'—goes on to say: 'To such presumption *mare liberum* gave the first warning voice; which must be answered with a defence of *mare clausum*—not so much by discourses as BY THE BOLDER LANGUAGE OF A POWERFUL NAVY, to be better understood.'

"This was followed by the appearance, on the fishing ground, of an imposing naval force, and by a new proclamation which was issued on the 10th of May of the next year, 1636."

But the Dutch did not desist from their avocation, and stuck to the British shore, and fished in the British seas, as before.

The treaty of 1654 is sometimes quoted as containing, on the part of Holland, a full acknowledgment of England's sovereignty over the sea. How impotent must the teachings of history be that such errors can obtain credit and be received as truths! Holland had sustained a protracted and most disastrous war against England, and from impending exhaustion had agreed to the main conditions of a treaty of peace as early as 1651. The Long Parliament insisted upon an article being inserted in the treaty by which England's sovereignty should be recognised, and her flag saluted wherever it might appear on the high seas. This, Holland bravely and peremptorily refused. The war continued three years longer, and the treaty could not be signed until, in 1654, the obnoxious clause had been stricken out, and another inserted in its place, granting the salute also, it is true, but as a mere mark of deference and courtesy alone.

Thus, as it seems, the concurrence of mankind repelled all attempts at transforming the ocean into a thing manageable and compressible, capable of being reduced to possession, and therefore susceptible of ownership. I have already said that it defies the mastery of men, and that being of none, it remains of all and is common to all.

The use of the ocean belongs to man and nations in so far only as it is being exercised. It is a right to such alone as exercise it, for the time they exercise it, and within the space over which it is exercised. As soon as it is abstained from, the right ceases—it is at an end—gone. *Cum igitur nil nisi usus maris et littorum occupari possit, facile constat jus hoc ulendi tantum durare quamdiu quius utitur, et quatenus utitur.*

The ocean, therefore, is free. Yet will some say: May not its dominion be conferred from one nation to another—by all men to one? It is clear that it cannot. Concede this, and what becomes of its freedom? If its sovereignty can be conferred, it can be conquered; and if so, it becomes at once the property of the first occupant or of the strongest. Force, in the one case, will be as legitimate as injustice in the other. Even its enjoyment could not be of one man and of one nation, without all other nations and men renouncing the rights which Nature has given equally to them all.

But this is no longer insisted upon. It has grown obsolete; it is not as much as thought of, unless, indeed, it be by some incorrigible tyro of the school of Selden, or some fanatic and blind admirer of every dictum that ever fell from the fertile pen of Grotius. The difficulty is not there. But some contend that though the sea—the main, the high sea—be the common thoroughfare of mankind, there are yet parts of it susceptible of and subject to

dominion, which, on that account, may rightfully be claimed as the property of the nation having sovereignty over their immediate coasts.

Armed with these principles, and supported by the opinion of her Crown officers, England presumes to do away with all restrictions injurious to her in the treaty of 1818, and, placing a most untenable construction on the limits which that treaty assigns to her maritime jurisdiction, claims that those limits are to be measured from headland to headland, thus assuming that under that treaty our vessels are excluded from the Bay of Chaleur, the Bay of Miramichi, the Bay of Fundy, and the straits of Northumberland, within which the greatest quantity of the best mackerel is now taken.

The disasters and loss which such a pretension, if strictly enforced, would entail upon a large portion of the inhabitants of New England, can hardly be computed, although some idea may be formed of them from the short memorial that I send to the Secretary's desk to be read. It was addressed to the lamented member of the other House, whose untimely and much regrettable loss we had lately to deplore, and has found its way to my hands through the kind indulgence of a friend. [The Clerk read the memorial of fishermen, citizens of Massachusetts, stating the damage which they will sustain in consequence of the late measures adopted by the British cabinet, unless an armed force of the United States is sent to protect them, &c., &c.]

And thus, if I may be allowed to borrow the pithy language of the Boston Journal, "two thousand vessels and thirty thousand men and boys are now exposed to the cannon of a British fleet, and the cruelties and horrors of British prisons, for doing just what they have for thirty-four years been accustomed to do without molestation."

But let us see upon what principle this other pretension is founded. Those who sustain it assert that the rights of the territorial sovereign over the sea extend as far as his power can physically reach; in other words, it is predicated upon a fiction, and because, since the discovery of fire-arms, that power can be extended from the coast to a given distance upon the sea, so as to preclude others from approaching it within that distance, the sovereignty reaches thus far. Such is the foundation, and the only foundation upon which stands that extraordinary right. It is, at best, as you see, but a constructive right; it is nowhere held up as an absolute and original one. Well, be it so. But, then, to what terms will you reduce it? Undoubtedly to these, and none other—that, being founded upon the power of the sovereign to extend his armed hand beyond the shore, it reaches as far only as that power is felt. The rule of law is, *terra dominium finitur ubi fin finitur armorum vis*—the domain of the land ends where the force of arms terminates. And such seems to be the universally admitted measure of what, in diplomatic parlance, and in the books treating of the law of nations, is termed the

maritime jurisdiction. And it is reasonable that it be so. After you have laid down the principle that the ocean is free—that it is of nobody, and therefore of everybody—the exception, if exception there is, must be kept within the terms of the fictitious right under which it is claimed—within the point which the more powerful projector can reach from the shore—within cannon's shot, in a word; and that is within *three marine miles*—EO POTESTAS TERRÆ EXTENDITUR QUO USQUE, TORMENTA EXPLODUNTUR EATENUS QUIPPE CUM IMPERARE TUM POSSIDERE VIDETUR. Galiani, Hubner, Kluber, Vattel, Azuni, Grotius, all concur in assigning those limits to the land power over the circumambient sea. They were solemnly sanctioned by the treaty of 1780, constituting the armed neutrality. They had been previously acknowledged in the marine regulations adopted by Tuscany in 1778, by Venice in 1779, and are found reaffirmed in those published by Russia in 1787, and by Austria in 1803; and, indeed, in every convention which has been signed since the closing of the last century. If such be the rule of right, and the measure of supremacy to which a nation may pretend over a littoral sea, we have a meaning for the words used in the convention of 1818; we know what constitutes a bay or a gulf of HIS MAJESTY'S DOMINION, or a pent-up sea, the true and only *mare clausum*. Such bay, says an eminent writer, "must communicate with the ocean only by a strait so narrow that it must be reputed as being a part of the maritime domain of the State to which the coast belongs; so that you cannot enter it without going through the territorial sea of that State; which means twice the distance of a gun shot, or six miles. It is required, besides, that *all* the coasts bordering on such bay be subject to the State claiming such strait. The two conditions must unite to give to any part of the ocean the character of an internal sea, or a *mare clausum*."

Our envoys, then, committed no oversight, and made no such concession in the treaty of 1818, as is admitted by Mr. Webster. How that eminent statesman could so far have misjudged the sagacity, tact, and subtleness of mind of such men as Messrs. Rush and Gallatin, and the wisdom and forecast of that far-reaching, astute, alert, and discriminating diplomatist, John Q. Adams, as to suppose that they had all overlooked the untoward remissness of language supposed to exist in it, and surrendered everything, when they thought, that, without endangering any substantial interest, they had secured so much that was valuable and good, I am at a loss to conceive. A more matured appreciation of that instrument will reclaim, I have no doubt, Mr. Webster from his error, and redeem our envoys and their illustrious compeer from the foul stain which for a time seemed to darken their diplomatic escutcheon.

The convention of 1818, therefore, excludes us from no part of the littoral seas washing her Majesty's dominions, without three marine miles of the coast of such littoral seas, be they bays, gulfs, or other inlets, unless the coast, bordering the same, be *all* under

her sovereignty, and unless the strait formed by the headlands at their entrance exceeds six miles in length. The question is here entirely solved and put at rest. It only remains to be ascertained how distant be the headlands at the entrance of the Bay of Fundy, of Chaleurs, and elsewhere. Are they more widely apart than six miles? Then the bays are as open and free as the main ocean itself. Are they within the line of the six miles? Then they are private bays, bays shut up from the commerce of the rest of mankind, at the will of the riparious sovereign, provided he be the lord of the whole coast surrounding them, and not otherwise. Now, we know that such is not the case with the bays just named. Both have an entrance too wide to be claimed as private seas; and independent of this, the Bay of Fundy is bounded in part by the State of Maine—a circumstance which alone would preclude all pretensions on the part of England to make it hers. I am done with this part of my subject.

The next question which naturally calls my attention is, what can have been the object of the British Government in arraying, within sight of the fishing-grounds, the imposing armaments whose appearance has created such alarm among our fishermen, and so much sharpened the susceptibilities of this whole nation? We have no reliable data on which to base even an approximation. Many are the surmisers and many the surmises. Some suppose that the object was to stir up and stimulate the languid energies of our diplomacy in reference to certain negotiations about to be reopened with the United States of America, for the settlement of the principles on which the commerce of the British North American colony is hereafter to be carried on. I use the language of Sir John Packington and of the vice admiral commanding the forces now plying within the waters of Newfoundland and Nova Scotia, as quoted by Mr. Webster himself. Others consider the movement as having originated in the arrogant and inconsiderate policy of her Majesty's Ministers, and in their desire to manifest, through some bold and striking exhibition of zeal and earnestness, their anxiety to pay a long-arreared debt to the undeviating toryism of the colonies, by a tender of every protection it may be in the power of the imperial Government to afford. Others, again, have thought that those demonstrations were made with a view to strike terror in the minds of the colonists, supposed to be disaffected on account of their failing to obtain the privilege, they had asked, to build a railroad from Halifax to Quebec; and there are those, lastly, who cannot be persuaded that the whole is not a deeply-laid game to try us in a diplomatic conflict, and ascertain how far we might feel inclined to surrender this main dependence of our naval strength, and important element of our national wealth.

There is that, with nations whose fortune it is to have thrived and prospered under the assumption and exercise of rights which were not theirs, that they grow infatuated with their too-easily-earned successes, and become rash, and daring, and reckless;

ever ready to jump over abysses of difficulty in pursuit of a cherished object, and in the extravagant conceit that whatever they wish to attain it is in their power to grasp, and that whatever they grasp is legitimately theirs. Such is England. She knows where lies the secret, and the great fountain of your power. She loathes to see those naval nurseries of yours, almost stuck to her shore, those hives of whizzing seamen pitched upon the waters of what she would have you call *her seas*, and *her gulfs*, and *her bays*, as so many advanced posts watching over the deep, that none may dare to claim its mastery and hold it in thralldom. She cannot but look with extreme jealousy and concern on the growing prosperity of this country. She may think that it were well for her, if she could bar its progress, while it has not yet reached its acme. Who can say that in some of those wild dreams that come, at times, over the mind and darken the intellect of nations, she has not conceived that by timely interposing she might perchance slacken our march, arrest the tide of our fortune, and assign limits to our greatness? I will not say that she has. Still, how are we to conciliate her well-known sagacity with the intention attributed to her of coercing us into a treaty by so insulting a præmonition of her purposes and designs? Depend upon it, Mr. President, she has been emboldened by *her late triumphs* in the Nicaragua and Mexican questions; and she may expect to deter us from holding on to our rights in the fisheries, as we were deterred, it is said, by ominous warnings, from entertaining the proffer, lately made to persons in high places, of isles impatient to throw themselves in our lap.

Sir, what does England mean? What is she after? But, hush! She is negotiating. So says her admiral; so says Sir John Packington. She is negotiating? No! she has negotiated, if we are to believe the semi-official announcement made in a whig paper of this city, under the caption of ADJUSTMENT OF THE FISHERY DIFFICULTIES. Here it is:

"We are enabled to announce, upon what we regard as entirely satisfactory authority, that the subject of the recent excitement in regard to the New England fisheries has been arranged between Mr. Webster and Mr Crampton in a manner that will prove wholly satisfactory to the American people"

Mr. SEWARD. Will the honorable Senator allow me to ask him from what paper he reads?

Mr. SOULE. The Daily Telegraph. The honorable Senator understands, I imagine, that when I speak of a semi-official announcement I mean not to impart a character to the paper, but to the announcement alone. The peculiar language in which the intelligence which it imparts is couched fully justifies the denomination under which I have presented it to the Senate. The honorable Senator, besides, is presumed not to be unfriendly to the paper, and in all probability knows more of its whereabouts than I do.

I was going to remark, when I was interrupted, that the announcement which I have just now read had scarcely gone out

from the press, when the magnetic wires were transmitting to us another announcement, which I have also here. I read from the Union of the 7th instant:

"THE FISHERIES DIFFICULTY.—BOSTON, August 6.—Information has been received in this city that a remonstrance to the British Government against the Americans fishing within three miles of the coast, even if reciprocity be granted, is circulating in Halifax, and has received a great number of prominent signatures. The Halifax Acadian and Recorder considers the question fraught with much danger, and that war between the two nations is not improbable."

And thus, sir, we may, for aught we know, have negotiated away, by treaty, a branch of our revenue, with the hope that we would silence the roaring lion; but the lion will still roar, it seems, and roar until he frightens us out of those haunts the participation in which we acquired by original occupation, if not otherwise: which we retained as a constitutive element of our separate existence as a nation; which war itself could not wrest from us; which we hold under no grace or favor of any one, but under the sufferance of God alone, and under the highest sanctions of the laws of nations; for, in the language of the now redeemed negotiators who signed the convention of 1818, *ours is a right which cannot exclusively belong to, or be granted by, any nation.* Sir, I ask it of you, would that be an attitude becoming this great country? But I believe not in these rumors; it cannot have escaped that wise and clear-sighted person who now holds the seals of the State, and whose great mind and exalted patriotism are equal to any emergencies, that, to negotiate under such circumstances, and sign a treaty, whatever its merits in other respects might be, were to sink in the dust what of pride, what of dignity, what of honor we were grown to, in the rapid race which we have run since we became a nation.

But, it may be asked, What would you have this Government to do? Sir, as I cannot suppose that this debate is an idle and unmeaning ceremony—as I know too much of the distinguished Senator who so creditably occupies the chair in the Committee on Foreign Relations, to indulge the least thought that he could have moved in so grave a matter, with no view to some practical end, to the attainment of some object of public interest, I will take it for granted that his aim was to provoke an expression through which the sense of this Senate, and, as far as this Senate may be a proper organ of the nation, the sense of our people might become manifest, and be attended to, where, otherwise, it might have been overlooked and unheeded.

Mr. SEWARD. Will the honorable Senator allow me to ask him whether we are to understand him as supposing that it was the intention of the honorable chairman of the Committee on Foreign Relations that the sense of the Senate should be taken before any negotiations were entered into, or before any treaty was made?

Mr. SOULE. There are two attributes of this body under which we act in two different capacities. The one connects us with the

Executive, and creates duties which we perform in executive session. The other constitutes us a component part of the legislative power of the country, and enables us to address ourselves, without any reserve, but that which a proper regard for the interests of the nation may impose, to all questions of public policy, whether internal or external, and to which it may be our wish to call the attention of the country.

Under such promptings, I cannot hesitate to give my humble judgment; which is, that our Cabinet should follow, to the letter, the course which the great Chatham, on a memorable occasion, recommended to ministers ready to surrender, in a disgraceful negotiation, what he considered to be the honor of the British Crown.

It was on the occasion of the forcible taking by Spain of the Falkland islands from the possession of a British garrison. He pointed solemnly to the conduct of Lord Granville in a like emergency:

"The French," said he, "had taken a little island from us called Turk's island. The Minister then at the head of the Treasury, took the business upon himself; but he did not negotiate. He sent for the French ambassador, and made a peremptory demand. A courier was despatched to Paris, and returned in a few days with orders for instant restitution, not only of the island, but of every thing that the English subjects had lost."

Such is the spirited conduct he advised the ministers to pursue, deeply impressed with the conviction, that while a prompt and warm resentment would infallibly secure peace, tameness and silence would as inevitably lead to a rupture.

Sir, there is a world of storms in the questions which the present difficulty must soon bring to a definite issue. I am fully aware of the great stake which not only this country but the whole world has in their speedy and amicable adjustment. Yet we should insist upon having the last word of them. This is no time for a patched-up accommodation. We owe to ourselves—we owe to all mankind—not to leave undisputed the cloud hanging over our security and peace. We would seek in vain to avoid the contest. If it has to be met at all, let it be met now, and be met fairly, in all its bearings and intricacies. England has forced it upon us: she must expect that we will face its dangers like men.

Sir, these provincial neighbors of ours constitute no longer a mere colonial dependency. They have grown to be a nation—a nation of hardy, industrious, aspiring men, who will have their place, and claim rank before long, among the independent States of this continent. Whatever be their present views of the relations which it may suit them to form with us hereafter, their interest is too closely linked with ours to be dealt with slightly. While I would wish to see our rights in the fisheries established on a firm and permanent basis, giving security and quiet to our fishermen, I am also for indulging the colonists in what reasonable concessions they may expect at our hands. I desire to see them contented, and would heartily aid in hastening the conclusion of any arrangement that might be satisfactory to them. But until England has

withdrawn her squadron, and given satisfaction for what wrongs she may have perpetrated on us, let no negotiation be entertained; and if, contrary to my expectations, any was being entertained, let it be dropped at once and abandoned. I shall vote for the reference of the papers on the table, in the hope that they will be returned to us with a resolution expressive of such sentiments as it behooves this Senate and this great country to speak forth in such an emergency.

