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BOUNDARY BETWEEN THE DOMINION OF CANADA AND THE TERRITORY OF ALASKA.

ARGUMENT

PRESENTED ON THE PART OF THE

GOVERNMENT OF HIS BRITANNIC MAJESTY

TO THE

TRIBUNAL CONSTITUTED UNDER ARTICLE I OF THE CONVENTION

SIGNED AT WASHINGTON, JANUARY 24, 1903,

BETWEEN

HIS BRITANNIC MAJESTY AND THE UNITED STATES OF AMERICA.

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BOUNDARY BETWEEN THE DOMINION OF CANADA AND THE TERRITORY OF ALASKA.

ARGUMENT

PRESENTED ON THE PART OF THE GOVERNMENT OF HIS BRITANNIC MAJESTY TO THE TRIBUNAL CONSTITUTED UNDER ARTICLE I OF THE CONVENTION SIGNED AT WASHINGTON ON THE 24TH DAY OF JANUARY, 1903, BETWEEN HIS BRITANNIC MAJESTY AND THE UNITED STATES OF AMERICA.

FIRST QUESTION.

"WHAT IS THE POINT OF COMMENCEMENT?"

THE two Governments are agreed on the answer to be given to this question. It is true that they do not arrive at this result by the same process of reasoning, but these different processes of reasoning bear only on Question Three, and will therefore be considered in the argument on that question.

SECOND QUESTION.

"WHAT CHANNEL IS THE PORTLAND CHANNEL?"

Great Britain's Contention.

Great Britain's contention is that it is the channel which Vancouver named Portland Canal, and which enters the ocean between Tongass Island and Kannaghunut Island, leaving Sitklan, Wales and Pearse Islands on the south and east, and extending northerly eighty-two miles to its head. Great Britain suggests an alternative answer, to which reference will be made later.

United States' Contention in its Case.

The United States in its Case contends that Portland Channel passes from the north between Ramsden Point on the mainland and

Pearse Island, and thence southward of said island and Wales Island, and enters Dixon Entrance between the island last mentioned and Compton Island (United States' Case, p. 104).

United States' Alternative Contentions in its Counter-Case.

In its Counter-Case, pp. 14 and 15, it changes its contention and suggests two alternatives: either that Portland Channel is the whole estuary from mainland to mainland, in which Pearse, Wales, and other islands lie, and of which Observatory Inlet is a branch, or that the estuary as far inland as Point Ramsden is an unnamed arm of the sea from which diverge two branches—Portland Channel and Observatory Inlet.

What was Vancouver's Portland Channel?

Of these different answers, it is the one suggested by Great Britain that must be given if Vancouver's narrative is to decide the question. Portland Channel was named by him, and in his narrative he clearly indicates that Portland Channel enters the ocean between Tongass and Kannaghunut Islands, and passes north of Wales and Pearse Islands. That is fully proved in the British Case, pp. 51–55. It is not denied by the United States.

United States' Contention that the Negotiators, and specially Sir C. Bagot, were not familiar with Vancouver's narrative.

The United States only contends that Vancouver's narrative is immaterial, because it is not shown that the negotiators knew of it, and because it appears, on the contrary, that Sir Charles Bagot was not familiar with it. To show that Sir Charles Bagot was not familiar with the narrative, two statements of his are quoted to the effect that several of the bays and inlets, between parallels of latitude 54° 45′ and 56°, might communicate with the establishments of the Hudson's Bay Company, and that the head of Portland Channel might be the mouth of a river flowing through the country occupied by that Company. These statements, it is argued, show that Sir Charles Bagot had not read Vancouver's narrative, in which the latter states that the evidence of a navigable river flowing into the archipelago existing between 47° and 57° of north latitude is still wanting, and that the scrupulous exactness with which his survey of the continental shores has been made, within those limits, precludes the possibility of such a river having been passed unnoticed by him as that described to be Rio de los Reyes (a very large river spoken of by a previous explorer).

Answer to that Contention.

Vancouver had been commissioned to search for any considerable inlet of the sea, or even large river in order to find a communication between the Pacific and the Atlantic, or at least

the Lake of the Woods. He reported that no such inlet or river existed, but he was only looking for very large rivers, likely to extend far inland, and navigable all the way for big ships. With smaller rivers, navigable for the Hudson's Bay Company's small craft, he had nothing to do, and his report does not show that there are none. In fact, his examination was not sufficiently minute to allow him to say so. (Vol. II, pp. 354 and 355.) He states that at the head of Portland Canal the water was nearly fresh for upwards of 20 miles. At the heads of other inlets, between 54° 45′ and 56° of north latitude, he also reports having found fresh water. (Vol. II, pp. 340 and 354–356. British Case, Appendix, p. 143.) Those statements were of a nature to convey the impression that there might be rivers communicating with the Hudson's Bay establishments, which were not far inland. (United States' Case, Appendix, p. 162.) The statement that Portland Channel terminated in low marshy land could not destroy that impression, it rather confirmed it. As no other source can be given from which Sir Charles Bagot could have got the idea that there might be rivers flowing into Portland Canal and the other inlets, it follows that he had probably read the narrative, and his statements above mentioned, far from proving that he was not familiar with it, rather prove the contrary.

Answer to the argument drawn from the fact that the Negotiators give the longitude west while Vancouver gives it east

The fact that Vancouver in his narrative should give the east longitude, while the negotiators give the west does not support the United States' contention. As he was going around the world from west to east, he followed his course in his narrative in giving the longitudes. But his maps give the longitude both east and west. With them the conversion from east to west could be instantaneously made. At all events, in order to find the longitude of the few points to which reference is made by the negotiators, they must have gone to the maps where it could easily be obtained, and not to the narrative where it might not be given at all, and if given would be difficult to find.

On this point it remains only to be said, in answer to the arguments contained in the American Counter-Case, p. 10, that the narrative could not help the negotiators to give more accurately the astronomical location of the southern boundary than they have done; neither

could they find, in Vancouver's narrative, landmarks which could have helped them to draw more clearly than they have done the boundary from the point of commencement to the head of Portland Canal.

Arguments to show that the Negotiators had read Vancouver's narrative.

To show that the negotiators were familiar with Vancouver's narrative, there is, in addition to the statements of Sir Charles Bagot above referred to, a statement of M. de Poletica to the effect that Vancouver saw Russian establishments in the Bay of Kinai (United States' Case, Appendix, p. 33), and a statement about the extent of the Russian establishments contained in a confidential Memorandum delivered by Mr. Middleton to the Emperor of Russia, which shows that he had made a thorough search of Vancouver's text, and which reads as follows: "Vancouver learned, in 1794, from the Russians themselves upon the spot, that their most easterly establishment was then at Port Eches, in *Hinchin Brook* island (*Tchatcha* island of the Russians, and *Magdalena* of the Spaniards, in latitude 60° 25'), where they were established the preceding summer, and that *the continent* in the vicinity of that place was barren and *uninhabited* (United States' Case, Appendix, p. 61; Vancouver's Narrative, 1st edition, vol. III, p. 199). It seems reasonable to presume that the correctness of this statement of Mr. Middleton on such an important point was verified by the Russian authorities. In fact, it seems unreasonable to suppose that, when it was so important for the Russian Government to prove to the satisfaction of the British and American Governments the number, importance, and situation of the Russian establishments, and when it was looking everywhere for information on that point, it would not have looked into a book of world-wide reputation, the most important and reliable one on the question, and one, the authority of which could not be contested by the British. That supposition appears still more unreasonable if we consider that the Russian Government, having the maps in its possession, must necessarily have had also the narrative, as the maps were really published as part of the narrative. The title page and the preliminary notice of the French edition, as well as the list of plates at the beginning of the English edition, establish that fact.

M. de Poletica's statement.

Mr. Middleton's statement.

The Maps were sold as published of the narrative.

At pp. 25 and following of the Appendix to

Mr. Pelly's Memorandum.

the British Case there appears a Memorandum of Mr. Pelly, addressed to Mr. Canning, in answer to the statement contained in M. de Poletica's letter printed at p. 33 of the Appendix to the United States' Case, and this Memorandum shows that a careful examination of all the authorities on the question had been made. Especially at pp. 27 and 28 there are three references to Vancouver which imply a very thorough study of his narrative. This Memorandum must have been used by the British negotiators, and its statements must, therefore, have been verified by both Russian and British authorities.

So obvious did it appear to the United States' officials that the negotiators must have had Vancouver's narrative, that they never thought of denying it in all the discussions that preceded the Treaty of 1903. They tried to meet the difficulty in another way (British Case, pp. 54 and 55). This argument was not even raised by the United States in its Case where, under the terms of the Treaty of 1903, it should at least have been raised. It is mentioned for the first time only in the Counter-Case.

It seems that both the Russian and British Governments having designated the channel which they took as the boundary by the name which they knew had been given by Vancouver to a certain channel, it is that channel, as named by Vancouver, that they must have intended to take as the boundary.

Baron Tuyll's letter and Sir C. Bagot's letter quoted in the British Case.

The British Case, at p. 56, quotes extracts from two documents which appear to be conclusive in favour of the British contention.

The first is Baron Tuyll's suggestion to Count Nesselrode, so early as the 21st October, 1822, in which he says:—

"Mais dans la supposition que l'on ne pût réussir à étendre les frontières de la Russie beaucoup plus vers le sud, il serait, ce semble, indispensable de les voir au moins fixées au 55e degré de latitude nord, ou, mieux encore, *à la pointe méridionale de l'Archipel du Prince de Galles et l'Observatory Inlet*, situés à peu près sous ce parallèle. Tout voisinage plus rapproché des établissements Anglais ne pourrait manquer d'être préjudiciable à celui de Novo-Archangelsk, qui se trouve sous les 57° 3'."

This shows that Russia knew that Observatory Inlet entered the ocean at a point substantially as far south as the southernmost point of Prince of Wales Island, and thus that she read Van-

couver's book and charts in accordance with the present British contention.

Russia, however, did not at any time propose Observatory Inlet.

And it cannot be supposed that when, later on, after tedious negotiations, she proposed Portland Channel, she meant the entrance of Observatory Inlet.

The United States does not attempt even to answer this argument. As to the second document, the argument based on it has apparently been misunderstood, because the answer is no answer at all. The argument is that by mentioning the parallel 54° 45′ as the point north of which Great Britain would lose the inlets and bays if Russia's proposal was accepted, Sir C. Bagot showed that he considered the boundary, the Portland Canal, to be on that parallel.

Maps alleged to have been before the Negotiators.

The maps will next require consideration. According to the United States' Counter-Case, the negotiators had before them Vancouver's Maps, the Faden Map of 1823 (British Atlas, No. 10), the Russian Map of 1802 (British Atlas, No. 5), and one or more of Arrowsmith's Maps (British Atlas, Nos. 8, 9, and 12; United States' Case, Atlas, Nos. 8 and 10). They may possibly have had also the Langdorff Map of 1803, but that map need not be taken into account as it can help neither side. Two other maps anterior to the Treaty are published in the United States' Case, Atlas, the French one of 1815 (No. 9), and a German one of 1807 (No. 7). Even if there is no positive evidence that those two maps were before the negotiators, they may help in ascertaining what was the general understanding at those times concerning Portland Canal and Observatory Inlet.

Vancouver's General Map.

Vancouver published a general map (British Atlas, No. 1) and a sectional map (British Atlas, No. 2). In the general map the channel north of Wales, Pearse, Sitklan, and Kannaghunut Islands is shown very clearly. It appears almost as important as the channel to the south of these islands. Between Ramsden Point and Pearse Island hardly any channel can be seen. No one looking at that map could believe that the channel began between Ramsden Point and Pearse Island. It obviously supports the British contention, and shows two generally separate channels coming down to the ocean.

Vancouver's Sectional Map.

In the section map, which is on a larger scale, the pass between Ramsden Point and Pearse Island is clearly shown. The channel north of Wales Island is also clearly shown. This section map taken alone shows either that the two inlets extended down to the ocean separated from each other by the islands, as Great Britain contends, or that both stopped before reaching Pearse Island. The position of the names cannot support the latter view for the reason given in the British Case, and such view is rendered improbable by the unlikelihood of an important arm of the sea, in which lay Pearse and Wales Islands, having been left unnamed by Vancouver. The other view to the effect that Portland Canal extended at its mouth in the ocean from mainland to mainland, and that Observatory Inlet was an inlet diverging from Portland Canal, is not supported at all by either of those maps. In both of them the two inlets are clearly shown to be independent of each other. Both maps being bound up together in the Atlas must have been seen by the negotiators.

The Russian Map of 1802.

The Russian Map contains no names, but the two channels are shown clearly as distinct the one from the other down to the ocean. The north one appears almost as important as the south one. The impression that this map gives is exactly the same as the one created by Vancouver's general map. It, therefore, supports exclusively the British contention.

The Faden Map.

The Faden Map has the words "Portland Channel" written on the north side of the channel, down to the ocean, and it shows a clear channel north of Pearse and Wales Islands.

The Arrowsmith Maps.

Much the same observation applies to the Arrowsmith maps, and it may be added that in some of them the type in which the words "Observatory Inlet" are written make it impossible to believe that that inlet is a branch of Portland Canal.

Other Maps anterior to the Treaty.

The two other maps anterior to the Treaty, the German one of 1807 and the French one of 1815, also clearly support the British view. The first brings the words "Observatory Inlet" down to the ocean, the second brings both the words "Portland Canal" and "Observatory Inlet" down to the ocean.

Facts subsequent to the Treaty.

The facts subsequent to the Treaty will now be considered. Great Britain contends that on

this question the terms of the Treaty being clear, no interpretation is required, and, therefore, the subsequent facts cannot be taken into account. However, as the United States strongly relies on those facts, they must be alluded to.

The United States contends that all the maps with scarcely any exception are favourable to its view. Great Britain denies that statement. Many of the maps support neither view, and several support the British view. Special reference will be made here only to those particularly relied upon in the American Counter-Case, and to a few of those which support the British view.

Arrowsmith's Map, 1833.

The Arrowsmith Map of 1833 (United States' Case, Atlas, No. 12), supports the United States' view in this sense, that the colouring gives Wales and Pearse Islands to Russia. But the way in which the names "Portland Channel" and "Observatory Inlet" are written shows as in several of the previous Arrowsmith maps that Portland Channel extends down to the ocean, and that Observatory Inlet is not a dependency of Portland Channel. The designation of the geographical features, therefore, supports the British view, and should be preferred to the designation of the boundary-line which merely represents the personal opinion of the map-maker on the meaning of the Treaty of 1825, an opinion which surely cannot help this Tribunal to decide the question.

Hudson's Bay Company's Map, 1857.

The Map of 1857 produced before the Select Committee appointed to investigate the affairs of the Hudson's Bay Company, and the British Admiralty Map of 1866, do not support the American view. The United States' Coast Survey Map of 1867 obviously cannot be invoked against Great Britain, and only shows what the American contention was.

Admiralty Map, 1866.

United States' Coast Survey Map, 1867

British Admiralty Maps, 1868.

The British Admiralty maps of 1868 do not show a survey of the channel north of Pearse and Wales Islands, because, being prepared only for the use of navigators, they dealt only with the southern entrance, which was the one used by ships. The insertion of the words "Portland Canal" on one of those maps between Point Ramsden and Pearse Island is the act of the draftsmen, who, as shown by the hydrographer's note placed upon this map in 1886 had no authority to insert the same, and cannot commit Great Britain to any particular inter-

pretation of the Treaty of 1825. As a matter of fact, the insertion of "Portland Canal" at that place on the map only shows that there were people in 1868 who named the entrance between Point Ramsden and Pearse Island Portland Canal, and from whom the draftsman had obtained the information. It does not in any way show, in the opinion of Great Britain, that in 1824 and 1825 the negotiators considered that to be the entrance to Portland Channel.

Maps subsequent to the Treaty supporting the British view.

Among the maps which support the British view may be mentioned Greenhow's Map (United States' Case, Atlas, No. 15), the official French Map of 1844 (United States' Case, Atlas, No 16), Hebert's Map (British Atlas, No. 13), and specially the Russian official Map of 1853, on which the words "Portland Canal" extend down along the channel north of Pearse Island (British Atlas, No. 20).

Irrelevancy of the Maps.

Great Britain, however, contends that even if all the maps subsequent to the Treaty supported the American view, they nevertheless would be irrelevant. The United States attempts to show by those maps either that it was generally understood by all map-makers that the boundary-line and Portland Channel passed south of Pearse and Wales Islands, or that Great Britain has herself interpreted the Treaty of 1825 in that sense.

The first of these alternative contentions is not established. The general understanding at the time of the Treaty would have to be shown; a large number of maps would have to be produced, all agreeing with each other and free from ambiguity. The maps produced were all published long after the Treaty; they are not very numerous, they do not agree, and several of them are ambiguous. The second alternative contention is not established either. No map which marks the boundary-line, as contended by the United States, is shown to have been approved of by the British Government or by any one authorized to bind the Government on this question, and no map containing the United States' view on the question is shown to have been communicated to the British Government or its authorized Representative in such circumstances that the failure of Great Britain to protest could be held as implying that it accepted those views.

Great Britain's arguments, based on the con-

struction of a fort on Tongass Island, and in answer to the United States' argument based on the construction of store-houses on Wales and Pearse Islands, are fully given in the British Case and Counter-Case. It is useless to repeat them here. The same remark applies to Great Britain's argument to the effect that the United States has admitted the British claim as to what is Portland Channel in their Case.

Major Cameron's Report.

Great Britain is charged in the United States' Counter-Case with having printed Major Cameron's Report of 1878 with all the Appendices except one, which, it is stated, favours the United States' contention. The whole of the charge which is suggested is absolutely unfounded. Great Britain, as appears in a note on p. 182 of the British Appendix, did not print any of these Appendices at all, and for the reason that they have no bearing on the Case. The "Portland Inlet" of the Journal of the Royal Geographical Society, quoted by the United States, is clearly the upper part of Portland Canal.

Great Britain's Alternative Contention.

As stated at the beginning of the argument on this question, Great Britain suggests an alternative answer in case Vancouver's Portland Channel should be held not to be the negotiators' Portland Channel. That alternative contention is that if there is to be any departure from the nomenclature and descriptions of Vancouver as the controlling element of decision, then the line should be determined to run up Clarence Strait and Ernest Sound, or up Behm's Canal on one or other side of Revilla Gigedo. The argument on that point contained in the British Case need not be repeated.

THIRD QUESTION.

The third question to be answered by the Tribunal is:—

"WHAT COURSE SHOULD THE LINE TAKE FROM THE POINT OF COMMENCEMENT TO THE ENTRANCE TO PORTLAND CHANNEL?"

The words of the Treaty are:—

"A partir du point le plus méridional de l'île dite Prince of Wales, lequel point se trouve sous la parallèle du 54° 40′ de latitude nord, et entre le 131e et le 133e degré de longitude ouest (méridien de Greenwich), la dite ligne remontera au nord le long de la passe dite Portland Channel," &c.

British Contention

The British view is that the line must be drawn following the most direct, and therefore the shortest course, leaving to Russia the whole of Prince of Wales Island in accordance with the special stipulation of the Treaty to that effect.

United States' Contention.

The United States contends in its Case that the line should be drawn from Cape Muzon easterly until it intersects the centre of Portland Canal. In its Counter-Case it abandons that view, and suggest another one, to which reference will be made later.

As pointed out in the British Counter-Case, it is not very clear whether by this statement of its view the United States means that, wherever may be the entrance of Portland Canal, the line must follow the parallel of latitude on which Cape Muzon, the admitted point of commencement, is situated, or that it must be drawn easterly only because the entrance to Portland Channel, as suggested by the United States, is practically on the same latitude as Cape Muzon. As the United States in its Case merely states its view without supporting it with arguments or explanations, its real meaning cannot be discovered.

It will, however, be assumed that the first of those two meanings correctly represents the United States' view, as the second meaning would be an implied admission that the line must be drawn directly to the entrance to Portland Channel, wherever that entrance may be.

British view supported by the Text of the Treaty.

The text of the Treaty conclusively supports the British view. The degrees of latitude and longitude are given in it only to identify the point of commencement. The Treaty, therefore, merely says that the line commencing at the southern-most point of Prince of Wales Island shall ascend to the north by Portland Channel. No special direction to be followed is given between the point of commencement and the entrance to Portland Channel. The most direct one must therefore be chosen in accordance with the well established rule and with common sense, as otherwise there is nothing to show which of the many indirect courses that may be imagined should be selected. If the line was to go east, regardless of the situation of Portland Channel, the Treaty should have said so. If the argument is that the fact of the line going due east shows the entrance to Portland Channel to be due east, it would be necessary, in order to maintain that argument, that the Treaty should expressly say

that the line must go due east. It certainly should not say, as it does, that the line is to go northerly.

The clause to the effect that the whole of Prince of Wales Island shall belong to Russia, renders the question still clearer if that is possible. That clause shows that the negotiators contemplated the possibility of the line crossing part of Prince of Wales Island. If the line starting from the southernmost point of that island is to go due east, that cannot happen; while if it is to take the most direct course towards the entrance of a channel which is further north, it may happen. That clause, therefore, shows not only that the line was not necessarily to go due east, but also that Portland Channel was supposed to enter the ocean further north.

New Contention in the United States' Counter-Case

The conclusive nature of this argument has apparently struck the United States' Government, because in its Counter-Case it modifies its contention, obviously for the purpose of meeting the objection. In the Counter-Case, the line is no more to be drawn easterly along the parallel on which lies Cape Muzon, but parallel 54° 40′ is to be absolutely the southern boundary. Consequently the line is to start from Cape Muzon, ascend to the north along the eastern coast of the Cape till it reaches parallel 54° 40′, and then follow that parallel easterly to the coast of the continent. The view suggested in the Case is apparently abandoned, and the whole argument is directed towards establishing that the southern boundary is parallel 54° 40′, regardless of where the southernmost point of Prince of Wales Island and the entrance to Portland Channel may be. The change is insignificant in its result, because the southernmost point of Prince of Wales Island happens to be almost on parallel 54° 40′. But considered at the time of the Treaty it might have been important, as the exact situation of that point was unknown, and it is a change in the principle suggested as controlling the interpretation of the Treaty on that question.

United States' Counter-Case, first half of p. 11.

The Text of the Treaty does not favour that view.

The text of the Treaty evidently does not support that view. Parallel 54° 40′ is mentioned only to identify the point of commencement. Even if it could be considered as a boundary, it would be restricted by the terms of the Treaty to the distance between the 131st and 133rd degrees of longitude. This unreasonable geodetic boundary between the two degrees of longitude

would not help the American view, as Point Wales is outside of those degrees. If parallel 54° 40′ had been intended as the southern boundary, it would have been very easy to say so, the designation of the boundary would have been less complicated, and it seems incredible that any man, especially the negotiators, with all the care they took in drafting this Treaty, would not have thought of expressing themselves clearly on that point.

The negotiations previous to the Treaty of 1825.

The Treaty being clear, it follows that it is unnecessary to go beyond it. However, the negotiations also support the British view. In the first place, such a line as that suggested in the United States' Counter-Case is unreasonable; why should the line instead of following the parallel on which the southernmost point of Prince of Wales Island is situated, if a parallel of latitude has to be followed, go from that point to parallel 54° 40′, and then follow that parallel? The answer cannot be that the negotiators thought the southernmost point of Prince of Wales Island to be on that parallel. They could not believe that there was any certainty as to the situation of that point. Its latitude had never been determined, they did not know even which of the south capes was the southernmost, and they chose a degree in round figures only to give the approximate situation. If the negotiators had been convinced that parallel 54° 40′ was exactly the parallel of the southernmost point of Prince of Wales Island, and had chosen it as the boundary in consequence, they would not have provided for the contingency of the line crossing the island since they could not believe that such a contingency could arise, and as the southernmost point of Prince of Wales Island is on parallel 54° 39′ 50″, it is this parallel that would have to be followed on this supposition.

The negotiators had in view parallel 55°.

The only parallel which the negotiators had in view was parallel 55°. From the outset, and throughout all the negotiations, Russia recognized that her rights did not go further south. Only so as not to cut Prince of Wales Island in two, and so as to find a natural boundary on the coast was this parallel departed from. It follows that if any parallel is to be considered, it is parallel 55°.

As to parallel 54° 40′ no reason can be given for its adoption. It is true that in two letters

addressed to Count Lieven, Count Nesselrode mentions parallel 54° 40′ as the boundary, when giving the history of the then pending negotiations, but such references by Russia's Minister, in letters addressed to the Russian Ambassador, even if shown to the British Minister, cannot avail against the clear terms of the Treaty and of all the previous drafts and proposals, and against the obvious intention of the negotiators to take parallel 55° as the boundary, and to depart from it only for two special purposes. They cannot lead to the adoption of a line which is utterly unreasonable, as has already been shown. They surely do not show a consent on the part of Great Britain to accept a boundary different from the one mentioned in the Treaty as signed.

Two letters of Count Nesselrode to Count Lieven, mentioning 54° 40′ as the southern boundary.

Those two letters are easily explained. Parallel 54° 40′ was the degree of latitude of the southernmost point of Prince of Wales Island, determined approximately and in round figures. On the mainland whether 54° 40′ or 54° 45′ was mentioned as the southern boundary, it came exactly to the same result, because the maps show that the mainland ceases at Cape Fox, and from that cape to parallel 54° 40′ there are only islands. If the word "coast" used by Count Nesselrode in the second of those letters is held to mean the coast as contended by the United States in answer to the Questions Five and Six, his statement that Russia owned the coast down to 54° 40′ would be inaccurate, as it would give to Russia part of the southern shore of Observatory Inlet. If the word "coast" means what Great Britain claims, as already pointed out, whether 54° 40′ or 54° 45′ was given as the southern boundary was immaterial. On Prince of Wales Island it was practically accurate to say that parallel 54° 40′ was the southern boundary. It is, therefore, obvious that Count Nesselrode used the expression 54° 40′ to designate the southern boundary, because it was the approximate southern boundary of Prince of Wales Island, and also the approximate boundary on the mainland, the discrepancy of about five minutes there being unimportant, as it did not include any mainland. The expression was used to avoid repeating each time the lengthy, but accurate description mentioned in all the proposals and in the Treaty. It may be noted also that Count Nesselrode in those letters did not attempt to be very accurate, as there was no reason for him to do so. Thus he mentions

Answers to the Argument based on those two letters.

parallel 59° as the latitude above which no nation ever challenged Russia's rights, while in the British Appendix, page 30, it appears that its rights were challenged up to latitude 60°.

Negotiations leading to the Treaty of 1824 between Russia and the United States.

The negotiations preceding the Treaty with the United States of 1824 are absolutely irrelevant. They do not show what the intention of the British negotiators was, and it is the combined intention of both parties that must be found. It is not even proved that those negotiations were shown to the British negotiators. They do not even show what was the intention of the Russian negotiators when dealing with Great Britain. The Russian proposal to Great Britain, which was maintained from beginning to end, was made before latitude 54° 40′ had ever been mentioned to the United States, and Russia by using terms which obviously had a different meaning showed that her intention was different.

Text of the Treaty of 1824.

The same argument applies to the text of the United States' Treaty with greater strength. That Treaty was seen by the British negotiators, and reproduced word for word in many respects. The fact that they changed the terms of Article III of the United States' Treaty when drafting Articles III and V of the British Treaty shows that they did not intend the same thing.

Without repeating the argument which appears in the British Case and Counter-Case, it is to be noted that in the British Treaty a territorial question was involved, and the exact location of the boundary-line was important. Great Britain was insisting upon carrying it as far north as possible. The United States' Treaty was only concerned with navigation and commerce, and, as the United States, although theoretically claiming to have rights far north, was really insisting only upon a boundary-line situated much further south, the exact location of the line in its Treaty was a matter of indifference.

The reference by Sir Charles Bagot to parallel 54° 45′, as being the limit above which England would be deprived of all the bays and inlets under the Russian proposal, also shows that 54° 40′ was not the southern boundary agreed upon.

Mr. Middleton's statement.

It is unnecessary to comment on Mr. Middleton's statement that the negotiations between Russia and Great Britain broke off on the question of parallel 54° 40′. We know that such was not the case. The negotiations broke off

because Russia wanted the *lisière* to extend down to Portland Canal, while England did not want it to go further south than the 56th degree. Then how can Mr. Middleton's statement of what he thought was the difficulty between Russia and England be considered as "an act of a Representative of either Government tending to show the original and effective understanding of the Parties" within the meaning of the Treaty of 1903?

While speaking of Mr. Middleton, his report on the Treaty of 1825, quoted at p. 62 of the American Case, however incorrect it may be in other respects, supports the British interpretation on this point. It says—

> "it [the line] begins at the southernmost point of Prince of Wales' Island (about 54° 40'), leaving the whole of that island to Russia. It follows the strait called Portland Passage," &c.

It is useless to refer in detail to the other arguments on this question which appear in the British Case and Counter-Case.

Facts subsequent to the Treaty.

Only a few remarks remain to be made on the facts subsequent to the Treaty. Great Britain repeats that the Treaty being clear, the subsequent facts are not to be considered; in any case they are insignificant. The United States' Counter-Case, at pp. 17, 18, and 19, quotes a certain number of documents, in which expressions similar to those used by Count Nesselrode in the above-mentioned letters appear. What has been said concerning Count Nesselrode's letters applies here. Also none of these documents are proved to have been issued by, or communicated to, the British Government. They cannot, therefore, show how it interpreted the Treaty. A few words only need be added concerning the lease of the *lisière* by the Hudson's Bay Company. Great Britain asserts that the Hudson's Bay Company was not entitled to commit the British Government to any particular interpretation of the Treaty. Moreover, in the lease the Hudson's Bay Company itself did not show that it interpreted the Treaty in accordance with the United States' view. It wanted to get rid by this lease of competition, and was, therefore, not particular whether the terms describing the area leased were too broad or not; its only objection could have been that they might not have been broad enough.

Finally, the description in the lease adds after the words "54° 40′" the words "or thereabouts," and the same words are used in the renewal of the lease in 1849; they are also used in the United States' Census of 1890. The description of the area leased, as quoted at p. 19 of the United States' Counter-Case, apart from all the other objections to its relevancy, does not show that on the coast the boundary was at 54° 40′. It only shows that somewhere the boundary reaches 54° 40′, which is true.

It may be added that the Memorandum referred to in the American Counter-Case assumes that part of the River Mackenzie is in Russian territory. The ignorance of those who drafted the Memorandum, and the carelessness of the Directors of the Company if they thought it exact, is therefore so apparent that no importance can be attached to this reference.

It is only necessary to remark that if it is proved, as Great Britain contends, that the entrance to Portland Channel is north of Kannaghunut Island, the question whether the line is to follow parallel 54° 40′ or not is immaterial, as if it does it will have to curve northward, so as to reach the entrance to Portland Channel.

FOURTH QUESTION.

Great Britain's Contention.

Great Britain contends that the line from the head of Portland Channel to the 56th parallel should be drawn along the shortest possible line to the point on that parallel which the Tribunal may find to be the starting point of the eastern boundary of the *lisière*.

The two Contentions of the United States.

The United States has put forward two contentions.

United States' Case, p. 104.

In its Case it asks the Tribunal to decide—

"That the line should be drawn from the head of Portland Channel north-easterly along the same course on which said line touches the mainland at the head of Portland Channel until it intersects the 56th parallel of north latitude."

United States' Counter-Case, pp. 30, 31.

In its Counter-Case—

"The United States submits that the line between the head of Portland Canal and 56° of north latitude

should be drawn directly to that parallel along the axis of the valley, which forms a continuation of Portland Canal."

The two courses proposed by the United States do not tend to the same result.

That the two courses proposed by the United States cannot lead to the same result is shown by Map No. 30 in the atlas accompanying their Counter-Case. The direction of the canal and that of the valley are different. That map again suggests a third course for this part of the boundary-line inconsistent with both the others.

The correct principle stated.

Great Britain submits that this confusion has resulted from overlooking the principle that, in dealing with boundaries of lands, a break should be filled in by the most direct line possible.

In the present case both Parties are agreed that the head of Portland Channel is one point of the line of demarcation. Both are also agreed that the course of the line north of latitude 56 degrees is to be determined by considerations depending not at all upon the course of the line south of the parallel, but solely relating to circumstances existing north of that parallel.

The line drawn north of latitude 56 degrees, whether along mountain summits, or along a line determined under the alternative provision of Article IV, must start from some point of the parallel of 56 degrees.

This point of the 56th parallel, when its position has been fixed by a determination of the course of the line northerly, from thence becomes a definite and fixed point of the line of demarcation.

Between it and the former point at the head of Portland Channel there is a discontinuity in the description contained in the Treaty of 1825.

Difficulties of the United States' Contention.

In accordance with the rule above cited, these two points must be joined by a direct line. The difficulties which are occasioned by the contentions of the United States are illustrated by the description of the boundary-line from the head of Portland Canal in its "statement in conclusion," which reads thus :—

United States' Case, p. 103.

"Thence upon the same course continued to the 56th parallel of north latitude; thence northwesterly, always 10 marine leagues from tide water . . . . ."

The discontinuity in this description is apparent. The point attained at the 56th parallel is not exactly 10 marine leagues from tide water, or from any other predetermined topographical feature.

If it was intended that the line should attain latitude 56 degrees at the precise distance of 10 leagues from tide water the description should have been framed accordingly.

Discontinuity in United States' description.

Whether the line from the head of Portland Canal is drawn "on the same course" or "along the axis of the valley," there is a discontinuity at the 56th parallel, which must be filled in either by running the line the necessary distance along the parallel, or by joining the point attained on the 56th parallel by a straight line with some point of the eastern boundary of the *lisière* to the northward.

Method adopted for covering the discontinuity. Its magnitude.

The last appears to be the course adopted by the United States. The line of its Map No. 2 is drawn straight from the point of the 56th parallel to a point distant 10 leagues from the head of Burroughs Bay, or thereabouts. The length of the straight line is, as measured on the map referred to, fully 9 marine leagues. The United States thus, in filling up the first break, has introduced a second break which it covers by resort to the very principle which Great Britain maintains should be applied to the first, and the application of which leaves no subsequent discontinuity to be overcome.

Argument on word "elle."

United States' Counter-Case, pp. 28, 29.

The United States bases an argument upon the word "elle" in the Treaty, stating that it refers to "la ligne," and that any other interpretation "would violate the grammatical rules of the French language." Reference is also made to a Russian version of the Treaty to the same effect.

The applicability to the determinations of the questions at issue of the Russian version, so much relied on by the United States in this, as well as in other parts of their argument cannot be admitted. The negotiations preceding the Treaty were carried on in French, the Treaty was concluded in that language, and by the present Treaty of 1903 the French text is submitted to the Tribunal for interpretation. No evidence has been offered that the Russian version was a translation made at the time of the Treaty, or if so, that it was under such efficient direction of the Treaty makers, as to preclude a minute grammatical error such as the literal translation of the French "elle" by the Russian feminine pronoun without care as to the context.

Grammatical argument of minor importance.

It is conceived that the point is of minor importance, for whether the line is carried along

Portland Canal until the *line* strikes the 56th degree, or until the *Canal* strikes the same degree, the result is the same when the canal along which the line is running is found to terminate before the required latitude is reached. The guiding channel ceasing, the direction in which the line is to go to the point of the continent where "the line strikes the 56th degree" still remains to be determined. It is admitted by Great Britain that there is a point on the continent where the line strikes the 56th degree, but the immediate conclusion drawn from that fact by the United States, that, therefore, no change of direction can occur at the head of Portland Channel, is not admitted.

United States adopts "ascend to the north" as controlling words.

The words relied upon by the United States to substantiate this theory of no change of direction, "ascend to the north," it has utterly discarded in its answer to Question Three, by making the boundary-line "ascend to the north" for more than 70 miles on a due east course along a parallel of latitude. Even here, in the argument on Question Four, in the attempt to make its words "ascend to the north" control to the disregard of the landmarks of the Treaty, they are not given their full effect. The line, it seems, is not to ascend due north, along a meridian line, although that would be the shortest course if the parallel of 56° were the objective point, but may deflect to the east, though on no account whatever to the west!

United States' Counter-Case, p. 29.

The United States, nevertheless, after reaching this result from the discussion of the word "elle," immediately throws away whatever advantage has been gained by the proof that it is the *line*, and not the *canal*, which reaches the 56th parallel, by reverting to the "natural boundary" of the "clearly defined valley" beyond the head of Portland Canal—a course for the boundary which derives its sole *raison d'être* from the fact that this valley is considered the natural continuation of the canal to the boundary.

It is submitted that neither of these two inconsistent alternatives put forward by the United States can be accepted.

Consistency between different parts of the Treaty description secured by the principle Great Britain adopts.

The position of Great Britain on this point rests upon an unstrained reading of the Treaty. Immediately after the words, "To the point of the continent where it strikes the 56th degree of north latitude," come the words, "from this last-

mentioned point the line of demarcation shall follow the summit of the mountains."

This identifies, without possibility of doubt, the "point of the continent" with "the last-mentioned point" at which the line following the summit of the mountains, or, in the alternative, the line of Article IV was to begin.

This point once found, there is no other rational course to follow than to join it with the last described point of the boundary-line, the head of Portland Canal, by a straight line.

That this straight line runs many miles to the westward before it makes its northing to the 56th parallel is no more in conflict with the words, "ascend to the north" than the course of the line to Cape Muzon, which must proceed nearly 70 miles eastward in making 5 miles of northing from 54° 40′ to 54° 45′ at the entrance of Portland Channel.

Mr. Middleton's Report.

United States' Case, pp. 62, 63, 67.

A reference may be made here to Mr. Middleton's Report of his conversation with Mr. Stratford Canning on the day of signature of the Treaty of 1825. Mr. Middleton's Report was that the line "turns eastward upon that latitude [56°] until it touches the highest ridge of the chain of mountains lying contiguous to and nearly parallel with the coast." To this Report considerable importance is attached in the United States' Case. Although, as has been shown in the British Counter-Case, Mr. Middleton was palpably mistaken in his use of the word "eastward," which, through some confusion of thought or of language, he may have substituted for "westward," no such explanation can be given for his use of the word "turns." This word indicates at least that Mr. Middleton carried away from the conversation the impression that a notable change of direction took place in the locality indicated.

Objection that the British line cuts Behm Canal.

United States' Counter-Case, p. 29.

An objection is raised by the United States to the course of the line from Portland Channel to the 56th parallel, as drawn upon Map No. 27 of the British Atlas, in that it intersects the northern part of Behm Canal, and gives Great Britain an outlet to the sea below the 56th parallel. This is said to be at variance with the views of Sir Charles Bagot, who, at a certain point in the negotiations with Russia, raised the objection that a line as proposed by the Russians through the middle of Portland Channel and thence to the mountains bordering the coast, would deprive

Great Britain of the sovereignty of all the coves and small bays lying between latitudes 56° and 54° 45′.

Sir Charles Bagot was contrasting the boundary on the coast at the 56th degree, which he had previously offered to agree to, with the boundary at 54° 45′, which the Russians were now proposing. His remarks had direct reference to the coast merely; in his want of knowledge of the topographical features inland, he was not in a position to judge what the effect of "thence to the mountains" might be. Nor does it appear that the Russians would have vetoed such a line, for the reason that it gave Great Britain an outlet to the sea, for, as has been shown in the British Case, it was no part of the intention of the negotiators to bar Great Britain from access to the sea: the provisions of the Treaty itself show the contrary. This criticism by the United States, however, does not touch the principle, as set forth by Great Britain, upon which the portion of the line now under consideration should be drawn. Whatever force there may be in the criticism is directed against the identification by Great Britain of the particular mountains which the line should follow north of latitude 56°. It is to be observed that even an affirmative answer by the Tribunal to the Fifth Question would not affect the course of the mountain boundary proposed by Great Britain along the ridge from the 56th degree as far as Bradfield Canal, nor would such answer preclude the crossing of Behm Canal by the line, for the Fifth Question refers solely to the *lisière* north of 56°, which will lie wholly to the west of the mountain ridge referred to.

Similarly Staff-Commander Pender's naming of certain mountains merely indicates that he was not in possession of the facts by which the boundary-line in that part was to be determined. If indeed the names Johnson and Reverdy have the nationality ascribed to them in the United States' Counter-Case, it still does not appear that Commander Pender's action in applying these names was an action tending to show the "original and effective" understanding of the Parties.

United States' Counter-Case, p. 30.

Evidence of the Maps

In concluding the argument on Question Four, attention is directed to the statement in the United States' Counter-Case made "in connection with this portion of the boundary," *i.e.*, from the head of Portland Canal to the 56th parallel, that

United States' Counter-Case, p. 30.

"the universal understanding of the Treaty by cartographers and by governments for seventy-five years was the same as that now claimed by United States."

In the atlases of the United States' Case and Counter-Case are printed twenty-eight maps subsequent to the Treaty and which show the course of the line near the head of Portland Canal. (For the present purpose omission is made of several maps of recent date printed by the United States to illustrate their claims, the claims of Great Britain, and those of various writers in the present controversy.)

Of these twenty-eight maps, which are the work of cartographers of many countries, two only show the line proceeding according to the United States on a north-easterly course in prolongation of Portland Canal to latitude 56°, and these two maps show it in very doubtful fashion.

United States' Case, Atlas, Map No. 20.

The two referred to are the Russian Map of 1861, on which the line starting north-easterly from Portland Canal curves back to the west and reaches the 56th parallel almost due north of the head of the canal, and the map of the Scottish Geographical Magazine, 1898, on which the line (as well as can be seen on a map of such small scale) continues north-easterly along a river flowing into the head of Portland Canal to a point considerably to the north of latitude 56°.

United States' Counter-Case, Atlas, Map No. 46.

United States' Maps Nos. 11, 14, 33, 18.

On the other maps, four, namely:—the Russian Map of 1826, the Tanner Map of 1839, the Simpson Map of 1847 (very small scale), and the Spanish Admiralty Map of 1857, show the line as running due north from Portland Canal to the 56th degree. The Brué map of 1833 shows the line running along the west side of the canal as far as a point some distance below its head. It then runs north, diverging from the course of the canal, to about latitude 56°.

United States' Map No 13.

The other twenty-one maps show the line turning to the north-west from the head of Portland Canal. Among these last is the United States' Coast Survey Map of 1867, to which much importance is attached in the United States' Case.

United States' Map No. 24.

Thus two maps only, out of the twenty-eight, support, and they very imperfectly, what is asserted to be the "universal understanding" of seventy-five years.

FIFTH QUESTION.

Meaning of the Fifth Question

The Fifth Question is understood by Great Britain to mean that the Tribunal is to decide whether it was an essential characteristic of the *lisière* that it was not to be traversed by inlets, in other words, whether its eastern boundary was necessarily to run round the heads of all the inlets.

In the argument upon the answer to be given to this question it is proposed in the first place to examine the words of the Treaty in the light of the charts existing at the time, and afterwards to consider the effect of the negotiations and the subsequent action of the parties.

Dealing with the construction of the Treaty apart from extraneous matter altogether, it is clear, in the first place, that it is impossible to arrive at the intention and meaning of the Treaty without first of all defining the meaning of three terms, namely, coast, ocean, and windings or sinuosities of the coast.

By Article III the boundaries follow the summit of the mountains situated parallel to the coast. By Article IV, if these mountains prove to be more than 10 marine leagues from the ocean, the boundary-line is to be parallel to the windings of the coast, never exceeding the distance of 10 marine leagues therefrom. At every point, therefore, it is controlled by reference to the ocean and the coast.

The words "Coast" and "Ocean" refer to the same line.

In the next place it is submitted as clear that "ocean" and "coast" when used as indicating the datum with reference to which the situation of the boundary is to be ascertained refer to the same thing; the coast being the line where the ocean terminates, and the sinuosities or windings of the coast being the sinuosities of that line.

If "coast" and "ocean" do not refer to the same thing it must follow either (1) that the ocean is regarded as capable of penetrating within the line of coast, or (2) that the coast is regarded as capable of retreating from the ocean.

The "Ocean" cannot penetrate the line of "Coast."

The first alternative must clearly be put aside. It is difficult to conceive that the term "ocean" should be used of water coming within the line described by the word "coast." If anything the word "ocean" excludes the idea of inclosed waters more than the word coast does; but apart from this the result of the construction in question

is such as cannot be supposed to have been contemplated. If the "ocean" can penetrate within the "coast" the mountains might somewhere be found to be say 11 marine leagues from the "ocean" but 15 marine leagues from the "coast." The line which would in that case be drawn with reference to the "coast" would be only 6 marine leagues from the "ocean." It cannot, however, have been the intention that when the mountains were more than 10 marine leagues from the ocean, the *lisière* should be narrower than it would have been had the mountains been found exactly at the 10 marine leagues. The "ocean," therefore, cannot come within the "coast."

The Coast" cannot retreat from the line of the "Ocean.'

On the other hand it is still more extraordinary to suppose that the coast was considered capable of retreating from the line of the ocean by following the shores of waters not forming part of the ocean. If this were so, it would follow that where the mountains were found more than 10 marine leagues from the ocean the boundary, which would in that case quit the mountains, might be removed not nearer the sea, but further inland. To take an example, if the waters of any inlet were not "ocean," but the shore of the inlet was "coast," mountains at the head of the inlet might be more than 10 marine leagues from the "ocean," but less than 10 marine leagues from the "coast," and, therefore, the effect of discarding the line of the mountains in order to substitute a line drawn with reference to the coast would be to place the line further inland than the mountains. It is obvious, however, that the line to be drawn with reference to the coast was meant to limit and not to extend the width of the *lisière*.

For the above reasons it is submitted that "ocean" and "coast," where these terms are used to supply the datum from which the boundary is to be ascertained, refer to the same thing.

The "Sinuosities" of the "Coast" are those of "the Coast of the Ocean."

It is also clear that the "sinuosities" or "windings" of the "coast" are the sinuosities or windings of the same coast as that above referred to; that is to say, the coast which forms the limit of the ocean.

According to Article IV, the line which is to be drawn where the mountains are too remote is to be parallel to the windings of the coast and never more than 10 marine leagues distant therefrom. It matters not whether the word "therefrom" ("en") refers to "sinuosities," to "coast," or

to "ocean." It is clear that the parallelism and the distance must be with reference to the same line. If it could be held that the shores of an inlet, though not part of the coast were, nevertheless, part of the sinuosities of the coast, the line parallel to the sinuosity might be forced inland more than 10 marine leagues from the coast and from the ocean.

The question therefore is, what is the one line which is referred to in the three expressions "ocean," "coast," and "sinuosities of the coast?"

Answer to the United States' Contention that the line dividing the "Coast" and the "Ocean" is at the head of Tide-water.

In the case for the United States it is throughout contended that this line must be found at the head of the tide-water. It is to be observed, however, that the expression "tide-water" is itself one requiring further definition.

Assuming that it has reference to ordinary tides, the question presents itself whether tide-water extends as far up a river as the level of the stream is affected by the tides, even though the downward flow of fresh water is not reversed, or whether it only extends to the point where the flow is so reversed. In other words, is the limit to be taken that of the vertical or of the horizontal action of the tide?

It appears to be settled law in the United States that the former is the correct view, and it has been held by the Supreme Court that the city of New Orleans, where the tides cause the fresh water to swell in its downward flow without affecting its current, is on tide water. (Peyroux *v.* Howard (1833) 7 Peters, p. 343.) The same view would probably prevail in England, though the question is not perhaps quite settled (see the authorities collected in Stuart Moore's History and Law of Fisheries, pp. 98–107).

At any rate it was held in the eighteenth century that the water of the Thames at Richmond was tidal, and, whichever rule is taken, the Thames is certainly tidal far above London. It is submitted, however, that it is absolutely out of the question to contend that the Mississippi at New Orleans, or, on a smaller scale, the Thames at or above London, could by any stretch of language be called parts of the ocean, and the absurdity would not, practically speaking, be less glaring if the limit taken was the point where the horizontal action of the tide ceases.

The theory that the ocean extends to all tide-waters must therefore be rejected, and there is

no other limit which can be suggested except a line drawn at the point where the open sea is reached.

It is no answer to say that in many cases the inlets upon this part of the coast do not form the estuaries of important rivers. Vancouver's charts showed no rivers, and the negotiators of the Treaty were entirely ignorant as to what the rivers were. It is clear from Article VI that they were alive to the possibility that they might be important. It is, moreover, not practicable to treat as ocean all the waters of those inlets which do not terminate in a river, while applying some other rule to those which do. The question would arise in each case whether there was a river of sufficient importance to lend the character of an estuary to the inlet which received it.

Similar considerations show that the word "coast" cannot be held to include the whole margin of tide-water. It is not consistent with the ordinary use of language to hold that New Orleans or London is on the coast, and as in the case of ocean, so in the case of coast, if the limit of tide-water cannot be accepted, there is no other alternative to fall back upon, except a line following the general trend of the outer coast which faces the open sea.

Consistency of the meaning assigned to the words "Ocean" and "Coast" by Great Britain.

The meanings assigned above to the words "ocean" and "coast" are not only natural meanings of the terms themselves, but they harmonise perfectly with each other and with the context in which they occur, and if there had been no inlets penetrating the mountains or extending to a depth of 10 marine leagues, the suggestion that the line was to follow the limit of tide-waters would probably never have been heard of. In that case the line would have been drawn in the absence of mountains at 10 marine leagues from the general line of the outer coast, and would have passed behind all the inlets, though, of course, at a distance of less than 10 marine leagues from their heads. It would never have occurred to anybody to contend that an attempt should be made to reproduce in the boundary-line the convolutions shown in the inlets.

The circumstance, however, that some inlets extend more than 10 marine leagues inland cannot vary the construction, either by way of making an exception in the case of such inlets only or by treating every inlet as part of the

ocean. If the line of coast is not to be regarded as broken by the mouth of an inlet extending 5 leagues inland it cannot be regarded as broken by the similar mouth of another inlet which happens to extend 20 leagues.

Argument contained in the United States Counter-Case on the meaning of the words "Ocean" and "Coast."

The question of the meaning of the words "ocean" and "coast" is not specifically argued in the United States' Case. In the Counter-Case, however, it is contended that each of these words may be employed in three distinct ways—viz., in a physical, political, or descriptive sense: and it is urged that they are here used in the physical sense. Great Britain does not admit that this analysis is complete. It is not, however, important to dwell upon merely verbal questions, and the British contention may be broadly stated as being to the effect that the word coast is physically descriptive of the mainland frontage over against the Russian islands, and the word ocean of the sea that washes such coast.

United States' Counter-Case, p. 31.

Articles I and VII of the Treaty of 1825 and I and IV of the Treaty of 1824 compared.

The Treaty itself shows that the Parties were using the word ocean in its popular sense, having regard to the connection in which it occurs. In Article I of the Treaty the term ocean appears to have been used in a sense excluding the interior waters, otherwise it would follow that Article VII was either superfluous as conceding what was already given by Article I or was contradictory to Article I as limiting to a period of 10 years what was given in perpetuity by Article I. And the same observation is to be made with reference to Articles I and IV of the Treaty of 1824.

The true view of Article VII of the British and Article IV of the United States' Treaty with Russia is that these Articles gave something in addition to what was acknowledged by Article I, that is to say, a right to frequent for trade and fishery for ten years something which was not ocean, namely, the interior waters. If this is not so, the United States would have to admit that the subjects of Great Britain have at the present day, under the Treaty of 1825, a right to frequent for trade and fishery therein the interior waters of the *lisière* belonging to the United States. It is hardly necessary to say that this is not, and never has been, admitted by the United States or contended for by Great Britain.

British Counter-Case, pp. 35, 36.

As was pointed out in the British Counter-Case, Mr. Middleton, during the whole course of his negotiations with the Russian Government, was

careful to keep the provisions, which ultimately were embodied in Article IV of the Treaty of 1824, distinct from those contained in Article I; and in announcing the conclusion of the Treaty, he observed that the specific and particular privileges granted by Article IV would be found to contain an extension of the general privileges embraced by the preceding Articles.

United States' App., p 79.

The United States' Case alleges quite clearly that at the termination of the period of ten years referred to in Article IV of the Treaty of 1824, and upon the refusal of Russia to renew the provisions of that Article, the Government of the United States accepted the position that the right of United States' citizens to frequent the interior waters for trade and fishery came to an end, notwithstanding Article I of the Treaty.

Other meanings of the words "Coast" and "Ocean"

It is quite true that persons travelling in the interior of the country might speak of reaching the coast when they came to the shore of an inlet, or that the terminus of a railway upon an inlet might be described as an ocean terminus. Such expressions, which are relied upon in the Counter-Case for the United States, are sufficient to convey the meaning of those employing them in that connection. It does not follow that they would be accurate in other connections. It is conceived, for instance, that a ship would be described as having sailed along the coast without its suggesting to the hearer that she had entered any of the inlets, and if her course were described as parallel to the coast it would undoubtedly mean parallel to the general line of the coast.

United States' Counter-Case, pp. 33, 34.

"Political Coast."

In the same way it is not necessary to controvert the allegation made on page 31 of the United States' Counter-Case, that the "political coast" in this region at the present time follows the islands. This is so because the mainland facing the islands is United States' territory also. At the time, however, when this Treaty was being negotiated, Russia had obtained, or at least obtained very early in the negotiations, a recognition of her right to the islands. It remained to consider the mainland opposite, and it is submitted that, looked at for this purpose and from this point of view, it might quite well be regarded as having even a "political coast" of its own. This verbal controversy seems, however, hardly worth pursuing.

While offering the contentions above adverted

to as to the meaning of the words "coast" and "ocean," the Counter-Case for the United States does not explain how the physical coast to which it refers is to be made to serve the purpose for which the line, which the word coast is used to describe, was introduced into the scheme for the Treaty. No answer has as yet been given to the argument that the British construction is the only one which will enable effect to be given to the requirements of Article IV, that the boundary, in the absence of mountains, shall be a line parallel to the windings of the coast, and which shall never exceed a distance of 10 marine leagues therefrom.

Line indicated on United States' Map No. 25 of Atlas accompanying Case. Reasons why it cannot be adopted.

The United States' construction does not admit of this. If the map on page 25 of the atlas delivered with the Case for the United States is looked at, it will be seen at a glance that the line there put forward does not conform to the requirements of the Treaty. It is not a line drawn parallel to the sinuosities of the coast if the shores of the inlets are to be regarded as part of the coast. It does exhibit certain curves which in point of fact, except where a détour is made to get round the head of Lynn Canal, reproduce in a remarkable way the curves not of the inlets, but of the general line of the coast, and so far as that line can be said to be parallel to anything at all, it is parallel, not to the windings of the coast, as the United States must define them, but to the windings of the coast in the sense contended for by Great Britain.

The fault, however, of the line, as shown on this map, is that it is more than 10 marine leagues from the coast, being pushed back to pass 10 marine leagues from the heads of the inlets in succession. This can only be done upon the theory that the heads of the inlets are coast, and that sinuosities of the coast include the detailed sinuosities formed by the inlets. But if that position is taken, the line must be drawn parallel to those sinuosities; which, however, obviously cannot be done. The line suggested by the United States is, in fact, a line which is parallel to the coast, using that word in one sense, and 10 marine leagues from the coast, using that word in another. But the use of the word "therefrom" clearly indicates that the distance is to be measured from the same line of coast as that to which the boundary was to run parallel.

By drawing the line in the way indicated the United States deprives Great Britain not only of the benefit of all peninsulas and projections which, if their theory as to the meaning of "coast" is correct, should affect the line, but also of all the country between inlets.

If the southern end of the United States' line is looked at, it will be observed that, starting at the 56th parallel, its direction is determined in the first place by the head of Burrough's Bay, from which it keeps at a distance of 10 marine leagues. From that point the course of the line is governed by the head of the next inlet, namely, Bradfield Canal, being drawn parallel to an imaginary line joining those two points without being in any way affected by the occurrence of the Cleveland Peninsula. Great Britain is entitled to ask what is the sinuosity of the coast to which the line is at this point drawn parallel. It is submitted that none can be shown; and that this example demonstrates conclusively the falsity of the principle adopted. The same remark may be made as to the whole course of the line which skips at a distance of 10 marine leagues from inlet to inlet along the whole of its course to the 141st meridian.

It is submitted that the above argument shows conclusively that the British interpretation is the only one which the words of the Treaty will bear, and that the application of the American interpretation produces a result which is shown by ocular demonstration to contradict its specific provisions.

Argument based on Article VII of the Treaty.

As pointed out in the British Case and Counter-Case, the provisions of Article VII strongly support the contention that the Treaty contemplated the possibility that some part of the inlets might be in British territory. There is indeed no answer to this argument, if the effect of that Article is to give to Russia a licence from Great Britain in respect of waters situated between Portland Canal and Mount St. Elias, for there would be no use in Russia taking such a licence if none of the waters to which it referred could be British. The question therefore is whether there were any other waters in respect of which Russia could take such a licence from Great Britain.

In the Behring Sea Arbitration a question was raised as to the meaning in this Treaty of the phrase "North-West Coast of America," the

British contention being that it included, and the United States' contention that it did not include, the coast of Behring Sea; and in the course of this discussion Great Britain maintained, and the United States at least as strenuously denied, that Article VII applied as far north as Behring Sea. The despatches and contentions in which these positions were assumed by the parties respectively are referred to in the British Counter-Case and the United States' Counter-Case in this present Arbitration. It is not now necessary further to refer to the contentions of the Parties in the connection referred to. If the present position of the United States receives support from the position assumed by Great Britain on the former occasion, the converse is at least equally true.

British Counter-Case, pp. 48–53. United States' Counter-Case, pp. 37, 38.

It is submitted, however, that the point now made is not really affected by the contentions with reference to the scope of Article VII, put forward in connection with the Fur Seal dispute. The question now is not whether Russia gave a licence to Great Britain in respect of waters beyond the *lisière*, but whether there were any such waters in respect of which Russia could be regarded as taking a licence from Great Britain. Now Great Britain could in no view possess any inland waters north of the *lisière*. The boundary following the 141st meridian put that out of the question. On the other hand, Russia could not be taking a licence south of the *lisière*, because all that territory had been already relinquished by her to the United States, and had never come into discussion between Great Britain and Russia.

The result is that, by Article VII, Russia took from Great Britain privileges in respect of waters situated in that part of the continent which was fringed by the *lisière*; and, therefore, that it was contemplated that Great Britain might be found entitled to inland waters in that region.

It is contended on behalf of Great Britain that the course of the negotiations confirms the interpretation above set forth of the Treaty itself. It is important, however, to bear in mind the limitations which, upon well-known principles, are universally held to govern the extent to which previous negotiations can be looked at for the purpose of construing a formal written contract.

Such negotiations can be looked at to identify the subject-matter of the contract and to show what the Parties used particular terms to

Extent to which previous Negotiations can be looked at for the purpose of interpreting the Treaty.

describe. It is clear, therefore, that they can be looked at to show what the words "ocean" "coast" and "sinuosities of the coast" were employed to designate; and for this purpose Great Britain refers to the negotiations.

Extent to which the United States claims to be entitled to refer to the Negotiations.

The United States, however, claims to refer to the negotiations as showing that the Parties meant to make a bargain other than that which they have expressed. The position is put very frankly in the Counter-Case for the United States in the following passage:—

United States' Counter-Case, p. 40.

> "The United States asserts that the intention of the parties to the treaty is vital to its true interpretation; that such intention between nations is the very essence of the agreement; and that any material variance from the intention must give place to an interpretation in accordance with it."

The United States uses the liberty of interpretation so claimed to introduce the argument which may be shortly described as "The Barrier Theory," and to contend that the Treaty must be read and applied in such a sense as to give effect to such a barrier as it is asserted the negotiators intended to erect.

Answers of Great Britain to that Contention.

Great Britain denies that this intention can be discovered in the negotiations. But she also submits that the negotiations cannot be referred to for the purpose of controlling the construction of the Treaty to this extent. If, on the true construction of the Treaty itself, it is held that the geographical principle adopted gives, when worked out, a line which provides no such barrier as that contended for, it is not open to the United States to claim that the geographical principle should be modified in order to correct this result. On the contrary, the truer rule would seem to be that the more clearly it appears that any particular stipulation was insisted upon by either side during the negotiations, the stronger is the inference that it would have been expressed in the Agreement if conceded, and that, if not, it must have been abandoned.

This is a rule of common sense, and is particularly applicable in the present case. This Treaty was the result of negotiations extending over about three years, several times broken off and renewed between different Representatives of the two nations, and relating to questions both of maritime jurisdiction and territorial limits.

It was natural, as is found to be the case, that

with regard to such limits in a country then wholly unknown and little thought of, various proposals should from time to time have been made on either side and rejected, conceded, or more or less modified, until in the end an agreement was reached. It is eminently, therefore, a case in which the agreement must govern, however inconsistent it may be with what the Parties may have said or attempted to obtain at different stages of the many protracted discussions. The question of what either side was given or got by the words of the Treaty can hardly, in any case, be affected by showing what they were anxious to get or willing to concede before it was concluded.

Meaning in which the words "Coast" and "Ocean" are used in the Negotiations.

Taking first the words "coast" and "ocean," it will be found that from the time when the *lisière* was first suggested these terms were used convertibly to indicate the line with reference to which the *lisière* was to be defined, the word "coast" meaning broadly the coast of the mainland fronting the Pacific, and the word "ocean" meaning the sea that extended to that line.

Russian "Contre-projet" in answer to Sir C. Bagot's First Proposal of February 1824.

The idea of a *lisière* was first put forward in the "Contre-project" suggested by the Russian Plenipotentiaries in answer to the first proposal of Sir C. Bagot in February 1824. The "Contre-project" commences by referring to a dividing line "on the North-West Coast of America." It then states the Russian desire to make the boundary follow the Portland Canal as far as the mountains "which run along the coast," from which point it would ascend along these mountains "parallel to the sinuosities of the coast."

British Case, App., pp. 69, 70.

Sir C. Bagot's Amended Proposal.

In his amended proposal, delivered on receipt of this "Contre-projet," Sir Charles Bagot adopts the phrase "mountains bordering the coast," and suggests in effect that the *lisière* shall commence further to the north, whence the line "would follow a northerly and north-westerly direction parallel to the sinuosities of the coast and always at a distance of 10 marine leagues from the shore ["rivage"]."

The word "rivage" here clearly means the same as "côte," and is only used to avoid repeating the same word. It cannot mean the shore of the inlets, because in the first place a line parallel thereto is impossible, and, secondly, because the inlets are so pronounced that such a line could not be accurately described merely as running "in a northerly or north-westerly direction."

Russian Observations on Sir C. Bagot's Amended Proposal.

In their observations upon the amended proposal, the Russian negotiators again refer in their opening paragraph to the "North-West Coast," and, after reiterating their proposal, point out that it would leave to Great Britain "all that part of the coast lying between the mouth of Portland Channel and the 51st degree of latitude north." Here they are clearly speaking of the North-West Coast of America in its broad aspect, and neglecting the inlets. Otherwise the coast left to Great Britain (and it would support the Russian argument to make it appear as extensive as possible) would have been described as running from the head of Portland Canal. Independently of this, it is clear that in this despatch the "coast" was not regarded as including the head of Portland Canal, because that inlet is in terms described as having its "origine dans les terres."

British Case, App., p. 71.

Sir C. Bagot's reply.

In his reply Sir Charles Bagot repeats the Russian phrase, "that part of the coast lying between the mouth of Portland Canal and the degree of latitude," &c.

British Case, App., p. 72.

Russia's Final Decision.

In their final decision the Russians insist on the possession of a "portion of territory on the coast opposite" Prince of Wales Island.

British Case, App., p. 74.

Sir C. Bagot's Report to Mr. Canning.

The negotiations were then broken off, and, in reporting to Mr. Canning what had taken place, Sir C. Bagot describes the *lisière* as "a line of coast extending 10 marine leagues into the interior of the continent."

British Case, App., p. 67.

Count Nesselrode's Letter to Count Lieven, giving an Account of the Negotiations.

Count Nesselrode, on his side, also wrote an account of the negotiations to Count Lieven, in which, after referring to "the North-West Coast of America" and "the North-West Coast of the American continent," he speaks of the frontier proposed by him as running along "the mountains which follow the windings of the coast." The southern frontier, he said, would "end upon the continent at the Portland Canal, the mouth of which into the ocean ["l'embouchure dans l'océan"] lies in the latitude of Prince of Wales Island and the head inland ["l'origine dans les terres"] between the 55th and 56th degrees." He explained that the proposal only secured to the Russians "a narrow strip on the coast itself;" and he pointed out that England did not possess any establishment "neither at the head of Portland Canal nor on the shore of the ocean."

British Case, App., p. 75.

British Case, App., p. 78.

It is contended that these documents show to demonstration that the Parties in speaking of the coast were referring to the general line of the

North-West Coast of America, to which the mountains on the chart appeared to run parallel in a northerly or north-westerly direction; that the word as they used it excluded the shores of the inlets, and that the inlets were not regarded as "ocean." The "narrow strip on the coast itself," referred to by Count Nesselrode, would not, therefore, be a strip at the head of an inlet like Portland Canal.

Upon Sir Charles Bagot breaking off the negotiations at this point, Mr. Canning communicated the position of affairs to the Hudson's Bay Company, who, through Mr. Pelly, expressed themselves as satisfied with the proposals of Russia, subject to a better definition of the mountains described as following the sinuosities of the coast. The language used by Mr. Pelly, and repeated by Mr. Canning to Sir Charles Bagot, shows that "the coast" and "the sea" were regarded as denoting the same line. On the 26th May, 1824, Mr. Pelly wrote pointing out that it was possible "that those mountains represented in the charts as closely bordering on the sea, and described by the Russians as a *très petite distance*, may really be at a very considerable distance from the coast."

Mr. Pelly's Letter to Mr. Canning of the 26th May, 1824.

British Case, App., p. 80.

On the 12th July, 1824, Mr. Canning, writing to Sir C. Bagot, spoke of the line "following the sinuosities of the coast, along the base of the mountains nearest the sea." In the same despatch he speaks of the necessity of a proviso, "that the line shall in no case (*i.e.*, not in that of the mountains, which appear by the map almost to border the coast, turning out to be far removed from it) be carried further to the east than a specified number of leagues from the sea."

Mr. Canning's Letter to Sir C. Bagot of the 12th July, 1824.

British Case, App., p. 86.

Meanwhile, on the 29th May, 1824, Mr. Canning had written to Count Lieven in terms which point clearly to a distinction between inland waters and the ocean. He asks for "precise and positive stipulations for the free use of all rivers which may be found to empty themselves into the sea within the Russian frontier, and of all seas, straits, and waters which the limits assigned to Russia may comprehend." He adds, later, that it was taken for granted that "the exclusive claims of navigation and jurisdiction over the North Pacific Ocean, which were put forward in the Ukase of September, 1821, are to be altogether withdrawn."

Mr. Canning's Letter of the 29th May, 1824, to Count Lieven.

British Case, App., p. 81.

Count Lieven's Letter to Count Nesselrode.

British Case, App., p. 83.

In repeating Mr. Canning's communication Count Lieven drew Count Nesselrode's attention to these separate points as to the inland seas and the Pacific Ocean.

Draft Conventions sent by Mr. Canning to Sir Charles Bagot on the 12th July, and to Mr. Stratford Canning on the 8th December, 1824.

British Case, App., p. 87.

In the draft Convention which Mr. Canning sent to Sir Charles Bagot on the 12th July, 1824, the line was described (Article II) as ascending Portland Channel "till it strikes the coast of the Continent," and the same phrase is used in the draft sent to Mr. Stratford Canning on the 8th December following. These two passages are the only ones in which the word "coast" seems to be capable of applying to the shore of an inlet. It is, however, interesting to observe that in each case the Russians altered the phrase. In the counter-draft delivered to Sir C. Bagot the line was described as ascending Portland Channel "jusqu'au point où cette passe se termine dans l'intérieur de la terre ferme," and the same correction was made by Matusevich in the draft which was submitted through Sir Stratford Canning. This emendation thus repeated is most pointed, and shows that the Russians noticed the confusion which would be introduced by treating the head of Portland Canal as "coast." At any rate, it shows that the Russians did not enter into the Treaty relying on the word "coast" having any such significance.

Russia's Counter-Draft.

British Case, App., p. 94.

Matusevich's Corrections to the Draft submitted by Sir Stratford Canning.

British Case, App., p. 126.

British Case, App., p. 115.

This conclusion is fortified if the terms in which the 10-marine-league limit is provided for in the four documents last-mentioned are examined. In the draft sent to Sir C. Bagot it was stipulated that "the strip of coast should not in any case extend more than 10 marine leagues in breadth from the sea towards the interior." In the Counter-Draft this phrase is retained side by side with the substituted phrase describing the head of Portland Canal as "in the interior." The Russians therefore were clearly contemplating a breadth of 10 leagues, to be measured back from the sea to "the interior," the heads of the inlets being situated in such "interior," and not, therefore, being part of the sea.

In the draft sent to Mr. Stratford Canning by Mr. George Canning the clause provided that "if the summit of the aforesaid mountains shall turn out to be in any part of their range at more than the distance of 10 marine leagues from the Pacifick, then that for that space the line of demarcation shall be a line parallel to the coast, and its

windings at the said distance of 10 marine leagues therefrom, so that the said line of demarcation shall never extend farther than 10 marine leagues from the coast." This clearly treated the coast as being the coast of the Pacific.

In the Russian Counter-Draft the language is: "Partout où la distance entre la crête des montagnes et la mer se trouverait de plus de 10 lieues marines, la limite de cette même lisière sera formée par une ligne parallèle aux sinuosités de la côte et qui ne pourra jamais s'éloigner de la mer que de 10 lieues marines."

Looking at these four versions of this proviso, it is clear that the words Pacific, mer or sea, and côte or coast, all refer to the same datum line from which the 10 marine leagues were to be measured towards the interior, and that the Russians were correct in altering the phrasing of the preceding Article so as to make it clear that the head of Portland Canal was not on the coast but in the interior.

For these reasons it is submitted that the negotiations support the contention that the words coast and ocean or sea, as used by the negotiators, did not include the heads of the inlets.

United States' Contention that an "Unbroken Barrier" was intended to be retained by Russia.

In the United States' Case it was, however, contended that the negotiations disclosed a governing intention on the part of the two Powers concerned to erect a barrier unbroken by inlets between the British possessions and tide-water throughout the whole length of the *lisière*. It has already been submitted that the negotiations cannot be referred to for the purpose of extracting from them a controlling principle of this kind independent of and, indeed, over-riding the provisions of the Treaty itself. In the British Counter-Case it was shown, moreover, that the negotiations do not, in fact, support any such theory. It is not proposed here to repeat that reasoning, especially as it is not part of the affirmative argument of Great Britain. It is sufficient to refer to the pages of the British Counter-Case in which it is set forth. It is contended, however, that if the negotiations are examined not for the purpose of extracting a principle at variance with the terms of the Treaty, but for the more legitimate purpose of ascertaining the sense in which the word *lisière*

The British Contention.

Sense in which *Lisière* was used.

was used, the British interpretation receives material confirmation.

British Case, p. 82.

As was pointed out in the British Case, the *lisière* was described as a "point d'appui," "une portion de territoire sur la côte," "une étroite lisière sur la côte même," "une simple lisière du continent," "une médiocre espace de terre ferme," "uniquement un point d'appui."

United States' Counter-Case, p 40.

In the Counter-Case for the United States it is argued that the *lisière* contended for by Great Britain would not be an effective "point d'appui."

This is not admitted; but if it is to any extent true, the answer is that the Russians were willing to take their chance as to the real situation of the mountains which were to determine, in the first instance, the breadth of the *lisière*.

Course of Negotiations.

The mountains were suggested as the eastern boundary of the *lisière* on the first occasion on which the *lisière* itself was proposed, namely, in the Counter-Draft delivered by the Russian Plenipotentiaries to Sir Charles Bagot in February, 1824. The amended proposal of Sir Charles Bagot neglected the mountains and proposed a 10-marine-league line.

The limiting line, where the mountains receded more than 10 marine leagues from the Ocean, was first suggested in the draft Convention sent by Mr. Canning to Sir Charles Bagot in July, 1824, in view of the proposed resumption of the negotiations broken off earlier in the year. In this draft the boundary was expressed to follow the seaward base of the mountains.

The "Seaward Base of the Mountains."

The way in which this proposal was received by the Russians shows that they were perfectly alive to the possibility that the mountains would be found far within the 10-marine-league limit. In his Memorandum of the 24th July, 1824, Count Lieven pointed out that it would not be impossible, in view of the little exactness of the geographical ideas which the Parties as yet possessed as to those regions, that the mountains designated as the boundary should extend by an insensible slope down to the very border of the coast.

Removal of line from Seaward Base to Summit.

Sir Charles Bagot was instructed by Mr. Canning to consent, if necessary, to the boundary running along the summit instead of along the base of the mountains. The Russians, however, were not satisfied with this, and proposed in their Counter-Draft the adoption of a 10-league line, without reference to mountains at all.

British refusal to discard Mountain Boundary.

The negotiations at this time failed upon other points, but when Mr. Stratford Canning was instructed to resume them in December, 1824, Mr. George Canning informed him that the British Government could not consent to discard the mountains altogether, and take the distance as invariably the rule.

The Mountain Boundary retained with a limiting 10-league line.

The alternative boundary was therefore adopted, but it is quite clear that the Russians, while fully appreciating that the mountains might be found to run along the coast itself, were prepared to take the chance of this, and would have preferred to have had no reference to the 10-marine-league limit at all. In his despatch of the 20th February (3rd March), 1825, Count Nesselrode remarks to Count Lieven that the natural frontier formed by the mountains would have been preferable—

British Case, App., p. 131.

> "England," he says, "would have gained thereby wherever those mountains were found at less than 10 marine leagues from the sea; Russia, wherever this distance was greater, and considering the want of precision in the geographical notions then possessed concerning these countries, such an arrangement would have offered to the two Contracting Parties entirely equal chances of advantage."

It is submitted that this shows the Parties were not bargaining upon the basis that the mountains would reproduce any such line as that shown by the ridge conventionally depicted on Vancouver's charts, but that they were willing to take a line subject to all the variations which proper application of the geography, when ascertained, would introduce.

Acts of the Parties—How to be considered.

As has already been pointed out in the British Case and Counter-Case, preliminary or subsequent action of the Parties can only be taken into consideration by the Tribunal by virtue of the concluding clause of Article III of the Treaty of Arbitration.

How evidence as to Acts of Parties is to be considered.

The limits within which, and the purpose for which, evidence of this kind is receivable under this Article, have already had attention drawn to them in the British Counter-Case. But it is also necessary to keep in view, while estimating the bearing of this class of evidence, when admitted, what has been the position in reference to this

British Counter-Case, p. 66.

boundary during the period to which this evidence refers.

The Treaty provided a Paper Boundary merely.

The contention of Great Britain, which will be more fully developed hereafter, is that the Treaty of 1825 merely established a boundary on paper, to be located when the time arrived which should make that step necessary; and further, that such locating of the boundary would not merely consist of an identification of points referred to (as in the case of the water boundary), but would involve an ascertainment of facts and data.

Acts of Parties as Revealing Intention.

The inquiry, for the purpose of which the action of the Parties is to be looked at, is as to the meaning and intention of the Treaty, and not as to what are to be taken to be the facts and data which would control its application.

The British view.

From this standpoint, Great Britain submits her view of the facts and data, and presents a line which she says exhibits the result of the application of the Treaty thereto. But, as was declared in the British Case, she does not present it as in all respects the only possible application of the Treaty, and action of the Parties pointing to a different application from that shown by such line is not to be mistaken for action pointing to a different interpretation of the Treaty itself. The application of the Treaty has, as Great Britain contends, always been a problem awaiting solution, and not one that was in the process of receiving it; and this is the answer, broadly stated, which she submits to the United States' contention upon this part of the Case.

British Case, p. 83.

The United States' view.

The evidence, however, which is presented by the United States upon this part of the inquiry is directed substantially to establish the contention that the provisions of the Treaty have received practical application by the action of Russia and the United States (without protest, it is said, on behalf of Great Britain): and that such application reveals a line coinciding substantially with the line shown on Map 2 in the Atlas delivered with the United States' Case.

Resulting fallacious Argument by United States.

This being the point of view from which this subject is approached, the Case and Counter-Case for the United States are found continually commenting upon the action of the Parties as if the issue were between two ascertained lines, namely, a line such as that contended for by the United States as above mentioned and the line shown in the Atlas delivered

with the British Case as giving effect to the British application, on the ground, of the terms of the Treaty; and the action of the Parties is examined with a view of showing that it is inconsistent with the latter line. One example of this is sufficient for the present purpose. In the Counter-Case for the United States reference is made to the narrative of the journey of Governor Simpson in 1847, and an extract is cited and printed in italics in which the Governor says that the strip (the *lisière*) rendered the interior country comparatively useless to England. The comment on this is as follows: "If Great Britain had possessed the heads of the inlets, Governor Simpson would never have written the last clause of the foregoing sentence."

United States' Counter-Case, p. 46.

The fundamental fallacy of the line of argument of which the above is an example, and which is often repeated, is that it ignores the fact that the boundary was, and still remains, an unascertained line, not merely an undelimited line in the sense of unidentified upon the ground, but a line unascertained in the sense that the data upon which it depended had not been agreed upon.

In answer to the Fifth Question, Great Britain repudiates the contention of the United States that it is a fundamental principle in the construction of the Treaty that she is to be entitled to none of the inlets. And she is further contending, in answer to the Seventh Question, that, in the application of the provisions of the Treaty to the topography, she ought, as a matter of fact, to obtain the heads of all the important inlets. But the Fifth Question may be answered in accordance with the British view, that is to say, in the negative, and yet, in the application of the Treaty, so construed, to the topography, it may still be undecided (and the solution would depend on the answer to the Seventh Question), how far she is to obtain the heads of the inlets.

There is a further general observation to be made with reference to the United States' presentation of evidence in support of the authority of the specific line for which that Power contends.

Two false United States' assumptions.

This line assumes two things, firstly, that the boundary must, of necessity, run behind all the inlets; and, secondly, that the boundary is to be traced throughout by reference to the 10-marine-league limit, and not by reference to mountains.

As to the first point, Great Britain objects that

it is not open to the United States to show, by evidence of the action of the Parties, that the boundary was assumed to run in the way described, unless they also prove that it can so run consistently with the Treaty.

Powers of the Tribunal.

It is to be observed that the Tribunal is not empowered to give any effect to such action as a source of title independent of the Treaty of 1825. That Treaty cannot be revised, nor, except so far as is contemplated by the terms of the Seventh Question, can a boundary be laid down by the Tribunal. It has only to answer the questions put. If, therefore, the action of the Parties were to be held to point to the assumption of the boundary-line contended for by the United States, but such line cannot be made consistent with the words of the Treaty, the Tribunal would have no authority to give effect to it.

United States' line inconsistent with Treaty.

Is, therefore, the line contended for consistent with the Treaty? It cannot be so unless it is the mountain line. There is no 10-marine-league line. There is a 10-marine-league limit, but the Treaty postulates the existence of mountains to form the boundary, and the 10-marine-league limit defines the position of the mountains and the course of the line in places where the mountains fall outside the limit.

Great Britain has further to observe, with reference to the evidence of the United States on this part of the Case, that, inasmuch as it is adduced to establish that a 10-marine-league boundary has been accepted, it misses the mark by proving too much.

The Boundary was left to be determined and has never been determined.

It cannot be denied that under the Treaty the boundary was left to be ascertained in the future. It was dependent on the ascertaining of the position of the summits of the mountains within the prescribed limit. It cannot be alleged that the Parties have ever agreed upon the point so left open; it is not submitted to the Tribunal to say whether they have or not; and the Seventh Question assumes that they have not.

Yet a large part of the Case and Counter-Case of the United States is devoted to supporting by reference to the action of the Parties a line relied upon as establishing the application of the 10-marine-league principle—a principle which was repudiated by one of the Parties, and regretfully allowed to drop by the other.

The first act referred to by the United States subsequent to the making of the Treaty of 1825

is the publication of a Russian map described as laying down a boundary "at a distance of 10 marine leagues around all the inlets of the sea." Subsequently there is a reference to "the universal method followed by cartographers in drawing the boundary-line at 10 marine leagues from the shore of the mainland." An alleged Russian boundary-mark on the Stikeen at 10 marine leagues from the coast is relied on. It is pointed out that the settlement proposed to be made by those on board the "Dryad" was to be at more than 10 marine leagues from the coast.

United States' Case, p. 72.

United States' Case, p. 85.

United States' Case, p. 88.

United States' Case, p. 79.

There are numerous other references of the same kind in connection with the Stikeen, and it is also alleged that arrests were made up to a distance of 10 marine leagues from the head of Lynn Canal, and that the census was taken, and the United States' authority acknowledged for 30 miles up Taku River.

United States' Case, pp. 95, 96, 101.

Great Britain contends that it is not competent for one Party claiming under the Treaty of 1825 to set up against the other that any 10-marine-league principle is to govern the boundary to the exclusion of mountains, unless it shows that such is the result of the Treaty stipulations and geographical conditions.

SUMMARY OF ACTS OF PARTIES.—THEIR EFFECT.

It is not proposed on behalf of Great Britain to go through the individual acts referred to in the Case and Counter-Case of the United States, either with a view to showing how far the evidence must as a matter of detail be rejected, or only accepted subject to qualification, or with a view to classifying it in detail with reference to its receivability, in accordance with the canons hereinbefore submitted. It is sufficient here to deal with it by way of summary.

As was shown in the British Case, the relations of Russia with the territory now in dispute were principally at the Stikeen. So far as there is evidence that they penetrated to the head of Lynn Canal, their action may have been taken at the time of the affair of the "Dryad" as part of an effort to thwart the operations of the Hudson's Bay Company by all means in their power, whether rightful or wrongful. In the Counter-Case for the United States, however, there is a deposition of an Indian named Ikee Shaw, said to be a

United States' Counter-Case, App., p. 214.

resident of Kluckwan, exhibiting medals which he declares were given to his wife's ancestor as a token of allegiance to Russia. The deponent does not identify the date of this ceremony beyond stating that it was three generations ago. The medals themselves date back to the time of Alexander I, and the mere statement of a witness of this sort that they had been in the possession of his wife's family for such a period is not very conclusive evidence of the fact. It is to be observed that the only records from Russian sources which refer to ceremonies of this kind chronicle presentations of medals on the Stikeen or at Yakutat Bay.

United States' Case, App., pp. 308, 309.

Effect of Lease to Hudson's Bay Company.

The Case and the Counter-Case of the United States dwell at some length upon the lease granted by the Russian Government to the Hudson's Bay Company as showing a recognition of title inconsistent with the British interpretation of the Treaty.

It is submitted that the transaction, if looked at fairly, does not support this inference. The lease was accepted as a way out of the difficulty created by the stoppage of the "Dryad." The fair view of it is that it was accepted as a temporary cession of the Russian territory, whatever it was. The possession of the *lisière*, however narrow it may have been, had given rise to a difficulty about the right of passage. It might give rise to innumerable other difficulties at various points along the coast, and it is perfectly intelligible that the Hudson's Bay Company, which was, for general reasons, anxious to come to an understanding with the Russian Company, should think it good policy to anticipate all such questions up to Cape Spencer by an arrangement of this kind. After the arrangement was made they could and did carry on their operations everywhere except upon the islands, and it is not reasonable to suppose that they ever distinguished between what they enjoyed under the lease and what they enjoyed under the Treaty.

It was sufficient for the Hudson's Bay Company to know that they had got rid of the Russian strip, which was an inconvenience to them; and this is the effect of the evidence given by Sir George Simpson before the Select Committee of the House of Commons in 1857. What passed on that occasion has been submitted to a verbal scrutiny on the part of the United States, which extracts more significance

from it than, on a reasonable consideration of the circumstances, it is possible to do. Sir George Simpson was dealing with a difficulty which, for present purposes at any rate, had been overcome. To read his statement as containing any admission as to what effect the strip would have if its existence had been a practical matter is, as Great Britain contends, highly unreasonable. The Committee had a map before it, as to the character and true meaning of which some remarks will be made hereafter, and it was quite sufficient for the purposes of the Committee, which only required to refer to boundaries in the most general way, to treat the *lisière* as indicated by such map.

The Counter-Case for the United States, however, puts forward the argument that one of the objects of the Hudson's Bay Company in taking the lease was to enable it to hunt the river beaver in the rivers of the *lisière*, and evidence of a distinguished biologist is printed to show that the river beaver is only found in fresh water. There is no ground for the suggestion that the lease was wanted to enable the Hudson's Bay Company to hunt the river beaver. The documents quoted on p. 44 of the United States' Counter-Case, which state that the Russians regarded the object of the Hudson's Bay Company as being to "occupy the region where the natives living on the coast obtain river beavers," refer not to the territory ceded by the lease, but to the intended site of the Stikeen post, to establish which the "Dryad" was fitted out. The river beavers, though trapped in fresh water, were traded for upon the coast. The American traders obtained these skins as easily as the British or Russians; and they at any rate had at this time no access to fresh water in this region.

United States' Counter-Case, pp. 43, 44.

United States' Counter-Case, App., p. 2.

Acts of United States after 1867.

It is now necessary to refer to the alleged action of the United States after that Power succeeded to the Russian title in 1867. In the Case and Counter-Case for the United States a good deal of space is devoted to the consideration of incidents that occurred upon or with reference to the Stikeen. It is not perceived in what the importance of these matters consists. They only show the particular points at which on one side or the other the boundary was, on the different occasions alluded to, alleged to cross the river. It was some times asserted that the mountain boundary had been identified. At other times

the suggestion was that the 10-marine-leagues point was at such or such a point. These were questions of the local application of the Treaty only, not supporting the United States' construction of the Treaty. If the United States could point to any instance in which a measurement was taken advisedly from the head of tide-water, in order to ascertain the boundary point, it would be of importance. In point of fact, however, the only occasion on which a measurement was taken on accurate lines was when Mr. Hunter made his survey: and he measured from the general trend of the coast.

With regard to Lynn Canal, the evidence is summarized at pp. 75–78 of the British Counter-Case, to which Great Britain requests the Tribunal to refer. The time which it covers may be divided into three periods—1867–1880, 1880–1885, and 1885–1903.

1867–1880.

During the first period there is no evidence of any action of the United States except on certain occasions when their ships visited those waters. The country itself was barred to white men by the local Indians, and no laws of the United States relating to Indians were applied or, indeed, deemed applicable.

United States' Case, App., p. 365.

1880–1885.

During the period from 1880 to 1885, though access to the country had been obtained by the whites, the effect was small. A trading station, two or three canneries, and a mission school represented the settlement. There was no effective system in operation for obtaining title to land, and no administration of affairs. Nothing can be pointed to as having occurred to direct the attention of Great Britain to this incipient settlement.

1885–1903.

During the last period, from 1885 to 1903, events of more importance occurred, the effect of which was gradually to bring into prominence the questions involved in the application of the Treaty of 1825 now before this Tribunal. In order, however, to assign its proper degree of significance, with reference to the purpose for which it is adduced, to the evidence of what occurred locally, such evidence must always be considered in connection with the position of the two Governments concerned.

How evidence of Maps to be regarded.

This important topic will be dealt with hereafter, but, before doing so, it is necessary to consider the true bearing in this controversy, and in connection with the action of the Parties, of

the maps relied upon on behalf of the United States.

The Russian Map of 1826.

The publication of the Russian map of 1826, which was followed by others having, so far as material, the same characteristics, is referred to in the United States' Case as the first incident in the chain of events relied upon. Now the line which was drawn on the Russian map of 1826 was not, and could not have been, intended to be a line showing the actual result on the ground of applying the principles of the Treaty of 1825.

On the contrary, it is a line which is obviously drawn in a manner inconsistent with the Treaty. The Treaty provided that the mountains near the coast were to furnish the boundary, and that it was only in the event of there being no such mountains within 30 miles of the coast that a line was to be traced parallel to the coast within that limit. This map shows at several points ranges of mountains much nearer the coast than the line which is traced as the boundary. It is obvious that the map-maker adopted the simple plan of tracing a boundary-line at some distance from the sea, irrespective alike of the physical features of the country and of the provisions of the Treaty. Indeed, in one point of some importance this map is quite inconsistent with the argument for the United States. According to that argument, the head of such an inlet as the Lynn Canal is to be treated as part of the coast, and the boundary should be set back from it as far as from the general line of the coast proper. An examination of this Map of 1826 shows that the line traced as that of the boundary is separated from the head of Lynn Canal by a distance much shorter than that which separates it from the general line of the coast at other points. It would therefore appear that the map-maker considered that the width of the *lisière* at this point was to be measured from some point on the Lynn Canal far removed from its head. The map is, however, of no authority, and little can be based upon it on either side.

The Treaty disregarded.

This line of the Maps generally.

It is not proposed in the written argument in answer to this question to examine in detail the maps relied upon by the United States. They are all open to the observation that the map-makers have not been guided by the physical features of the country and have not attempted to apply to them the provisions of the Treaty.

The Diplomatic Situation as Affecting Actions of Parties and Evidence of Maps.

Maps and Actions of the Parties must be considered in relation to the Diplomatic Situation.

It is now necessary to present the British view of the diplomatic correspondence between the Parties, with reference to which the action locally of the United States and the evidence afforded by the maps must be considered.

1871–1878.

Between 1871 and 1878 there were various communications between the Parties with reference to a demarcation of the boundary, and stress is laid in the Counter-Case of the United States upon the circumstance that the boundary to be marked out was on one or two occasions mentioned as crossing the Rivers Stikeen, Taku, and Chilcat. It will be found that the point to which the Parties were primarily directing their attention was the feasibility of saving the expense of a general demarcation by selecting a few points which should alone be dealt with. It is not unreasonable to suppose that those to whom this suggestion occurred simply referred to one of the maps drawn in the way which has above been referred to, and considered the financial problems involved in tracing such a line as that. The only occasion on which any measurement was actually made was when Mr. Hunter laid off the boundary, as he estimated it, upon the Stikeen. He measured it from the general trend of the coast, adopting a principle which is inconsistent with the theory that it would be an essential characteristic of the line that it should cut the rivers referred to; and, looking at the slight degree of attention which the problems presented by the Treaty had at that time aroused, it is submitted that the expressions referred to as to the line crossing these rivers are not of great importance.

Mr. Bayard's despatch of November, 1885.

But whatever might have been the significance of these matters, if the case had rested there, it disappears in the light of the subsequent correspondence, which commenced with Mr. Bayard's despatch of November, 1885. In that despatch Mr. Bayard, referring to 1867, writes as follows:—

British Case, App., pp. 249, 252.

> "The boundary was then, as it is still, a theoretical one, based, as it is fair to be presumed, on the charts which the negotiators had before them in 1825, and which they doubtless assumed to be a substantially correct expression of geographical facts."

He quotes Mr. Dall's report as showing that a line following the shore of the inlets would be impossible to locate, inasmuch as it would "cross itself in many places and indulge in myriads of knots and tangles," and as establishing "the false geographical assumptions on which the language of the Treaty was based."

Mr. Bayard further states that:—

"The line traced upon the Coast Survey Map of Alaska, No. 960, is as evidently conjectural and theoretical as was the mountain summit line traced by Vancouver."

In the Counter-Case for the United States this despatch of Mr. Bayard is treated as merely showing that Mr. Bayard, having regard to the difficulties of demarcation, seemed to favour a conventional line. As the proposal was not acted upon, the Counter-Case continues, the correspondence has little present application, and its chief value lies in showing that no question concerning the true location of the line had arisen between Great Britain and Russia or Great Britain and the United States. United States' Counter-Case, p. 66.

This in no way meets the argument which Great Britain founds on this despatch. Great Britain does not refer to it merely for the purpose of extracting verbal admissions. The point is that this document shows that the line shown on the maps, which is now alleged to have received binding force as the Treaty line from the action of the Parties, much of it before 1885, was in 1885 not treated by the United States as the Treaty line.

Mr. Bayard clearly states that the line shown on the maps was not a line in accordance with the Treaty. It was conjectural and hypothetical, based on false geographical assumptions. Mr. Bayard's total refutation of the Maps.

The United States now contends that a line substantially the same as that referred to by Mr. Bayard gives effect to the Treaty. Whether this is so upon the construction of the Treaty is a question upon which Great Britain has already put forward her argument. But the United States insists that the action of the Parties has at any rate established that line, and established it on the principle of the 10-marine-league boundary. This is absolutely negatived by the attitude of Mr. Bayard.

It is obvious that no action of the Parties can have the effect of interpreting the Treaty, unless

it was taken avowedly as embodying an application of the Treaty provisions.

Mr. Bayard's declaration is conclusive evidence against the United States of the attitude of his Government upon this question.

Under these circumstances the position is that the United States is now contending that the line shown on the maps embodied its interpretation of the Treaty, whereas in 1885 it treated that line as conjectural and hypothetical only; and, further, that it now contends that the line fulfilled the requirement of the Treaty that it should follow the sinuosities of the coast, whereas in 1885 it asserted that this requirement was impossible of fulfilment.

It is to be observed that the object of these observations is not to forward the conclusion that any particular contention of the United States upon the construction of the Treaty may be rejected as wrong in itself, because contrary to a view formerly expressed on behalf of that Power. As the matter is before the Tribunal upon its merits, such an argument would be of secondary importance. The point made is that the suggestion of the United States to the effect that the line propounded by it has received the sanction of the Parties is absolutely disproved by the position taken by its Government with respect to it.

United States' line not sanctioned by the Acts of the Parties.

Before leaving the subject of Mr. Bayard's despatch, it is necessary to advert to the statement upon which the United States lays so much stress,—that no question as to the location of the boundary had, as Mr. Bayard believed, arisen between Great Britain and Russia, and that certainly none had arisen between Great Britain and the United States. The whole scope of the despatch shows that this means merely that no question had been in fact agitated. It cannot mean that any matter on which there might be a question had been settled in advance. This entirely accords with the British contention. It may be mentioned, in order to deal once for all with this point, that the Counter-Case for the United States, in the same way, refers to a speech by Hon. R. W. Scott in the Canadian Parliament, in which he is reported as saying: "There was no dispute as to the boundary of Alaska." The sentence next quoted is: "It was settled in the Treaty of 1825." The sentence preceding is: "The question has been discussed in despatches

United States' Counter-Case, p. 70.

for twenty years." The meaning of the speaker is clearly that the boundary was one provided for by Treaty. It is out of the question to argue that the use of such language, either on the British or the American side, establishes that the action of the Parties had left no room for such controversies as those now before this Tribunal.

Repudiated by the United States in 1885, and not sanctioned since.

It is not possible for the United States now to maintain that a line, which in 1885 Mr. Bayard, speaking officially for the United States to Great Britain, repudiated, had been, by the action of these two Powers, at any rate, before 1885, accepted as giving effect to it. Nor, in the face of that despatch, can the United States maintain that such has been the result of action since 1885. Mr. Bayard stated, as clearly as words could convey it, that the boundary shown on the maps, which is the boundary alleged to have been acted on, did not carry out the Treaty, and that the working out of the line was still to be undertaken. This was the statement of the United States in view of anything that might have happened in the past, and Great Britain was entitled to rest upon it as applicable to anything that might happen in the future till the solution of the problem should have been undertaken.

It is shown by what subsequently took place that the view put forward by Mr. Bayard, that the line was conjectural and hypothetical, was that which the Parties accepted.

Mr. Phelps' request for a certain Canadian Map; the Earl of Iddesleigh's remark when delivering it.

In forwarding Mr. Bayard's despatch, Mr. Phelps had asked to be supplied with a certain Canadian map, and, in complying with this request, the Earl of Iddesleigh expressly pointed out, with reference to the line denoted thereon, that no weight was to be attached to the location assigned to it, inasmuch as the Treaty made the line dependent on alternative circumstances, the occurrence or non-occurrence of mountains.

United States Counter-Case, p. 66.

The comment passed upon this in the Counter-Case of the United States is that the note had no reference to the previous correspondence and did not in any way qualify or dissent from it. The contention of Great Britain is that this communication shows that the British Government was in exact accord with that of the United States in holding the view that the line referred to was not to be regarded as the Treaty line, and this not only on the ground that the line had never been delimited, but on the ground that the facts which would govern its character had not been ascer-

tained. If, as now contended by the United States, that Government had been acting on the assumption that the line was, in substance, justifiable as the 10-marine-league line, it was to be expected that it would have been pointed out to Lord Iddesleigh that the question whether there were or were not mountains to carry the line was no longer regarded as open.

Report of the Director of the United States' Coast and Geodetic Survey of 1891.

British Case App., p. 268.

In 1891 Congress provided for a preliminary survey of the Alaskan frontier, and, in a Report by the Director of the United States' Coast and Geodetic Survey, it was stated that such survey would have to be carried "from Cape Muzon through the Portland Canal to the 56th degree of north latitude, thence north-westerly, following as nearly as practicable the general trend of the coast."

Convention of 1892.

In 1892 the two Governments signed a Convention for the appointment of a Commission to ascertain facts and data necessary for the permanent delimitation of the boundary-line in accordance with the spirit and intent of the Treaties.

Great Britain's view as to the effect of this Convention.

As has already been pointed out in the Case and Counter-Case, Great Britain contends that the making of this Convention absolutely negatives the idea that the course of the line which was to be run had in any way been settled by the action of the Parties. At the time that Convention was entered into the United States was aware of the interpretation of the Treaty put forward by Dr. Dawson in 1887, that the line might turn out to cross the inlets. Although that view had been informally put forward by Dr. Dawson, it had been officially noted by the United States.

Communication by Mr. Bayard to Congress of Dr. Dawson's view.

British Case App., p. 259.

It was clearly stated in a letter to Sir Charles Tupper dated the 7th February, 1888. This letter was communicated by Sir Charles Tupper to Mr. Bayard, who caused it to be transmitted to Congress. This would surely not have been done had not Mr. Bayard regarded the communication as the expression of a view which the United States' Government was asked to consider. Indeed, in transmitting to Congress the documents of which this letter is one, the President described them as considered of value as bearing upon a subject of great international importance which should be put in shape for public information. The importance of Dr. Dawson's suggestion does not appear to be fully appreciated in the Counter-Case of the United States, where it is dismissed with the remark that it cannot be

seriously claimed as official, or that any Government would adopt such a method of making its position known on such a question. Even if this were so, it is not suggested by Great Britain that the United States acquiesced in Dr. Dawson's views. The point is that Dr. Dawson's theory was not treated as putting forward a construction which Great Britain was estopped from asserting.

United States' Counter-Case, p. 69.

Its importance arises in view of the generality of the provisions of the Convention of 1892. If the position of the United States had been that the action of the Parties had determined substantially the course of the line, it is not conceivable that being in possession of views, which might be put forward, so much at variance with the principle which is supposed to have been established, that having treated the expression of those views as of sufficient importance to be embodied in a report laid before Congress, the Government of the United States would have entered into a Convention for the ascertainment of the boundary merely in accordance with the spirit and intent of the existing Treaties.

Importance of the preceding Point.

Great Britain contends that the Convention of 1892 recognized the question of the proper location of the boundary as absolutely open in every respect, to be determined according to the spirit and intent of the Treaties when the necessary data had been obtained.

It has apparently been thought worth while to devote some eight pages of the United States' Counter-Case to setting forth the different views which have at different times been put forward in Canada as to the position which the line would occupy when laid down, and to point out that they do not accord with one another or with the line submitted in the British Case as that which the Tribunal should adopt in answering the Seventh Question.

Statement in the United States' Counter-Case of the different views put forward in Canada.

United States' Counter-Case, pp. 82–90.

It is sufficient to point out that the question before the Tribunal is not whether Canada has called for the recognition of any particular line. Great Britain submits no such contention. The United States on its side does contend that the action of the Parties has given authority to a particular line as the Treaty boundary, but it cannot force upon Great Britain the adoption of a competing theory of the same kind. The contention of Great Britain is simply that after all the views and arguments put forward, and all the opinions expressed upon the subject, the questions

Difference between the British and the American Contentions on this Point.

put to the Tribunal are put to it for the purpose of obtaining an answer upon the true meaning of the Treaty.

What the Publication of the different Views put forward in Canada shows.

The United States' Counter-Case dates the commencement of this publication of the divergent views referred to as far back as 1885. This is seven years before the Convention of 1892, and approximately contemporaneous with the despatch of Mr. Bayard. If the fact that these views were expressed is in any way material to the questions asked of this Tribunal, it is as negativing the contention of the United States that the line contended for by that Power received the assent of Great Britain or of Canada.

Inconsistency of the Position of the United States.

It is at any rate impossible for the United States to insist that since 1885 its own application of the Treaty has been acquiesced in, and at the same time use against Great Britain, as affecting the position of her Government in this controversy, the variety and inconsistency of the suggestions put forward by those espousing her cause. As to the attitude adopted before 1885, it has already been shown in the despatch of Mr. Bayard in what position the boundary question stood at that date.

Dr. Mendenhall's Instructions.

British Case, pp. 73, 74.

The work of the Commission appointed under the Convention of 1892 was done on the side of the United States under the direction of Dr. T. C. Mendenhall. As was pointed out in the British Case, his instructions to his subordinates clearly contemplated, at least in the case of the Stikeen and the Taku, a measurement from the general trend of the coast, and the points marked as the 30-mile limit are not 30 miles from the upper extremity of salt or tidal water.

Answer of the United States to the Argument based on those Instructions.

United States' Counter-Case, pp. 34–36.

In the United States' Counter-Case this circumstance is treated as if Great Britain were founding an argument on "an expression" of Dr. Mendenhall's, "which might be construed into an admission," and it is thought worth while to explain that he carried his survey inland from the head of Lynn Canal, and even to print a magazine article from his pen to show that his personal view of the question was not in accordance with the British contention.

The real Point made by Great Britain which the above Answer does not meet.

United States' Counter-Case, App. pp. 269–276.

This does not meet the point made by Great Britain. No appeal is made to Dr. Mendenhall's private convictions. The point made upon the Convention of 1892 and Dr. Mendenhall's official action under it is that the British contention had not been negatived by the action of the Parties. It is

insisted by the United States that the word "coast" had long before 1892 been construed by the acts of the Parties to mean the shore of the inlets; and that the contention that it must be confined to the general trend of the outer face of the coast was not open to Great Britain. The latter Power maintains that the Convention of 1892 shows that this and every other contention was admittedly open, and in proof of this she points to the action of the United States' Commissioner, who was there to apply the provisions of the Convention of 1892, taking measurements which would not be material unless the British contention was open.

The fact that Dr. Mendenhall, who was a practical surveyor of the highest distinction and the Representative of the United States, seems naturally to have discarded the line of salt or tidal water as the "coast" from which he was to measure, is, of course, referred to by Great Britain as showing that that line must have been treated as incapable of fulfilling the requirements of the Treaty, and that it is necessary, in order to make the Treaty work, to contemplate the possibility that waters of inlets may have to be regarded, as Dr. Mendenhall regarded part of the Taku inlet, as within and not outside the line of coast. It is not assumed that Dr. Mendenhall realized that the consequence of the principle he adopted would be to give to Great Britain the head of every inlet more than 30 miles long or penetrating the mountains. But the principle must not be tested by the acceptability of the result. For the present, however, it is enough to refer to this incident as showing that the principle contended for by Great Britain, which leads to the results so strongly resisted by the United States, was clearly not regarded at any rate as necessarily wrong.

Survey by Dr. Mendenhall of the country at the head of Lynn Canal. Why the Canadians did not object to it.

The United States' Counter-Case further points out that Dr. Mendenhall, with the assent of the Canadians, surveyed the country at the head of Lynn Canal. It would have been very strange if this had not been done. Great Britain, though she contests its correctness, has never contended that the United States is precluded from urging its claim to a boundary in that region.

View of the United States' Coast and Geodetic Surveyor, Mr. Thorn.

That Dr. Mendenhall's opinion was not an unnatural or unusual one from the United States' point of view is evidenced by the fact that it coincided precisely with that of the United States'

British Case, App., p. 268.

Coast and Geodetic Surveyor, Mr. F. M. Thorn. Sir Julian Pauncefote, writing to Mr. Blaine the 5th June, 1891, inclosed the following passage from the last published report of the United States' Coast and Geodetic Survey, written by Mr. Thorn:—

"By recent Congressional enactments a preliminary survey of the frontier line between Alaska and British Columbia, in accordance with plans or projects approved by the Secretary of State, has been placed in charge of this Bureau. Such a preliminary survey, involving the determination of a number of points in geographical position and their complete marking by permanent monuments, will have to be carried from Cape Muzon *through the Portland Canal* to the 50th degree of north latitude, thence north-westwardly, following, as nearly as practicable, the general trend of the coast, at a distance of *about* 35 *miles from it*, to the 141st degree of west longitude, and thence due north to the Arctic Ocean, a total distance of about 1,400 miles."

It is clear, therefore, that Mr. Thorn entertained precisely the same view as Dr. Mendenhall, and that, in his opinion, the measurements necessary to fix the limiting 10-marine-league line should be made from "the general trend of the coast."

Mr. Foster's Statement as to what was said about the Alaska Boundary at the Conferences of 1892.

United States' Counter-Case, App., pp. 121–123.

In the Appendix to the United States' Counter-Case some correspondence is published between the Secretary of State of the United States and the Honorable John Foster with reference to what took place at the Conferences between the British and the United States' Delegates at the State Department, in Washington, in February, 1892. According to Honourable Mr. Foster, "the discussion was of very brief duration and relating merely to the questions which had arisen as to the point where the line crossed the Stickeen River, and the inconvenience occasioned by this existing uncertainty. No assertion was hinted at of 'British claim to the heads of inlets or of any rights on Lynn Canal.'" The Tribunal will be asked to consider, in answer to this statement, certain other correspondence which has recently passed between the British Agent before the Tribunal and the Honorable Sir Mackenzie Bowell, K.C.M.G., formerly Prime Minister of Canada, and the present Leader of the Opposition in the Senate of the Dominion, who was one of the British Delegates present at the Conferences.

Sir Mackenzie Bowell's Statement on the same Point.

Congressional Records of the 3rd January, 1896.

It appears from the Congressional records of the 3rd January, 1896, that the Alaskan boundary

question was on that day brought before the Senate by Senator Squire, who read a Report from a Committee of the Chamber of Commerce at Seattle. That Report puts forward arguments against "the pretensions of Canada to any of the canals, bays, or inlets to which claims are now being set up." It also specifies the Canadian claims, one of which was as follows:—

"That the eastern boundary-line in its extension from the point where it strikes the 56th degree of north latitude shall follow an alleged range of mountains arbitrarily crossing and cutting off the heads of bays and inlets, the ownership of which by the United States has hitherto been unquestionable."

Congressional Record of the 12th February, 1896.

The Congressional record of the 12th February, in the same year, shows that on that day the subject was again discussed, this time in the House of Representatives. On that occasion Mr. Pitney, Member for New Jersey, drew attention to the Canadian claims.

"On the Canadian side of the question," he said, "two claims are made. In the first place they claim that while there is no range of mountains distant 10 marine leagues from the coast or thereabouts, there is a range of mountains very near to the coast of the mainland, and that a line should be run there near the coast, which would leave in British territory a large part of Taku Inlet, and a large part of Lynn Canal, two great estuaries which extend into the interior. This would bring the British possessions down very close to the ocean, and at the same time the American territory of Alaska would be dismembered, &c."

It is clear, therefore, that in 1896 both Houses of Congress were in possession of the Canadian contention as now put forward in this arbitration. It is interesting to note that Mr. Pitney, speaking descriptively of the region in question, describes the inlets as penetrating into the interior, and describes the line which cut those inlets as "near to the ocean."

Communication to the United States' Government of a copy of Lord Salisbury's despatch of the 19th July, 1898, and Answer of that Government.

British Case, App., p. 297.

Immediately before the Joint High Commission met at Washington in 1898 the United States' Government was supplied with a copy of Lord Salisbury's despatch of the 19th July, 1898, setting forth the views of Her Majesty's Government upon the boundary question. This despatch described the provisional boundary which had been agreed upon at the head of Lynn Canal as being more than 100 miles from the Ocean. Inasmuch as the line is not to be more than

30 miles from the ocean, this passage was inconsistent with the view that the line was to pass round the head of Lynn Canal. But in the Memorandum delivered by the Government of the United States in answer to this despatch it was merely stated that the Report of the Joint Commission had made it possible, in accordance with the stipulations contained in the Treaty of the 22nd July, 1892, to proceed to consider and establish the boundary, and that the Government of the United States would expect the Joint High Commission to seek to execute this stipulation by an agreement as to the boundary as fixed by the Anglo-Russian Treaty of 1825, and the American-Russian Treaty of 1867. It appears, therefore, that the location of the line was accepted as being an entirely open question upon the true interpretation of the boundary Treaty.

For these reasons Great Britain submits that none of the actions of the Parties alleged by the United States was accepted as taking place with reference to any line as a true application of the Treaty, but that the line with reference to which it is contended such action has occurred has been throughout regarded as theoretical and conjectural, awaiting for its true location the solution of the geographical problems involved.

Manner in which the action of the Parties has been dealt with in the United States' Case.

One further observation has to be made with reference to the manner in which the action of the Parties has been dealt with in the Case and Counter-Case of the United States. The matters relied upon by the United States have been put forward individually instead of being looked at as a whole. The maps showing the line so often referred to are pointed to as showing that the United States is entitled to the inlets. Various incidents and expressions are collected as showing that the United States is entitled to the 10-marine-league limit on the Stikeen. A number of acts are alleged as proof that the headwaters of Lynn Canal and the land adjacent are in United States' territory.

How such action should be considered.

Such points cannot be appreciated except by the light of the Treaty and of the diplomatic action of the two Powers interested.

If, as contended by Great Britain, the working out of the Treaty was regarded as between the two Governments as an open question in all its aspects, it is impossible to attribute to any particular action or course of action in or with

reference to any particular place, the effect of showing an interpretation of the Treaty prejudging or limiting the questions to be solved.

How such action is considered in the British Counter-Case.

In the British Counter-Case the action alleged by the United States in the region in dispute was examined concurrently with the diplomatic correspondence, and that correspondence has been further examined in this argument.

Statements of Canadian Ministers and Public Men.

In the Counter-Case of the United States, however, reference is made to statements by public men in Canada, which are alleged to throw light upon the position taken by Great Britain. A statement made by the Hon. Mr. Scott has already been referred to in another connection, but there are also statements by the Hon. Clifford Sifton, Minister of the Interior, and Sir Wilfrid Laurier, the Prime Minister.

The point for which these statements are referred to by the United States is that the possession by the United States of Dyea and Skagway is described as undisputed.

If the text of these statements is referred to, it will be seen that the Ministers in question were merely pointing out that the possession by the United States was, in fact, complete at the moment, and that it was impossible for Great Britain to take possession. It is impossible to read into these statements an admission that the possession was regarded as precluding the question of right.

The Minister of the Interior says:—

"I believe our contention is that Skagway and Dyea are really in Canadian territory, but as the United States has had undisputed possession of these for some time past, we are precluded from attempting to take possession of that territory."

The two statements of the Prime Minister referred to must be read together; and in his first statement the Prime Minister said:—

"The advantages of the route by the Lynn Canal were that it was shorter and more direct than the route by the Stikeen River. But if we had adopted the route by the Lynn Canal, that is to say, had chosen to build a railway from Dyea by the Chilkat Pass up to the waters of the Yukon, we would have to place the ocean terminus of the railway upon what is now American territory. I agree with the statement which has been made on the floor of this house on more than one occasion, that Dyea, if the Treaty is correctly interpreted, is in Canadian territory. It ought

to be; but the fact is, as my hon. friends know very well, even those who do not belong to the legal profession, that possession is nine points of the law; and even though by the letter of the Treaty Dyea is in Canadian territory, the fact remains that from time immemorial Dyea was in possession of the Russians, and in 1867 it passed into the hands of the Americans, and it has been held in their hands ever since."

In his second statement the Prime Minister pointed out that when the American authorities were in possession it became manifest to everybody that at that moment Canada could not dispute their possession, and that before their possession could be disputed the question must be determined by a settlement of the question involved in the Treaty.

Upon the whole of the materials now before the Tribunal Great Britain submits that when the action of the parties is looked at in the light of the diplomatic communications, and regard is had to the character of the line depicted on the maps with which such action is alleged to have corresponded, it cannot be said that any effective understanding has been proved which would leave the Tribunal to give any other construction to the Treaty than that which most naturally flows from the language employed.

SIXTH QUESTION.

The Sixth Question put to the Tribunal is somewhat difficult to construe. It is in the following terms:—

"IF THE FOREGOING QUESTION SHOULD BE ANSWERED IN THE NEGATIVE, AND IN THE EVENT OF THE SUMMIT OF SUCH MOUNTAINS PROVING TO BE IN PLACES MORE THAN 10 MARINE LEAGUES FROM THE COAST, SHOULD THE WIDTH OF THE *lisière* WHICH WAS TO BELONG TO RUSSIA BE MEASURED (1) FROM THE MAINLAND COAST OF THE OCEAN, STRICTLY SO-CALLED, ALONG A LINE PERPENDICULAR THERETO, OR (2) WAS IT THE INTENTION AND MEANING OF THE SAID CONVENTION THAT WHERE THE MAINLAND COAST IS INDENTED BY DEEP INLETS FORMING PART OF THE TERRITORIAL WATERS OF RUSSIA, THE WIDTH OF THE *lisière* WAS TO BE MEASURED (*a*) FROM THE LINE OF

THE GENERAL DIRECTION OF THE MAINLAND COAST, OR (*b*) FROM THE LINE SEPARATING THE WATERS OF THE OCEAN FROM THE TERRITORIAL WATERS OF RUSSIA, OR (*c*) FROM THE HEADS OF THE AFORESAID INLETS ?"

The question only arises if Question Five is answered in the negative, that is to say, in accordance with the British contention, and it only arises with reference to the 10-marine-league limit. Under these circumstances the question requires the Tribunal to decide in the first place whether the width of the *lisière* is to be measured from the mainland coast of the ocean, strictly so-called, along a line perpendicular thereto. In answer to this, Great Britain contends that the width of the *lisière* should be measured from the line of the general trend of the coast of the ocean, strictly so-called, along a line perpendicular to such general trend, reproducing such windings of the coast as may be fairly said to modify the general trend and are of such dimensions as admit of being reproduced by a line drawn 10 marine leagues inland as contemplated by the Treaty.

British view on the first part of the Question

The arguments in support of this view are those which have been put forward in answer to Question Five, from which the conclusion above stated naturally follows.

The second branch of the Sixth Question contemplates the Case in which the mainland coast is indented by deep inlets forming part of the territorial waters of Russia, and specifically asks the Tribunal how the line is to be measured where such inlets occur. But this branch of the question, like the other, only arises if Question Five is answered in the negative and in the event of mountains failing to afford a boundary.

Second part of the Question.

The answer suggested by Great Britain is that, where inlets occur, forming part of the territorial waters of the Power owning the shores on either side (which Power at the mouth of the inlet upon the coast would be Russia, but may be either Russia or Great Britain higher up the inlet), the width of the *lisière* is to be ascertained from the course which a line giving effect to the general trend of the mainland coast would follow in crossing the inlet; the coast-line being regarded as carried across the mouth of the inlet from headland to headland, and the 10 marine leagues inward being measured on the same principle as

British view on that part

the 3 marine leagues of territorial water is measured outwards.

The authorities to which Great Britain refers, in support of this view, are set forth at some length in the British Counter-Case, and it is not proposed to reproduce them here, especially as it is not anticipated that the general doctrine of international law, as there stated, is disputed by the United States.

Three Alternatives suggested by this Question.

The Sixth Question suggests three alternative systems of measuring the line in the events presupposed, viz., (*a*) from the line of the general direction of mainland coast; (*b*) from the line separating the waters of the ocean from the territorial waters of Russia; (*c*) from the heads of the inlets.

The last one contradicts the hypothesis on which the Question is put.

With regard to the last alternative, this seems to Great Britain to contradict the hypothesis on which the question itself is put, namely, that the Fifth Question is answered in the negative. As revealed by the argument already adduced in answer to Question Five, Great Britain contends that the line is not to be measured from the heads of the inlets, because they are not upon the coast or upon the ocean.

The two other Alternatives are substantially the same.

With regard to the other two lines indicated in the question, namely, the line of the general direction of the mainland coast and the line separating the waters of the ocean from the territorial waters of Russia, Great Britain conceives that these are substantially the same, the territorial waters referred to being such as break through the line of the coast. The Treaty, however, refers to the coast and in the supposed case of waters inside the general line of the coast, but not territorial, the line from which the width of the *lisière* would have to be measured would be the coast-line and not the limit of territorial waters.

SEVENTH QUESTION.

The Seventh Question is—

"WHAT, IF ANY EXIST, ARE THE MOUNTAINS REFERRED TO AS SITUATED PARALLEL TO THE COAST, WHICH MOUNTAINS, WHEN WITHIN 10 MARINE LEAGUES OF THE COAST, ARE DECLARED TO FORM THE EASTERN BOUNDARY"?

As already pointed out in the British Counter-Case, the British case is that such mountains exist, and that the description is satisfied by those indicated on the map, and referred to and set forth in the declaration and statement of Mr. W. F. King, British Commissioner on the International Survey under the Convention of 1892, subject to the reservation that this suggested line is not put forward as showing throughout the only possible way of giving effect to the British contentions, but that it is susceptible of any variations in detail which may commend themselves to the Tribunal on examining the topographical conditions met with in tracing the line.

British Counter-Case, p. 56.

British Case, p. 76.

Ibid., p. 83, British App. II, Map No. 37.

British App. I, p. 307, *et seq.*

THE UNITED STATES' CONTENTION.

The United States' Case, on the contrary, contends:—"That there is not at any point within 10 marine leagues of tide water, between the head of Portland Canal and the 141st degree of longitude west of Greenwich, the whole or any part of a continuous range of mountains parallel with the sinuosities of the coast and extending from Portland Canal to the said 141st degree of longitude; and therefore the width of the *lisière*, above described, is not limited by a boundary line along the summit of such range, but solely by the agreed distance of 10 marine leagues from tide water," and "requests the Tribunal to answer and decide that such mountains do not exist within 10 marine leagues from the coast."

United States' Case, p. 103.

United States' Case, p. 106.

The line of demarcation is accordingly drawn from the point situated on "the 56th parallel of north latitude; thence northwesterly, always 10 marine leagues from tide water, around the head of Lynn Canal; thence westerly, still following the sinuosities of the coast at a distance therefrom of 10 marine leagues, until the line intersected the 141st meridian of longitude west of Greenwich."

United States' Case, p. 103.

Atlas of United States' Case, Map No. 2.

The United States, therefore, discards the mountain boundary altogether, and draws a line of demarcation in the interior of the continent at a distance of 10 marine leagues from tide-water at the heads of inlets, and at no point influenced by the existence of mountains.

The United States discards the mountain boundary.

Before again discussing the British contention and the line drawn in accordance with it, it may

be well to compare the line as drawn by the United States with the intentions of the negotiators, as expressed in the correspondence and finally in the Treaty, to show in how many ways it conflicts with the Treaty requirements, and to indicate some consequences necessarily involved in the repudiation of the possibility of a mountain boundary.

The Negotiations and the 10-league limit.

The negotiations on this point are absolutely clear. Mr. G. Canning's letter of the 8th December to Mr. Stratford Canning, and Count Nesselrode's letter to Count Lieven, inclosing the Treaty, after it had been signed, are all the evidence that is necessary. "The Russian Plenipotentiaries," wrote Mr. Canning, "propose to withdraw entirely the limit of the *lisière* on the coast which they themselves were the first to propose, viz., the summit of the mountains which run parallel to the coast, and which appear, according to the map, to follow all its sinuosities, and to substitute generally that which we only suggested as a corrective of their first proposition. We cannot agree to this change." "The Emperor," wrote Count Nesselrode, "would have found it more mutually just, more equally advantageous, if the natural frontier formed by the mountains bordering the coast were adopted by both parties as the invariable line of demarcation. England would have gained thereby wherever those mountains were less than 10 marine leagues from the sea; Russia, wherever that distance was greater. . . . However, Mr. Stratford Canning having declared that his instructions did not permit him to entertain the wishes which we had expressed to him on this point, the Emperor, in order to give His Britannic Majesty a last proof of his friendly feelings, authorized us to sign the act in question, such as I have the honour to transmit it to your Excellency."

British Case, App., p. 113

Ibid., p. 131.

The mountain boundary and the limiting line.

It is clear then, not only that the mountains were to constitute the boundary within the 10-league distance from the coast, but also that the 10-league limit was employed not as a boundary generally, but as indicating the extreme distance beyond which the mountain boundary should not be followed.

Emasculating the Treaty.

The very concession, therefore, which England stood out for, which Russia regretfully conceded, and which was finally embodied in all solemnity in the Treaty itself, vanishes into thin air under the United States' method of drawing the line

of demarcation. It has renewed the attempt, abortive in the Russian case, "to substitute generally that which we only suggested as a corrective of their first proposition," and has put forward a contention, which is not only opposed to the terms used by the negotiators, but which, if successful, would effectually wipe out one of the most important stipulations of the Treaty.

Drawing the 10-league line.

The repudiation of the mountain boundary, and consequent obliteration of a most important portion of the Treaty, does not get rid of the stipulation as to the manner in which the line of demarcation must necessarily be drawn. Whenever recourse is to be had to the 10-marine-league line as constituting the boundary or any portion of it, it is to be "a line parallel to the windings of the coast, and which shall never exceed the distance of 10 marine leagues therefrom." This is an unambiguous and imperative demand made by the Treaty, a condition from which escape is impossible so long as the Treaty continues to exist.

How the United States claims to draw the line.

In the United States' Case, the line is stated to be drawn at a distance of 10 marine leagues from tide-water at the heads of inlets, and at the same time "northwesterly, always 10 marine leagues from tide water, around the head of Lynn Canal; thence westerly, still following the sinuosities of the coast at a distance therefrom of 10 marine leagues, until the line intersected the 141st meridian of longitude west of Greenwich." As a matter of fact, the line is not so drawn, and could not by any possibility be drawn 10 marine leagues from tide-water at the head of Lynn Canal, and at the same time at an equal distance from the sinuosities of the coast.

United States' Case, p. 103.

What are Sinuosities?

This proposition can be discussed without entering upon a minute consideration of what is and what is not "coast" within the meaning of the Treaty. If Lynn Canal, which penetrates the Continent a distance of 75 nautical miles, is a sinuosity of the coast, the windings in the great general trend of the coast of the ocean are sinuosities also. The provision of the Treaty is that the line of demarcation shall be parallel to and at no greater distance than 10 marine leagues from all the sinuosities of the coast. In other words, it is not to run parallel to and at a distance of 10 marine leagues from such sinuosities only as the United

Inconsistency shown in drawing United States' line.

States chooses to select. How can a line drawn 10 marine leagues inland from tide-water at the head of Lynn Canal be just 10 marine leagues distant from the sinuosities of the Ocean coast itself, which is confessedly 35 leagues distant from the line in question? And how can it be claimed that a line parallel to the east coast of Lynn Canal is also parallel to the Ocean coast between Lynn Canal and Taku Inlet, a coast extending in a direction almost at right angles to it?

How it has been drawn.

How impossible it would be to draw such a line is well exemplified by the line on Map 2 of the Atlas accompanying the United States' Case. Throughout the whole length of the line there drawn it is possible to find only one or two points which are not more than 10 marine leagues from the windings of the ocean. A line drawn from Juneau perpendicular to the shore line to the United States' line of demarcation measures 17 marine leagues in length; the shortest line is 15 leagues. Stephens Passage, at Taku Harbour,

The conditions not observed.

is 16½ leagues from the line; Cape Fanshaw is at the same distance; and a line from the coast of the continent at 56° north latitude, by its shortest course, must be carried 16½ leagues inland to the boundary-line. Cape Spencer, at its nearest point, is 26 leagues away; along a line at right angles to the ocean coast north-westerly from the

No attempt to parallel coast of Ocean.

Cape, it is distant 31 leagues; while a line drawn midway between the two directions measures 39 leagues. Similarly a line drawn from Point Couverden at the south-west entrance of Lynn Canal to the line of demarcation measures 36 leagues.

Scaled with a rotameter on the map, the United States' line from the point on the 56° of north latitude to the 141° of longitude is about 540 miles in length, and yet throughout this whole distance it comes within 10 marine leagues of the coast of the great ocean at no more than three points.

It cannot be pretended that such a line is at all points 10 marine leagues distant from the windings of the coast.

No attempt to parallel shores of Inlets.

If the sinuosities of the coast generally were to be disregarded, and the direction and distance of the line were to be determined only with regard to the shores of Lynn Canal and other fjords penetrating the interior, this even has not been done. It has been drawn at a distance of 10 marine leagues from tide-water at the head of Lynn Canal, but while a line can be drawn

at a distance from a point it cannot be drawn parallel to a point. And yet, if the shores of inlets are in reality, as is contended in the United States' Case, the coast of the ocean, why is not the 10-marine-league line drawn at that distance from, and parallel to, the east and west shores of Lynn Canal, and parallel to the shores of the other inlets? At no point of its course is this done. The windings of the shores of the inlets equally with the windings of the coast of the ocean are completely ignored, and a boundary flung far inland, parallel to nothing, and at 10 marine leagues distant from "tide-water," although tide-water is not mentioned in any part of the Treaty, from beginning to end.

The result.

It is not surprising that, pursuing such methods, the United States is able to lay claim to a "uniform" *lisière*, 32,000 square miles in area, whereas even in the absence of a mountain boundary no such area could be contended for. This can easily be made plain. The line of rear boundary, even as drawn by the United States, has been shown to be about 540 nautical miles, or rather less than 630 statute miles in length. The utmost width of the *lisière* in the absence of a mountain boundary would be rather less than 35 statute miles. The total area, therefore, would not exceed 22,050 square miles. Yet in the Counter-Case of the United States the acknowledgment is made that the line of demarcation has been so drawn as to allow a *lisière* of about 32,000 square miles, that is, nearly 10,000 square miles, or 50 per cent., more than would belong to them on the basis of a line drawn parallel to, and at a distance of 10 marine leagues from the rear boundary.

United States' Counter-Case, p. 86.

Inconsistency between United States' present Contention and its evidence in favour of a mountain boundary.

Strangely enough, in complete opposition to the contentions now put forward, the United States, throughout its Case and Counter-Case, has made every possible effort to establish a mountain boundary as the real line of demarcation. How absolute is the inconsistency between the United States' contention and the evidence offered in the Case and Counter-Case, will appear from the following references:—

Lieutenant Schwatka's reconnaissance.

Lieutenant Schwatka, United States' army, whose military reconnaissance, made in 1883, is published as part of the United States' Counter-Case, says—

United States' Counter-Case, App., p. 89.

"The fact that the country beyond Perrier Pass" (Chilcoot Pass) "in the Kotusk Mountains, lies in British territory (as shown by our astronomical observations and other geographical determinations when brought back and worked out) lessens the interest of this trail beyond the pass to the military authorities of our Government."

Brigadier-General Howard's Report.

United States' Case, App., p. 360.

Brigadier-General Howard in his Report to the Assistant Adjutant-General, Head-quarters Military Division of the Pacific, on his tour in Alaska in 1875, says of the boundary on the Stikeen—

"Some of our shrewd frontiersmen say that it is not 10 marine leagues from the sea, as it should be, there being really doubt as to the summit of the coast range of mountains."

Report of Acting Secretary of the Navy, April 6, 1903.

United States' Case, App., p. 361.

The Acting Secretary of the Navy in his Report to the Secretary of State, the 6th April, 1903, states that the naval officials—

"Frequently dispatched armed parties up the Chilcoot and Chilcat rivers and to the mountain passes beyond the head of the inlets of Lynn Canal."

Mr. Dall's Report to Mr. Bayard.

United States' Counter-Case, App., p. 95.

Mr. W. H. Dall, A.M., in his Report to Mr. Bayard, the 13th February, 1888, speaks of—

"The transit of British miners from the coast over, for instance, the Chilkoot portage for the purpose of mining in British territory."

Lieutenant-Commander Newell's Report, 1887.

United States' Case, App., p. 392.

On the 16th June, 1887, Lieutenant-Commander Newell complained to the Secretary of the Navy of the Stick Indians, inhabiting the interior, who "are British subjects," coming into United States' territory for the purpose of packing over the trails. "It would be better," he writes, "if they confined themselves to their own territory which begins at the summit of the divide."

Lieutenant McCrackin's Report.

United States' Case, App., p. 393.

Lieutenant McCrackin on board the "Pinta" twice refers to the same boundary in his Report to Lieutenant-Commander Newell in describing his trip over the Chilcoot trails. Of the summit of the Chilcoot Pass, he says—

"As this summit is the highest land on the trail between the Taiya Inlet and the Yukon River, it is probably on the boundary-line between Alaska and British America, so the party did not go beyond it, except to look at Crater Lake, which is not all visible from the very summit."

Later in the same Report he says—

"The Chilkoots do not appear to be anxious to pack beyond the summit, and it would seem proper for the Stick Indians, who are British subjects, to do the packing on their own territory, and confine themselves to their own side of the mountains."

Mr. Moore's depositions.

An affidavit is printed from William Moore with reference to the Ogilvie expedition, in which he states that—

United States' Case, App., pp. 414, 415.

"By orders of the Navy Department at Washington, the United States' gunboat 'Pinta' accompanied the expedition from Haines Mission on Lynn Canal to the head of Lynn Canal, and there remained until the Ogilvie expedition had safely passed over the summit of Chilkoot Pass," and that the commander of the "Pinta" accompanied said expedition to the head of Lynn Canal "under instructions from the Navy Department of the United States, for the purpose of assisting said expedition from the shores of the head of Lynn Canal past a point on the crest of the mountains north of the head of Lynn Canal."

He further alleges, on oath, that during all the time of his residence at Skagway all property rights had been treated as subject to United States' jurisdiction, as far "as the passes of the mountains," and that all litigation had been determined by United States' Courts "on the shore of Lynn Canal or north as far as the passes of the mountains."

United States' Case, App., p. 416.

Similar statements are made in his formal deposition with regard to the exercise of authority by the officials of the United States' army, "as far as the passes north of Skagway and Dyea," and it is averred that British officials at no time attempted to assert jurisdiction "at any point south of the passes in the mountains north of Dyea and Skagway Bay."

Ibid., p. 417.

Evidence of Robert Wright, Joseph Carr, Don-a-wak, Armstrong, and Clarke.

Robert Wright, a citizen of the United States, resident at Dyea, makes similar and even more detailed statements on oath with regard to the exercise of all branches of jurisdiction by the United States, "as far north as the summit of the mountains north of Skagway Bay and Dyea," and points out that the pursuit of William Leak up the Chilcoot Pass was abandoned at the summit. He adds that he had never known of the exercise of British authority nearer "than a point inland beyond the summit of the mountains."

United States' Case, App., pp. 424, 425.

United States' Case, App., pp. 426, 427.

Joseph Carr's affidavit is printed to prove a similar series of facts, care being taken to again draw the line of jurisdiction "at the summit of the passes of the mountains north of Dyea and Skagway, Alaska."

Ibid., p. 427.

It is thought necessary by the United States to publish an affidavit by Don-a-wak, a Chief of the Chilkats, to prove that he and his people from 1867 onwards had recognized the authority of the United States "at least as far as the summit of the mountains from the heads of the various inlets."

Ibid., pp. 432–436.

Edward Armstrong and E. B. Clark relate on oath and with great detail similar acts of jurisdiction "as far inland therefrom as the summits of the passes of the mountains."

Similar evidence in United States' Counter-Case, p. 219.

In the United States' Counter-Case, even as late as the 27th March, 1903, Mr. Sol Ripinski, United States' Commissioner at Haines, is called to give evidence on oath to the same effect:—

> "During all my residence in Alaska," he says, "all notices of location, evidences of title, and the means of enjoyment of rights have been evidenced, claimed, and protected under and by virtue of the laws of the United States; and all records in reference to titles or interests in lands or other property have been made in accordance with and under the jurisdiction of the laws of the United States in the country adjacent to said bodies of water as far as the summit of the passes adjacent to said bodies of water."

The resulting inconsistency.

It is, therefore, evident that throughout the United States' Case and Counter-Case every effort possible has been made to prove that British jurisdiction began, and United States' jurisdiction ended at the summit of the Chilcoot Pass, the "crête" of the mountain boundary. To accomplish this, reports of officers of the army and navy, letters and affidavits of officials of the various branches of the public service, and of citizens who have lived for varying periods in the neighbourhood of Lynn Canal, and depositions of Indian Chiefs even, have been collected with great care, and printed as a substantive part of the United States' Case for the consideration of the Tribunal. The material in many cases has been put in the solemn form of sworn depositions. Indeed it is safe to say that more industry has been evinced in the attempt to show that a mountain boundary forms the division between British and United States' territory than to establish any other branch of the United States' Case.

Repeated appeals are made to the line of demarcation as fixed by the practice of United States' officers, officials, and citizens, and, on examination, that line proves to be the mountain boundary.

Consequent repudiation of United States' testimony.

The Tribunal is now asked to answer Question Seven by deciding that "such mountains do not exist within 10 marine leagues from the coast." The mountain boundary is rejected, and it is sought to draw the line of demarcation 10 marine leagues from the head of Lynn Canal, many leagues in the interior beyond the summit of the Chilcoot and White Passes. The rejection of the mountain boundary, therefore, involves the repudiation of all the reports and depositions above referred to, and of a great portion of the evidence put forward of alleged United States' occupation.

And necessary repudiation of United States' evidence afforded by Maps.

Not only has a great mass of the evidence of American occupation to be discarded to make way for the novel contention now put forward by the United States, but most of the cartographical evidence, upon which so much stress is laid, has, for this purpose, to be discarded as well. Throughout the United States' Case and Counter-Case repeated appeals are made to the testimony of the maps, and great weight is sought to be attached to the so-called evidence which they afford. "The boundary of the ceded territory as claimed by Russia, and accepted by the United States," it is said, "was recognized by all cartographers and geographical writers." "The universal method followed by cartographers in drawing the boundary line at 10 marine leagues from the shore of the mainland shows," it is said, "that it was their opinion that no dominant range existed between that line and the sea." And in the Counter-Case vigorous reference is made "to the universal understanding by cartographers and by Governments for 75 years."

United States' Case, p. 85.

An examination of the various maps cannot fail to show that no such unanimity exists. Brué's Map, published at Paris in 1833, shows the boundary-line following the crest of the mountains all the way from Portland Canal to Mount St. Elias, with the exception of a short break from Mount Fairweather north.

Atlas, United States' Case, Map No. 13.

Greenhow's Map, published in Philadelphia, 1844, makes the boundary-line follow mountains the whole way from Portland Canal, past Mount St. Elias, to the 141st meridian.

Ibid., Map No. 15.

In De Mofras' Map, Paris, 1844, the boundary is made to extend along a line of mountain

Ibid., Map No. 16.

summits for the whole length of the *lisière*, except between Portland Canal and Stikine River.

Atlas, United States' Counter-Case, Map No. 40.

Part of Map of Manitoba, Keewatin, British Columbia, &c., Montreal, 1880, shows a continuous mountain boundary, and a line drawn along its crest from Portland Canal until the line leaves the map.

British Case, Atlas, Map No. 28.

Map of Alaska accompanying report of Ivan Petroof, United States' Special Agent, Tenth Census, 1880, shows the line following mountain summits all the way.

Ibid., Maps Nos. 29 and 30.

The Petroof maps of 1882 also show the line following mountains, except where it crosses Lynn Canal.

Atlas, United States' Counter-Case, Map No. 44.

Part of Map of British Columbia, plate 72, Stanford's Atlas, 1887, shows a line drawn along the crest of a mountain boundary through a considerable portion of the *lisière*.

Ibid., Map No. 45.

The Map from Keith Johnston's Royal Atlas, 1894, also has a mountain boundary along a great part of the *lisière*.

Ibid., Map No. 47.

In part of Map of British Columbia, plate 39 E of Black's General Atlas, 1898, the boundary-line is again drawn along the crests of mountain chains and masses nearly all the way.

United States' Counter-Case, App., p. 248.

In the Appendix to the United States' Counter-Case, a list is printed of maps which are to be produced before the Tribunal. On Philips' Imperial Atlas of the World, London, 1890, "the line is drawn quite close to Lynn Canal, apparently upon the summits of the mountains rising directly from the sea."

In a very large proportion of the Maps published in support of the United States' Case, only one or two mountains are represented as accurately located. And in these cases the line is almost invariably deflected to pass through them. The United States' line as now drawn passes 10½ marine leagues to the rear of Mount Fairweather. A reference to the maps which are said to support this method of demarcation will show the boundary deflected to Mount Fairweather, 10½ leagues nearer the coast, on the following:—

Atlas, United States' Case, Map No. 12.

12. Part of A. Arrowsmith's Map of North America, published in 1795, and revised in 1833.

14. Part of "A Map of North America," constructed, according to the latest information, by United States, Tanner, 1839.

15. Greenhow, before referred to.

16. De Mofras', before referred to.

17. Bouchette, 1853.

21. Part of Perthes' Map of the World, 1863.

23. Part of the British Admiralty Chart No. 2461, corrected to 1866.

24. Part of the Map of North-West America, prepared for the Department of State, at the Office of the United States' Coast Survey, in 1867.

35. Map of British North America, from the Report of the Select Committee of the House of Commons on the Hudson's Bay Company, 1857. (Arrowsmith's.)

37. Part of Imray's Chart of the North Pacific Ocean, London, 1869.

38. Part of British Admiralty Chart No. 787, 1877; and several others.

It is evident, therefore, that cartographers are by no means agreed in discarding a mountain boundary; but, on the contrary, on many maps where mountains have been shown, a mountain boundary has been followed, and that on a very large number of maps, where only one or two individual mountains have been drawn, the mountain boundary has been deflected to run through them in its course, thus showing the influence of the presence of mountains upon the drawing of the international line.

Senator Sumner on map evidence.

There are differences also in drawing the line at the head of Lynn Canal, along Portland Canal and elsewhere. "If we look to maps for information," said Senator Sumner, while the Treaty of cession of Alaska was under consideration in the United States' Senate in 1867, "we find ourselves disappointed. Latterly the coast is outlined and described with reasonable completeness; so also are the islands. This is the contribution of navigators and of recent Russian charts. But the interior is little more than a blank, calling in mind the 'pathless downs' where, according to Prior, the old geographers 'place elephants instead of towns.'"

House of Representatives, 40th Congress, Ex. Doc., No. 177, p. 147.

In the United States' Case it is stated that the map used on that occasion by Senator Sumner was based on full knowledge, diplomatic, historical, and otherwise. Senator Sumner, however, described it as "only the harbinger of the maturer labours of our accomplished bureau when the coasts of this region are under the jurisdiction of the United States." By comparing the line on this map with that now contended for, it will be seen that these "maturer labours of our accomplished bureau" have altered its course so as to take in an addi-

United States' Case, p. 84. Atlas, United States' Case, Map No. 24.

tional coast strip 10½ leagues wide to the rear of Mount Fairweather, and to add very considerably to its width at the head of Lynn Canal and Taku Inlet.

The interior a "blank" so far as geographical knowledge was concerned.

The truth is that the maps drawn previous to the making of any survey cannot be put forward as evidence of the course which the international boundary-line should follow. In the words of Senator Sumner, the interior remained "a blank" so far as geographical knowledge was concerned. Many of the cartographers seem to have put mountains into their maps merely out of deference to the terms of the Treaty, and to have drawn a line of demarcation along their summits. Others depicted only mountains such as Mount Fairweather, Lions Head, and St. Elias, running the line through them in compliance with the requirements of the Treaty. Others, in the absence of accurate knowledge as to the mountains of the interior, simply flung conjectural dotted lines at various distances inland. In the absence of knowledge as to limiting mountains, the maximum distance inland was often drawn to indicate not a survey, but merely a claim awaiting adjustment. Senator Sumner's words with reference to Captain Cook's charts can be applied with equal truth to the maps of this coast generally:—

House of Representatives, 40th Congress. Ex. Doc., No. 177, p. 147.

"These were reproduced in St. Petersburgh, and the Russian copy was then reproduced in London; so that geographical knowledge was very little advanced."

Mr. Bayard's opinion on the folly of trusting the evidence of Maps.

A reasonable view of the evidence of the maps was taken by Mr. Bayard in 1885, who, in instructing Mr. Phelps to urge upon the British Government action towards fixing upon a conventional boundary-line, pointed out that:—

British Case, App., p. 252.

"The line traced upon the Coast Survey Map of Alaska, No. 960, of which copies are sent to you herewith, is as evidently conjectural and theoretical as was the mountain summit line traced by Vancouver."

In 1885 the United States discards the evidence of Maps.

The United States, therefore, in 1885, officially discarded, through its Secretary of State, the evidence of "all cartographers and geographical writers." Subsequent action, such as the conference between Messrs. Dall and Dawson, and the various diplomatic communications between the Governments, showed no reversal on the part of the United States of its views as expressed by Mr. Bayard. In 1892 the two Governments

formally agreed, by Treaty, to have a survey made of the territory adjacent, with a view to the permanent delimitation of the boundary-line in accordance with the existing Treaties with regard to it.

The Treaty of 1892 an acknowledgment that the question of the boundary is still open.

As has been shown in the British Case and Counter-Case, and earlier in this argument, the Treaty of 1892 is in itself a formal acknowledgment by both Powers that the question of the location of the boundary, as it depended upon the topographical facts and data, was still open, and this state of things has been continued by the action of the two Governments in the appointment of the Joint High Commission, and by the present Treaty of 1903.

THE BRITISH CONTENTION.

The British contention is that the Contour Maps show that mountains answering the description of the Treaty do exist, and that their situation is as indicated on the declaration of Mr. King, printed in the Appendix to the British Case at p. 307, and referred to in the British Case at p. 83, and the British Counter-Case at p. 56. This is a simple question of physical fact. It cannot be decided by any such processes of reasoning as are exemplified in the Case and Counter-Case of the United States. The Contour Maps exhibit the results of an elaborate examination of the country in question. It is not proposed in this argument to repeat the results of an examination of these maps as stated in Mr. King's declaration, and indeed, any such statement can be made only by constant reference to the Contour Maps which will be made at hearing of the oral argument.

United States Case, p. 103.

The United States' Case alleges that "there is not at any point within 10 marine leagues of tide water, between the head of Portland Canal and the 141st degree of longitude west of Greenwich, the whole or any part of a continuous range of mountains parallel with the sinuosities of the coast and extending from Portland Canal to the said 141st degree of longitude."

It is submitted that this statement affords no answer to Question Seven. The expression "within 10 marine leagues of tide water" does not occur in the Treaty. The word "range" is

not to be found in any of its Articles, and the word "continuous" has been gratuitously added, evidently for the purpose of making the terms of the Treaty appear much more exacting than they are. All that is required by the Treaty is that from the point of intersection at the 56th degree of north latitude, "la ligne de démarcation suivra la crête des montagnes situées parallèlement à la côte," to the point of intersection of the 141st degree of west longitude. Even should the United States succeed in proving its allegations, it would not be in a position to ask the Tribunal to decide that "such mountains" (as are contemplated by the Treaty) "do not exist within 10 marine leagues from the coast."

United States' Case, p. 106.

Maps before the Negotiators.

The maps before the negotiators of the Treaty, according to the United States' Case, were the charts of Vancouver, "probably" (Atlas, United States' Case, Maps Nos. 4 and 5), and, "undoubtedly," the Russian Map, prepared by the Quartermaster-General's Department and published in 1802 (Map No. 6, Atlas, United States' Case), which is described as "to all intents a copy of the Vancouver charts, with a few names added and changed to correspond with the Russian nomenclature." It is possible also, says the United States' Case, that the Russian navigators had the French edition of the Vancouver Atlas. In any case the maps used by the Russian officials were "the Vancouver maps or those which were reproductions of them."

United States' Case, p. 44.

Ibid., p. 44.

Ibid., p. 44.

In the Counter-Case this list is expanded to include the Faden Map of 1823 (Atlas, British Case, Map 10), one or more maps by Arrowsmith (Atlas, United States' Case, Nos. 8 and 10), and possibly the Langsdorff Map of 1803–1805 (British Case, Atlas, No. 7). "Other than these publications," says the United States' Counter-Case, "there is no evidence that any were consulted or examined during the negotiations."

United States' Counter-Case, pp. 7, 8, 38.

Ibid., p. 8.

The Arrowsmith Map, so-called (Map 8, Atlas, United States' Case), is described in the List of Maps preceding the Atlas as "the northward part" of a "map of British North America, after Mr. Arrowsmith," from Pinkerton's Modern Atlas, published at Philadelphia in 1818; reproduced on original scale. On the face of the map it is described as "from Mr. Arrowsmith's Map of North America, &c., &c." It cannot therefore be claimed among "one or more maps by Mr. Arrowsmith," as it is in the United States'

Counter-Case, nor is there the slightest evidence given to show that it was known to the negotiators on one side or the other.

It is not, therefore, admitted to be one of the maps to be considered by the Tribunal.

In the British Case it is pointed out that, besides the Vancouver Charts mentioned in the United States' Case, there are, however, some other maps which appear to have been used by the negotiators on one or both sides, notably Vancouver's large Chart, and mention is made of the Faden Map and Arrowsmith Maps, and the Russian Chart of 1802. British Case, pp. 54, 55.

Whether all or only several of the maps claimed by the United States were used by the negotiators, can make very little difference in the conclusion which must be reached from an examination of them. Certain it is that neither Sir Charles Bagot, Mr. Stratford Canning, M. Poletica, Count Nesselrode, or any one else, after even a cursory glance at the maps, would have selected as a boundary "a continuous range of mountains parallel with the coast and extending from Portland Canal to the said 141st degree of longitude." To begin with Vancouver's large Chart (British Case, Atlas, Map 1)—the only Vancouver Chart which shows the whole coast from Dixon Entrance to Mount St. Elias on one sheet—it will be found that a number of different ranges have to be combined to complete a mountain boundary. A range is shown bordering Observatory Inlet, Portland Canal, and Behm Canal, and then turning west to the Cleveland Peninsula. Another, lying further back, and sweeping around the head of Portland Canal at a considerable distance, passes the first and terminates nearly opposite Cape Fanshaw. A third rises behind the second, continues around the head of Taku Inlet, and terminates there. A fourth runs from near the mouth of Taku Inlet to the head of Lynn Canal, terminating just beyond the head of the Canal. A fifth runs down the west side of the Canal to Point Couverden, turns sharply north-west, and ends at Taylor Bay. A sixth begins just north of Cape Spencer and continues unbroken to St. Elias.

Maps do not show "continuous range of mountains."

This map was prepared by Lieutenant Roberts.

The second Vancouver Chart shows Prince of Wales Island and extends to Prince Frederic Sound in the north. On this chart is depicted a single range sweeping round the head of Obser- Atlas, British Case, Map No. 2; Atlas, United States' Case, Map No. 4.

vatory Inlet and Portland Canal at some distance, thence running generally parallel to the coast. A second range closely borders the general coast and the shores of the penetrating inlets. The space between the two ranges is filled in with a conventional representation of mountains not drawn in range form.

This chart was drawn by Lieutenant Joseph Baker.

Atlas, British Case, Map No. 3; Atlas, United States' Case, Map No. 5

The third Vancouver Chart shows the coast from Cape Fanshaw north-westerly to Mount St. Elias. A range is drawn parallel to the coast, to some extent following its sinuosities. It is also carried around Taku Inlet and Lynn Canal. It, too, is drawn by Lieutenant Joseph Baker, but the range is quite differently placed. The distance from Cape Fanshaw back to the mountains in this map is 8 miles, while in the other (British No. 2, United States No. 4), it is 25 miles. This comparison of the two charts is limited to the extent of their overlapping (see Atlas, British Case, Map No. 4). The average distance of the mountains from the coast in this third chart is about 9 miles.

Atlas, British Case, Map No. 5; Atlas, United States' Case, Map No. 6.

The Russian Map of 1802 (British Case) shows a range east of Observatory Inlet, and a mountain north of Observatory Inlet and east of the head of Portland Canal. A range then begins west of the head of Portland Canal and runs north-west unbroken, and parallel with the coast to the head of Taku Inlet. East of the head of Taku Inlet another range takes its inception, running parallel to Lynn Canal, around its head and part of the way down its west shore. There is then a considerable break till another range begins at Lituya Bay. The average distance of these ranges from the coast would appear to be about 15 miles by scale.

Atlas, British Case, Map No. 10.

The Faden Map of 1823, published by Wyld, shows a heavy mountain ridge east and north of Observatory Inlet and Portland Canal, thence parallel to the coast to near Point Houghton, at an average distance of 30 miles from the general coast line. Hachures showing elongated mountain masses also follow along the sinuosities of the coast to Point Houghton, where the two formations join and continue to run at about 20 miles from the coast. There are noticeable breaks at Taku, Berner's Bay, and a little below Chilkat.

The Arrowsmith Maps, said by the United

States' Case to be before the negotiators, are Maps 8 and 10 in the Atlas to the United States' Case. No. 8 is the Pinkerton Map, to which reference has been made. It is not an Arrowsmith Map, nor is there any reason for believing that it was before the negotiators. Map 10, the Arrowsmith Map of 1823, shows no mountains whatever. The Langsdorff Map (British Case, Atlas No. 7) also "possibly" used according to the United States' Case, like the Arrowsmith Map last referred to, shows no trace of mountains.

The Arrowsmith Maps mentioned in the British Case are those of 1822 and 1824 (Atlas British Case, Maps Nos. 9, 8 and 12). In the former the mountains stand in isolated masses. They follow the shores of Portland Canal and the inlets, roughly speaking. Another mass appears at the head of Lynn Canal. North of Cape Spencer another elongated mountain mass is shown extending to Mount Fairweather. Another mass extends to Port Mulgrave. At the angle between this mass and the other, "Mount Fairweather" is printed, but without any representation of a mountain. Then comes a short mass to the east of Admiralty Bay. Then another some distance inland, with Mount St. Elias represented to the north. British Case, p. 55.

The Arrowsmith Maps of 1824 show mountains hachured in along the coast and shores, including Portland Canal. They are hachured as isolated masses. They appear to cease near the head of Lynn Canal, and begin again north of Icy Strait and Cross Sound. They continue to Port Mulgrave. There is then a break, after which they continue along the west side of Yakutat Bay. Fairweather and St. Elias are shown as complete mountains behind the range.

The United States' Counter-Case cites the following statement from the Memorandum of the Russian Plenipotentiaries upon the amended proposal of Sir Charles Bagot:— United States' Counter-Case, p. 7.

> "According to the most recent and best maps published in England the establishments of the Hudson's Bay Company approach the coast only along the fifty-third and fifty-fourth degrees, and it can not be proved that they reach the Great Ocean at any point." United States' Case, App., p. 161.

The map referred to here, according to the United States' Counter-Case, must have been the Faden Map. As the Faden Map shows a post Atlas, British Case, Map No. 10.

near McLeod's Lake, north of 55° north latitude, it clearly could not have been the one referred to by the Russian Plenipotentiaries. In all probability they referred to the two Arrowsmith Maps just described. They are among the "most recent," and it would not be out of the way to describe the Maps of Arrowsmith at that time as the "best."

Taking all or any set of these maps together, the negotiators could not but conclude that such a physical fact as an absolutely continuous mountain range could not be assumed to exist along the *lisière*. The large Vancouver Chart, which is the only one showing the whole coast from Dixon Entrance to Mount St. Elias on one sheet, is omitted from the Atlases accompanying the United States' Case and Counter-Case; it shows no less than six separate mountain ranges. The second Vancouver Chart shows two ranges. The third is entirely different from the second, though drawn by the same hand. The Russian Map differs from all the foregoing in the distance of the mountains from the sea, and in the number of ranges and breaks. The Faden Map alters the distance of the mountains from the coast, and shows noticeable breaks. The Arrowsmith Map of 1823 and the Langsdorff Map, claimed by the United States to have been before the negotiators, show no mountains at all. The Faden Map and the Arrowsmith Maps of 1822 and 1824 are alike in representing the mountain topography by a series of isolated and elongated mountain masses. There was, therefore, abundant notice before the negotiators, furnished by the maps themselves, showing that the existence of a continuous mountain chain must not be relied upon. Ordinary experience of physical facts would have pointed to the same conclusion.

Atlas, British Case, Map 1.

The Hudson's Bay Company's warning as to the inaccuracy of Geographical information—"the supposed Chain of Mountains."

At an early stage of the negotiations the Hudson's Bay Company sounded a warning note, suggesting some more definite demarcation on the coast than "the supposed chain of mountains," and pointing out that "neither party have any very accurate geographical information with respect to the country in the immediate neighbourhood of the sea." The effect of this warning appears in all the subsequent negotiations. Count Lieven, writing to Count Nesselrode, May 20/June 1, 1824, informs him that the British consider the charts imperfect, and insist that the line of boundary should be

British Case, App., p. 78.

Effect of the warning on the Negotiators.

British Case, App., p. 82.

"plus précisément désignée." Mr. G. Canning, on the 12th July following, instructs Sir Charles Bagot as follows:— British Case, App., p. 86.

"In fixing the course of the eastern boundary of the strip of land to be occupied by Russia on the coast, the seaward base of the mountains is assumed as that limit; but we have experience that other mountains on the other side of the American Continent, which have been assumed in former Treaties as lines of boundary, are incorrectly laid down in the maps; and this inaccuracy has given rise to very troublesome discussions. It is therefore necessary that some other security should be taken that the line of demarcation to be drawn parallel with the coast, as far as Mount St. Elias, is not carried too far inland."

The Russian Negotiators on the necessity of Geographical information.

Count Lieven, in his Memorandum on the North-West Coast Convention, speaks of:— British Case, App., p. 91.

"Le peu de certitude des notions géographiques que l'on possède encore sur ces parages."

Mr. G. Canning writes Mr. S. Canning on the 8th December, 1824:—

"It is quite obvious that the boundary of mountains, where they exist, is the most natural and effective boundary. The inconvenience against which we wished to guard was that which you know and can thoroughly explain to the Plenipotentiaries to have existed on the other side of the American Continent, when mountains laid down in a map as in a certain given position, and assumed in faith of the accuracy of that map as a boundary between the possessions of England and the United States, turned out to be quite differently situated, a discovery which has given rise to the most perplexing discussions. Should the maps be no more accurate as to the western than as to the eastern mountains, we might be assigning to Russia immense tracts of inland territory, where we only intended to give and she only intended to ask, a strip of sea-coast." Ibid., pp. 113, 114.

Count Nesselrode, on the 20th February, 1825, in a letter to Count Lieven, speaks of:— Ibid., p. 131.

"Le peu de précision des notions géographiques qu'on possède sur ces contrées."

Finally, in his letter of the 13th March, 1825, to Count Lieven, he remarks again on:— Ibid., p. 132.

"Des contrées dont la géographie est encore peu connue."

On both sides therefore the negotiators, having been warned by the Hudson's Bay Company, were

Both sides considered the Maps unreliable.

thoroughly imbued with the idea that the maps could not be implicitly relied upon. It could not be assumed that the mountains would be found just where they were depicted on the map. Although the mountains nearest the coast are referred to, it was possible that, at some points, they might sweep inland 30 miles or more. Their attitude was one of complete uncertainty, and consequent caution. The British therefore insisted on the 10-league limit of the *lisière* in any case, and the Russians, yielding unwillingly enough to the force of the British Argument, saw fit to concede the point. And yet it is argued by the United States' Case that the same negotiators who refused to locate these mountains in any longitude or longitudes intended that they should constitute an uninterrupted chain along the boundary of a *lisière* 540 miles long!

In Dr. Mendenhall's opinion, the Negotiators doubted the existence of a continuous range.

The contention needs only to be put forward in its true light to be defeated. Dr. T. C. Mendenhall, who was for some years Superintendent of the United States' Coast Survey, and who, as Commissioner for the United States under the Convention of 1892, conducted the United States' survey of the territory adjacent to the disputed boundary-line, is quoted in the United States' Counter-Case as saying that at the time when the Treaty was being negotiated there was "a doubt as to the position if not the existence of such a range." This does not mean that there was any doubt as to the existence of mountains; there could be none; all the negotiators admitted their existence. The Treaty contains no alternative provision in the case of their absence. The doubt Dr. Mendenhall refers to is as to the existence of a continuous range. Will it be contended that negotiators who doubted the existence of a range would have assumed its existence for the purposes of the Treaty?

United States' Counter-Case, App., p. 271.

Absurd to suppose that Negotiators contemplated a continuous range as defined by United States.

If the negotiators had persisted in retaining in the Treaty itself the words "chain" or "range," which were used at various stages of the negotiations, it would be necessary to examine into their meaning as supporting, or failing to support, the United States' demand for a "continuous chain," but it will be observed that the same caution which dictated the naming of a limit beyond which the mountains must not be followed led to the exclusion of all such words from the Treaty. In the first draft Convention submitted, contained in Mr. Canning's letter to

Sir Charles Bagot of the 12th July, 1824, the line was thus described:—

"De ce point elle suivra cette côte, parallèlement à ses sinuosités, et sous ou dans la base vers la mer des montagnes qui la bordent, jusqu'au 139e degré de longitude ouest du dit méridien." British Counter-Case, App., p. 87.

Uninterrupted chain not required by Treaty.

It is obvious that these words do not involve the assumption of any uninterrupted chain of mountains. They are satisfied by the existence of mountains near the coast, whether in continuous chain or not.

British Counter-Case, App., p. 91.

The Russians objected that such a boundary might in some cases extend to the very edge of the water of the ocean itself, and suggested the use of the word "cîme" instead of base. Mr Canning, therefore, instructed Sir Charles Bagot to consent, if pressed for the alteration, to the use of the word "summit" of the mountains instead of the "seaward base." Mr. Stratford Canning's Contre-Projet of the 1st February (13), 1825, described the line as following the crest of the mountains in a "direction parallèle à la côte;" and the Treaty finally provided that "la ligne de démarcation suivra la crête des montagnes situées parallèlement à la côte." There is nothing here about "chain" or "range" of mountains, or about a "chain" or "range" parallel to the coast. The controlling principle is that the line of demarcation must follow in a "direction parallèle à la côte," and to do so it must follow mountains "situées parallèlement à la côte." In doing so, the line is to be drawn along the top instead of at or within the seaward base. The extension of the boundary up to the Ocean itself would thereby be avoided.

British Case, App., p. 90.

Ibid., p. 121.

The mountain boundary contemplated by the Treaty does exist

It is submitted that inspection of the Contour Maps shows the existence of mountains near the coast, along the summits of which the line must be drawn in accordance with the terms of the Treaty. The Treaty does not require that such mountains should form a continuous range, and the gaps which do exist afford no reason for discarding the plain words of the Treaty in favour of a line which was declared to be the limit within which the boundary was to run, not the boundary itself.

Evidence presented by the United States as to the Topographical Results of the Surveys made under the Convention of 1892.

Statement in United States' Case as to topographical features of the mainland.

In the Case of the United States (p. 85) reference is made to the Joint International Survey of the coast of the mainland which was made under the provisions of the Convention of July, 1892. It is there said that—

> "The American officers sent out in company with the Canadians examined the shores, and penetrated inland at several points for the special purpose of determining the character of the country. From their observations the following facts were established: That the mountains have a tendency to increase in altitude the farther they are situated from the shore; that throughout the *lisière* the mountains are composed of numerous isolated peaks and short ridges running in different directions, and that within 10 marine leagues of tide water there is no defined and continuous range such as appears upon the early maps and charts following the sinuosities of the coast."

For the observations from which these conclusions are deduced, reference is given to pp. 529 to 538 of the Appendix. Here are found a statement by Mr. Tittmann and affidavits from Messrs. Ogden, Hodgkins, Baldwin, and Flemer, who were officers of the joint survey made by the Commissioners in pursuance of the Convention of 1892.

The United States presents personal testimony to the neglect of the documentary evidence of Maps, &c.

The maps and other material submitted by the Commissioners with their Report of the 31st December, 1895, purport to exhibit the results of all the observations, of sufficient precision to be capable of representation in that way, which were made not only by the five officers who now give testimony, but also by some thirteen other United States' and nine Canadian surveyors named in the Report.

The best method of arriving at just conclusions from the survey would apparently be to analyse the maps of the Commission, as is done in the declaration of Mr. King, printed in the Appendix to the British Case; but no attempt to do this is made in the Case of the United States. The five officers who state their conclusions (with but one exception) do not so much as mention the fact

that such maps were made, or base their conclusions in any way upon this primary evidence.

Opinions of United States' Officers based upon limited observation.

The opinions they express are based upon surveys which the deponents individually made in certain restricted localities, and upon general views of the mountain scenery, which they had in common with all travellers along the coastal steam-boat routes. They are unsupported by anything of the nature of an observation properly so called.

The description of the coast, moreover, appears to be given mainly from memory, and this may account for some of the discrepancies in the affidavits which it is now proposed to examine.

Mr. Tittmann's Statement.

Mr. Tittmann surveyed a portion of the Stikine River, extending from a point about 10 leagues from Rothesay Point down the river towards the coast. He—

United States' Case, App., p. 529.

> "Determined the position and altitude of mountain peaks which could be seen from various points on the river, including several peaks about 8 miles distant from the river and approximately 10 marine leagues from the coast. These peaks were Kate's Needle on the west, and Big Mountain on the east."

Thus his view was limited to 8 miles on either side, and only extended so far in the case of three specially high peaks, namely, the two already referred to and Pinnacle Mountain, which is mentioned afterwards. Otherwise it does not appear from either his or Mr. Baldwin's statement, or from the Commission maps, that his surveys extended out of the immediate valley of the Stikine, or that any mountain was ascended by himself or any of his party. Yet, he says, he "paid special attention to identifying and locating the crest of the mountains." He also found that "within the 10-marine-league limit there is a total absence of that continuity and system which would constitute a mountain range parallel to the coast."

He does not state what is the criterion as to continuity and system of a mountain range, nor how he could determine the fact by observations which, at most, extended 8 miles.

In 1900, Mr. Tittmann was engaged in delimitating the provisional boundary about the head of Lynn Canal. He says that from the examination which he made there, and a study of the maps of the Commissioners, he has reached the conclusion—

"That there does not exist any defined or continuous mountain range or chain running generally parallel to the coast, and situated anywhere oceanward from a line projected from the head of Lynn Canal southward and drawn to the 56th parallel at a point near the head of Portland Canal, such line being parallel to the sinuosities of the coast-line, which proceeds around the bays and inlets, and not more than 10 marine leagues therefrom."

The language of this is somewhat confused. Is the limiting line of which he speaks to start from the head of Lynn Canal, or from a point 10 leagues from the head?

Probably the latter is meant, for presumably he considers Lynn Canal as one of the bays or inlets around which the "coast line" proceeds.

Now he says that "oceanward" from his limiting line there does not exist "any defined or continued mountain range or chain running generally parallel to the coast."

Yet as he visited Chilkoot and White Passes, which are less than 10 leagues from the head of Lynn Canal, he must know that at those points there is a well-defined watershed dividing the waters flowing into Lynn Canal from those flowing into the Yukon. He should also know that streams flowing from the east into Skagway River lead, by rapid ascents, to the same watershed within a few miles. Again, he would find by a study of Maps Nos. 1, 2, and 3 of the Atlas accompanying the United States' Case (which maps were prepared in the office of the United States' Coast and Geodetic Survey, apparently from modern data), that there is every indication of a continuous watershed or divide within 10 leagues from the shores of Lynn Canal and of connecting channels of the sea, in which the rivers flowing into these waters take their rise, and extending from Chilkoot and White Passes to near the Taku Inlet or River.

Here, at least, is a defined and continued watershed, 90 or 100 miles long. It is within 10 leagues from the shores of Lynn Canal, Stephens Passage, &c.

Mr. Tittmann demands a "defined and continuous range or chain running generally parallel to the coast," within 10 leagues of the heads of the inlets. It is difficult to see in what way such a well-defined ridge as this fails to comply with Mr. Tittmann's definition, even if we add to it the further qualification, which

is used by Mr. Ogden, and suggested by Mr. Hodgkins, in their depositions, of a "summit" mountain range.

Mr. Tittmann also states that the "group of mountains to the westward of the Stikine, of which Kate's Needle appears to be the highest, overtops the mountains between it and the coast." Here we have a "group" of mountains, a "summit" group, separated from the mountains of the interior by the Valley of the Stikine. The "group" appears to lie within 10 leagues from the coast. By measurement on Sheet No. 13 of the Surveys by the United States' Commission, it appears that Kate's Needle, said to be the highest mountain of this group, is distant about 20 nautical miles from the head of Le Comte Bay, or 25 miles from the general line of the coast at the mouth of the same bay.

It is not stated, nevertheless, by what process this mountain, which was not climbed, and only seen from a long distance and from below, was determined to overtop everything between it and the coast.

Mr. Ogden's Deposition

The surveys on which Mr. Ogden was personally engaged were confined to the valleys of the Taku and the Stikine River. He also saw the coast from the deck (or rigging) of the steam-boat, while passing along the usual routes of navigation.

App. to United States' Case, p. 530.

Of the Taku River he says:—

> "A careful survey was made of the Taku River by a small triangulation as a base for it, which was a continuation of the scheme of triangulation extending along the coast of Alaska. On this work I determined the contour and height of all the mountains that were visible from the bed of the river."

These determinations of the "contour" appear from Card No. 4 of the United States' Commission, which, with the plan of triangulation on Sheet No. 13 of the same Commission, presumably represents all the actual surveys made in this region by Mr. Ogden and the officers under his direction, to have been confined to the determination of the form of the river-facing slopes of the immediately adjacent mountains, these determinations, in some instances, though not in all, extending as far up as the nearest summits. The contours of the mountains beyond their summit, or their connection with the summit further back, is not shown.

British Case, App. III, Portfolio.

His statement, therefore, that he determined the heights and contours of "all the mountains that were visible from the bed of the river," must be taken with some important qualifications. Indeed, so far as the evidence of the Commission maps and cards is concerned, it would be more correct to say that he did not completely determine the contour of a single one of the mountains visible from the river valley.

Mr. Ogden states that his assistants, Messrs. Hodgkins and Welker, who were attached to parties of the British Commission, made all the ascents with those parties. In this he is rather at variance with Mr. Hodgkins, who swears that he did not make all the ascents with Mr. Ogilvie. The affidavit by Mr. McArthur, the Canadian surveyor whom Mr. Welker accompanied, shows that of twenty mountain triangulation and camera stations occupied by him, Mr. Welker occupied only ten, besides one independent ascent.

British Counter-Case, App. I, p. 73

Messrs. Hodgkins and Welker, it appears, assured Mr. Ogden that there was no well-defined range of mountains passing through that region. This evidence, though of little value, as of a hearsay character, is yet worthy of notice in that the qualification "well-defined" is applied to "range," leaving it open to inquiry whether there might not still be a range. This is but another instance of the use, throughout these depositions, of every possible qualification of "mountains," whereby the expression "mountains situated parallel to the coast," may be deprived of its meaning.

It is stated that Mr. Welker's sketch accompanying his report on the results of his work showed a very decided jumble, and nothing that could be construed into a range. This sketch does not appear to be included or incorporated in the maps and sketches accompanying the Report of the Commissioners. There is, therefore, no opportunity to compare this "jumble" with the very complete maps furnished by Mr. McArthur's survey.

Mr. Ogden proceeded from Taku Inlet by steamer to Fort Wrangell. During this journey he observed the character of the country in the light of the information that had already been gathered. Such observations made from the deck of a steamer must necessarily be of the slightest imaginable weight, and it can hardly

be conceived possible that any one should expect them to overpower the evidence of those who climbed the mountains in the region in question, fortified as this evidence is by photographs and topographical maps derived therefrom. Yet in part upon the information acquired on this journey, "from my observations made in Taku Inlet and on Stikine River and in running along the coast, and from all information that I gained," Mr. Ogden expresses himself satisfied that there is not, within 10 marine leagues from the coast, "any continuous chain of mountains," &c.

The scanty nature of his observations in Taku Inlet has already been referred to. Those on the Stikine will be dealt with afterwards. As to the value of his observations from the steamer, the evidence of Mr. Baldwin, in his deposition (pp. 535–537 of the Appendix to the United States' Case), may be referred to. Mr. Baldwin, who travelled along the same steamer passages as Mr. Ogden, repeatedly refers to the difficulty of seeing anything of the interior from these passages:—

"Wherever we followed the continental shore, as we did from the junction of Clarence Strait and Behm Canal to Burroughs Bay, the same topography was observed, the mountains rising precipitously from the water's edge."

"On account of the height of the mountains close to the shore, I could not see far into the interior."

Other passages might be cited from Mr. Baldwin's deposition to show the difficulty of determining from the water the relations of the mountains beyond the "high coast line," beyond the "main shore," which is "very abrupt and very high, the mountains rising from 3,000 to 4,000 feet."

It would not seem possible for any one on a steamer not more than 2 or 3 miles from such a shore to see very much of the interior, even if, as Mr. Ogden did, he ascended the rigging to get a better view. An ascent of 50 feet, let us say, above the deck, to look over the top of a mountain 3 miles away, would enable him to see 50 feet more of the top of a mountain 3 miles beyond that, and no more.

Referring to Mr. Ogden's observations on the Stikine, it appears that his survey extended up it for about 12 miles from its mouth, but

he says that his personal observation extended further, for he ascended the river to Mr. Tittmann's camp:—

"This gave me an apportunity to see a large section of the country back from the shore connected with the region I had been studying."

In this he appears at variance again with Mr. Baldwin, who says of the Stikine:—

"There was no extent of view, except between mountain peaks, which rose up abruptly from the valley in irregular order and continued in this way all the way up the river."

Mr. Ogden, however, appears to have seen enough from the Stikine of the region he had been studying from the steamer to give confirmation of the opinion he had formed, that there was no well-defined range of mountains. In the light of this preconceived opinion it was of little consequence that the group of mountains behind which Mr. Tittmann's camp lay (see Mr. Tittmann's statement) completely overtopped, and therefore hid from his view, in ascending the Stikine, the mountains lying nearer the coast which he had previously seen.

He admits, however, that he saw on the shores of the inlets "groups" of "hills and peaks" which were detached from the mountains behind them. This is not contrary to the evidence of the maps nor to the contention, based upon that evidence, of His Majesty's Government. Mr. Ogden, indeed, suggests that these hills and peaks might be called "foot-hills." There seems to be no reason, however, why a "hill" or "peak" rising above the timber line should not be called a "mountain."

British Counter-Case, App. I, pp. 57–62.

The nature of these "foot-hills," as they appear to the eye, may be gathered from the magazine articles descriptive of the coastal topography reprinted in the Appendix to the British Counter-Case. These articles were written without any special object and merely to give the impression produced on an observer. It is clear that the appearance is that of a mountain range facing the ocean.

Mr. Ogden's conclusion is that "there is not within 10 marine leagues from the coast any continuous chain of mountains in the form of a summit range running from the 56th degree

of latitude until it intersects in the northern direction with the 141st degree of longitude."

This opinion, however true it may be, and however complete the observations and cogent the other information upon which it is based, can hardly be of much service in interpreting the physical meaning of "the summit of the mountains situated parallel to the coast," for it greatly expands the requirement of Article III of the Convention of 1825.

"Summit of the mountains" becomes "summit mountains," "mountains" becomes a "range" of mountains.

Thus we have a "summit range." This must further be "continuous," and we now get a "continuous chain of mountains in the form of a summit range."

Even this is not sufficient. This continuous chain of mountains in the form of a summit range must extend without any break all the way between the 56th parallel and the 141st degree. Also it must always be within 10 marine leagues from the coast.

Such a range he says does not exist. It was indeed hardly worth while to make a deposition to establish such a conclusion. That a range absolutely continuous, without any break, does not exist along this whole extent of coast is a fact which was as well known in 1825 as it is to-day. This is shown by the provisions of the Treaty which contemplated that the mountains might be crossed by "rivers and streams." Probably Mr. Ogden's words were not intended to lead to such a self-evident conclusion. Doubtless he intended to say that there was not *anywhere* along that extent of coast from the 56th parallel to the 141st meridian a "continuous chain of mountains," &c.

If this was his meaning, whence did he derive his information?

It does not appear, either from the records of the surveys of the Commissions or from Mr. Ogden's own deposition, that he ever saw the region between Taku Inlet and the 141st meridian, comprising almost one-half of the whole length of coast concerning which he made his deposition. His knowledge of it must therefore have been obtained elsewhere.

Not, presumably, from the "Pacific Coast Pilot, Alaska, Part 1" (Washington, Government Printing Office, 1891), which was compiled in

the office of the United States' Coast and Geodetic Survey (of which Bureau he is an officer), for that work says (p. 204), speaking of Icy Point, on the coast west of Cross Sound:—

"Immediately behind the shore line up to this point is the eastern portion of the St. Elias range of mountains, and which extends nearly to the Copper River, and includes the highest mountain peaks yet known on the North American continent. This eastern portion of the range is sometimes known as the Fairweather Range."

See also "Geographical Dictionary of Alaska," by Marcus Baker, published by the United States' Geological Survey.

Thus there is a "range" along this part of the coast, at least.

Mr. Hodgkins' Deposition.

U.S. Case, App., p. 532.

Mr. Hodgkins was appointed by the United States' Commissioner as *attaché* on the party of Mr. William Ogilvie, one of the surveyors of the British Commission. He says he accompanied Mr. Ogilvie in his surveys of the mountains from Taku Inlet northward along Lynn Canal.

His conclusions are based upon what he saw while engaged in this work, and also while travelling along the coast to the point where that work began. On this journey he passed along Behm Canal and Clarence Strait, saw the continental shore at Wrangell, and again along Frederick Sound and Stephens Passage and as far as Juneau.

Speaking generally of what he saw on this steam-boat trip, he says that, according to his recollection of the shore of the continent northward from Dickson's Entrance, "in general the land rose abruptly and sometimes precipitously from the water's edge," and that although there were occasional breaks through which glimpses could be obtained of higher mountains further back, "the mountains immediately bordering the coast generally served to prevent any extensive inspection of the interior."

This testimony as to the prominence of the mountains immediately adjoining the coast agrees with that of Mr. Baldwin, and the reasonable inference is that Mr. Hodgkins got very little of his information as to the character of the mountains of the interior through what he saw while on the steamer. Apart from this, his only source of personal information would be

his observations while working with Mr. Ogilvie on the mountains near Taku Inlet and Gastineau Channel.

Mr. Hodgkins' observations in this region do not seem to have been very accurate or certain. As to the height of the mountains he ascended, he makes in his deposition two statements differing from one another. He first makes a substantive statement that, "on the part of the coast near Juneau, the summits are from 2,000 to 3,500 feet in height." Then he quotes a report which he made to the Superintendent of the Coast and Geodetic Survey, in which he says, speaking of the area covered by his work in 1893, which included the mountains on the part of the coast near Juneau, "The mountain peaks are from 3,000 to 5,000 feet in height." Of these two statements, that made in the report to his superior officer is the more nearly correct. That which he makes in the present affidavit is wrong.

A glance at the map, sheet No. 13 of the British Commission (forming part of section 3 of British Commission map in the Portfolio, Appendix III to the British Case), will show that along Gastineau Channel all the mountains rise steeply from the water's edge to the 3,000 feet contour, and their peaks are still higher—in several instances above 4,000 feet. None of these mountains can be described as 2,000 feet in height. They are not less than 3,000 feet.

The mountain immediately north of Juneau is 3,500 feet high. That immediately to the east of Juneau has a summit ridge of 3,500 feet, with peaks rising to 3,750 feet and more. The peak behind Sheep Creek is 3,630 feet. The next peak (proceeding south-easterly parallel to the channel) is 4,175 feet. The next two peaks, which overlook Gastineau Channel and Stephens Passage on the one side, and Taku Inlet on the other, are 3,300 and 3,441 feet in height. Thus it would have been nearer the truth to give 3,500 feet as the minimum instead of the maximum height.

Mr. Hodgkins arrives at the conclusion—

> "From all the observations which I made while in Alaska, and from all my knowledge of the region gathered not only from the ascent of mountains but from other investigations."

His knowledge gathered from the "ascent of mountains" has been shown to be uncertain

in an essential point—the height of those mountains.

The other observations which he "made while in Alaska" must be derived from his views of the mountain landscape while travelling on the steamer. He admits, however, that "the mountains immediately bordering the coast generally served to prevent any extensive inspection of the interior," and in this he is confirmed by Mr. Baldwin.

So the accurate part of his information must have been derived from the "other investigations." What the nature of these investigations may have been he does not state. They are evidently not examinations of the Commission maps, for, as has been shown, his statement—that is, his later statement—revised between the 24th February, 1894, and the 16th April, 1903, in the light of his "other investigations," is at variance with those maps.

His conclusion is framed with the usual qualifications in speaking of the mountains, that is to say, he contends that there is "no continuous chain," with the addition of the further qualification "such as seems to be contemplated in the language of the Anglo-Russian Convention of 1825." He defines "coast" as "the heads of the inlets and bays."

It may be noticed, nevertheless, that Mr. Hodgkins in a certain place saw mountains "which assumed somewhat the appearance of a range." He thinks, however, that this was an optical illusion. He evidently took no pains to verify or disprove his observation, which had the most important bearing upon the subject which he was sent to Alaska to investigate.

Mr. Baldwin's Deposition.

U.S. Case, App., p. 535.

Mr. Baldwin's testimony as to the high and commanding character of the mountains immediately bordering the coast has already been referred to. It accords with the experience of every traveller from the time of Vancouver, and with the Commission maps.

With respect, however, to his observations on the Stikine he is not quite so closely in agreement with outside evidence. He says "there was no extent of view," when passing up the Stikine, "except between mountain peaks which rose up abruptly from the valley in irregular order, and continued in this way all the way up the river."

The statement is here made that there is no

regularity in the arrangement of the mountains on either side of the Stikine River.

In 1869 appeared the first edition of the "Pacific Coast Pilot, Alaska," published by the United States' Coast Survey. The work bears on its title page the name of George Davidson as author, and appears from the introduction to be essentially a reproduction of his Report of 1867 (extracts from which are printed in the United States' Appendix, pp. 341–344), revised, and in some parts amplified.

On p. 83 of this work, Mr. Davidson, speaking of the Stikine River, says:—

"It rises by two branches, one to the north-east and one to the south-east, and from their junction near the latitude of 57° 30′ it flows almost south 30′, then west and south-west with a general antagonism to the coast ranges near the Archipelago Alexander.

"The interior of the country appears to be broken into a succession of sharply defined mountain ranges separated by narrow and deep valleys, similar to those between the islands of the coast. In fact, the topography of the Alexander Archipelago is a type of that in the interior. A submergence of the mountain region of the mainland would give a similar succession of islands separated by deep and narrow fiords."

Another edition of the "Pacific Coast Pilot, Alaska" was published in 1883. This edition was compiled by Mr. W. H. Dall, assisted by Mr. Marcus Baker. The Superintendent of the Coast Survey, in the preface, refers to the work as "a new work, exhaustive of all known sources of information." In it more than three pages (109 to 112) are devoted to the description of the Stikine River. On p. 109 we find:—

"The topography in the vicinity of the river is mostly mountainous, with some broad valleys, but more numerous narrow ones. Most of these have a certain parallelism with the coast, while some of those through which the Stikine, Naas, and Taku Rivers reach the sea cut across the ranges nearly at right angles."

In a foot-note on p. 109 it is said:—

"In fact, the same type of topography prevails upon the continental border as that exhibited in a half-submerged condition in the Columbian and Alexander Archipelago. If the latter were entirely elevated above the sea level, they would in essential features resemble the present continental border, and were the valleys of the last depressed below the sea level a similar extension of the archipelago, without changes of character,

would be the result. Sumner Strait appears to be merely the prolongation seaward of the valley of the lower Stikine."

"Alexander Archipelago" is the name applied by the Coast Survey to the whole group of islands lying off the mainland coast from Dixon's Entrance to Cross Sound. "Columbian Archipelago" is that applied to the islands south of Dixon's Entrance, lying off the coast of British Columbia.

Again, on p. 111, referring more particularly to the locality where Mr. Baldwin says the mountain peaks rose up abruptly from the valley in "irregular order," the "Coast Pilot" says:—

"About 5 miles above the delta islands the valley narrows and the river appears only 200 or 300 feet in width. The depth in the channel is nowhere less than 7 feet, and will average over 12 feet. The appearance of the high land on either side is as if ranges trending north-west and south-east were abutting obliquely upon the river."

This testimony as to the regularity of the mountain topography along the coast, the "coast ranges," the "parallelism" of the valleys with the coast, &c., it will be seen, differs materially from that of the gentlemen who have made affidavits in support of the United States' Case.

Reference may also be made to an article on "The General Geography of Alaska," by Henry Gannett, Chief Geographer, United States' Geological Survey, in the "National Geographic Magazine" (Washington, May 1901). Mr. Gannett, in this article, gives a close geographical and topographical analysis of the region bordering the coast. An extract may be made:—

"Although the coast of the mainland and of the islands is altogether several thousand miles in length, yet for the entire distance there are very few square miles of level ground. The land rises from the water almost everywhere at steep angles, without a sign of beach, to altitudes of thousands of feet. It is a fiord coast. The islands are separated from one another and from the mainland by fiords, deep gorges, whose bottoms are in some cases thousands of feet below the surface of the water. These fiords extend far up into the mainland and into the islands in deep, narrow, U-shaped inlets.

"The relief features of this region, its mountains and its gorges, partly filled by the sea, are all of glacial origin, presenting everywhere the familiar handwriting

of ice. Every cañon, every water passage, whether called strait, canal, or bay, is a U-shaped gorge, and its branches are similar gorges, commonly at higher levels—'hanging valleys' they have been called. Above the cliffs of the gorges the mountains rise by gentle slopes to the base of the peaks. The cross profile of each gorge, and its surroundings, is that of ice, not of water, carving. It is the work of channel erosion, not of valley erosion, and the channels were filled with ice. It is a colossal exhibition of the eroding power of water in solid form."

Mr. Baldwin states that at "no point between our camp" (up the river near the 10-league limit) "was there a continuous or homogeneous range of mountains extending parallel with the coast, and which stood out and could be distinguished from the collection of mountain peaks as a continuous mountain range." He could see, however, up the Rivers Iskoot and Katete "for a number of miles." As will be seen from the map, these rivers, as far as their course has been laid down by the surveys, run nearly parallel to one another, and nearly parallel to the general line of the coast. Between them, therefore, the mountains must form a range of some kind, which surely "could be distinguished" from the other mountains which were separated from them by the valleys of these rivers. Whether this range possesses all the properties required by Mr. Baldwin, homogeneity, &c., is hard to say. The survey of these interior regions along the rivers was committed, under the arrangement between the Commissioners under the Convention of 1892, to the officers of the United States' Commission, and the surveys of the British Commission, with their accurate delineation of the mountains, were allowed to remain, at this point, incomplete.

The "Alaska Coast Pilot" of 1883, indeed, suggests that there is something like a range here, distinguishable from the mountains of the interior, for it says of the "Skoot or Iskoot River" (p. 111):—

"The Skoot extends to the eastward about 55 miles, where it bends to the northward, receiving at the angle thus formed a tributary, the Nin-kun-saw, which flows from the southward and eastward a distance of over 20 miles. At the summit, where the head-waters of this branch are intimately associated with those of the Naas River, the elevation attained is 2,600 feet. By ascending the Skoot and making the portage, the

Stikine Indians can descend the Naas River and reach Fort Simpson in six days after setting out."

In 1894 Mr. Baldwin went up to the head of Chilkoot Pass, where he found a distinct watershed. Until his "arrival at this point it was a detached mass of heterogeneous mountains." The meaning of this is not very clear, but the word "it" probably refers to the mountains at the head of Chilkoot Pass, which appeared to be detached from one another, and heterogeneous or confused as to arrangement. When he reached the summit of the pass, however, he found the arrangement of the mountains was quite regular, forming a distinct watershed.

Might not his other views of distant mountains from which he has reached rather sweeping conclusions have been subject to similar correction if he had gone nearer to them?

He says, however, that his opportunities for seeing the mountain formations along the coast and in the interior were sufficient to enable him to say that there is not anything like a defined mountain range.

This defined mountain range, he says, does not exist to the west of a certain line, drawn much the same as that drawn by Mr. Tittmann. Mr. Baldwin, as well as Mr. Tittmann, has overlooked the possible existence of a "distinct watershed" extending for 100 miles, perhaps, from Chilkoot Pass, a pass which they both personally visited.

Mr. Flemer's Deposition.

App. to United States' Case, p. 537.

Mr. Flemer, in 1893, was attached to the party of the British Commission under Mr. Talbot, and his surveys of that season were made over the mountain area south of the Stikine River.

Mr. Flemer's own surveys in this region are shown in two sheets on Card No. 2 (Portfolio, Appendix III to the British Case).

With respect to the region south of the Stikine River, he remarks:—

"The terrene of this section is very rugged and bold, the numerous crags and peaks with their underlying mountain formation, forming irregular masses with no indication of any range formation. The altitudes of the peaks in this section gradually increase from the coast inland."

Yet his maps on Card No. 2 show distinctly the general arrangement of the mountain summits and slopes, with the intervening depres-

sions, as parallel to the coast. One of the mountain ridges is shown on the sheet on the left-hand side of the Card, extending in a direction south 25° east or thereabouts from a point of the Stikine south of the large island. This ridge is separated from the mountains to the east of it by a well-defined valley, and forms the summit which Great Britain claims that the boundary line should follow.

On the same Card, to the south-west of this range, appear other mountains close to the shore, extending south from near Rothesay Point at the mouth of the Stikine to Wrangell Peak. This series of mountains, although of short extent compared with the next inner range just mentioned, may yet, as it seems, be properly called a "range"—the "Cannery Range"—see sheet No. 4 of the United States' Commission. Mr. Flemer, however, says that there are "no indications of any range formation" in the region he surveyed during the year 1893. Immediately across the Stikine River, indeed, and in his full sight when he was on the mountain tops, is the "Wilkes Range" of the United States' Coast and Geodetic Survey Chart, No. 8,200, and of the sheet No. 4 of the United States' Commission. See also "Pacific Coast Pilot, Alaska," 3rd edition, 1891, p. 115.

Mr. Flemer's other surveys in Alaska were in the region about the head of Lynn Canal, and a long distance north of the point where His Majesty's Government claims that the boundary line should cross the canal. The absence of "mountain formations strung out north and south," along Lynn Canal, if such absence were a fact, would not therefore be in conflict with that claim.

His remarks, however, as to the abruptness of the mountains along the upper part of Lynn Canal, and the narrow valley bottoms of the rivers Katzehin, Skagway, &c., might seem to indicate a "coastal mountain range" (if the shores of Lynn Canal are the "coast"). He denies, however, that the mountains ever run "in a continuous range or chain."

He, indeed, recognises the existence of a divide between Lynn Canal and the Yukon and Taku Rivers, which appears from the most recent maps to lie within 10 leagues of the coast (see remarks upon Mr. Tittmann's statement). The evidence of the maps in the United States'

Appendix seems to show that this "divide" runs nearly north and south, and it must be a "mountain formation." Mr. Flemer tells us, however, that the mountain formations do not run north and south, though without stating upon what evidence he bases this statement.

Mr. Flemer says that in 1898 he was ordered to Alaska "to extend the surveys of the Tlaheena, Chilkat, Chilkoot, Skagway, and Dyea Rivers, including the passes at their heads leading into the interior, going inland as far as 30 miles from the coast."

From this sentence it might be inferred that the passes at the heads of the rivers named are 30 miles inland from tide-water. In correction of such possible inference, it may be explained that only two of these rivers, the Tlaheena (Klehini) and Chilkat, rise at a greater distance from tide-water than 10 leagues. The other rivers take their rise much nearer the shore.

Messrs. Hodgkins, Baldwin, and Flemer all refer to the general formation of the interior country as "plateau." Their descriptions do not entirely agree with one another, for Mr. Baldwin's language conveys the impression of an existing plateau, that is, "a broad flat area of land in an elevated position; a table land; an elevated plain" ("Imperial Dictionary")—this plateau having mountain peaks standing above its level surface.

Mr. Flemer seems to speak rather of the "plateau" as the original formation, which has now been so roughly eroded as to lose that character. Mr. Hodgkins' description seems confused. His plateau is of ice and snow, yet the valleys which have been carved out of it are "frequently occupied by glaciers."

The general impression conveyed by these expressions is, however, that of an elevated region lying behind "the mountains bordering the coast," which generally serve "to prevent any extensive inspection of the interior"; behind the "coastal barrier"; "the mountains rising sheer from the water's edge"; "the abrupt shore formation."

Without further discussing the question whether a "plateau" is a proper description of the character of the interior, it may be pointed out that it is along this "coastal barrier" that His Majesty's Government claims that the

boundary line should be drawn. Its character is shown by the photographs reproduced in the album accompanying the Counter Case, and described by Mr. J. J. McArthur in the exhibit accompanying his declaration.

It is submitted that the existence of a plateau or elevated region on one side of a range of mountains does not alter their character. It is a general rule in nature that the land on opposite sides of mountains is not of equal elevation.

Modified interpretation of Article III in United States' Counter-Case.

In the Counter-Case of the United States (p. 39) the interpretation placed upon "crête des montagnes situées parallèlement à la côte," as involving a "continuous range of mountains parallel to the coast," has been modified into "a continuous dominating range of mountains approximately paralleling the physical coast of the continent."

United States' Counter-Case, p. 39.

The statement is made that "the proof that no such range exists is conclusive."

Evidence presented in United States' Counter-Case.

For proof of this statement reference is made to pp. 529–38 of the Appendix to its Case, and to pp. 257 and 262-65 of the Appendix to its Counter-Case.

Pp. 529–38 of the Appendix to Case contain the declaration of Mr. Tittmann, and the affidavits of four officers of the Coast and Geodetic Survey. These statements have already been dealt with in this argument and in the British Counter-Case.

The references to the Appendix to Counter-Case are to a Report of the Geological Survey of Canada upon the area covered by the "Kamloops Sheet," and to affidavits of four more Coast and Geodetic Survey officers—Messrs. Ritter, Pratt, Welker, and Nelson.

Report of Geological Survey of Canada.

The quoted extract from the Geological Survey Report is confined to a description of the formation of the region adjacent to the Fraser River, far to the south of the locality now under discussion. The only references in the extract which can have any bearing upon that locality appear to be—

United States' Counter-Case, App., p. 257.

1. The statement that the Coast Ranges (of which a narrow selvage of the inland side alone purports to be described) form a wide belt of mountainous country, which runs parallel to the coast for the entire length of the Province of British Columbia; and

2. The inferred statement that at certain points of the Fraser Valley the mountains form a "complex."

British Counter-Case, App. I, p. 60.

From Mr. W. H. Dall, however, we learn that this complex does not exist further north. "Advancing northward," he says, "the valleys gradually widen, at the expense of the mountainous area; the latter assuming a greater regularity of trend, and forming more continuous ranges. The axis of elevation comes nearer the coast."

Of the four new affidavits, three were made on or before the 7th May, *i.e.*, before the British Case, filed in London on the 2nd, could have reached Washington. They would, therefore, more properly have been presented with the Case.

They are of the same general character as the former affidavits, being devoted to the assumption that a more or less physically impossible range of mountains was intended by the Treaty, and denials of the existence of such range. Their evidence is wholly of this negative character, and there seems to be nothing in them controverting or modifying anything in the British Case.

Mr. Ritter's Deposition.

United States' Counter-Case, App., p. 262.

Mr. Ritter, from certain mountains between the entrance to Holkham Bay and Port Houghton, saw, as he says:—

"A great mountain system, the culminating peaks of which were beyond the limits of the topography delineated by us. The mountain masses are so distributed that no defined mountain range trending north and south can be said to exist within the area described by me. Within the range of vision the altitudes of numerous crags and peaks which I saw gradually increase from the coast inland."

The mountains which formed his view points were apparently some of those which the line as described by Great Britain follows, and which, from the Commission maps, seem to form a well-defined range. Mr. Ritter, however, says nothing whatever about these, but only of some mountains which were beyond the limits of his survey. Although beyond these limits, and therefore not accurately determined by him, he thinks they are so distributed that no defined mountain range, &c., exists.

He, as well as most of the others, says the mountain heights gradually increase from the coast inland. This itself would point to a certain

regularity of arrangement, and suggest that ranges might be found to exist parallel to the coast. However, none of them give exact measurements of heights or precise positions, whereby the fact of the arrangement in ranges or otherwise could be tested.

Mr. Pratt's Deposition.

Mr. Pratt was "attached to the party of Mr. O. H. Tittmann." From this it must not be understood that Mr. Pratt accompanied Mr. Tittmann during any of the surveys described by Mr. Tittmann in his statement. Mr. Pratt was attached to the party of one of the Canadian surveyors, and worked with him.

United States' Counter-Case, App., p. 262.

Mr. Pratt says he ascended ten or more mountains between Thomas Bay and the Stikine, and also a peak 4,800 feet high near the Great Glacier of the Stikine. This peak seems to be the triangulation station No. 61 of the British Commission map.

From this last point he says he obtained a good view of the mountains towards the interior "which are much higher than those towards the coast." He does not say that from this point he obtained a good view of the mountains nearer the coast.

The Commission maps show pretty certainly that he could not, on account of the height of the mountains lying close to the westward and south-westward of his view point.

These last-mentioned mountains form the range considered by Mr. Joseph Hunter, in 1877, to be the axis of the coast range. As to Hunter's range south of the Stikine River at this point, it may be convenient here to point out that Hunter's conception of a definite range in this locality is supported by the evidence of Mr. Baldwin that he could see up the valley of the Katete River for a number of miles. Hunter's mountain range lies to the south-west of this valley.

United States' Case, App., p. 535.

Reference has already been made in dealing with Mr. Baldwin's evidence, to the fair inference which may be drawn therefrom, that a mountain range parallel to the coast lies between the Katete and Iskoot Rivers.

All these facts go to show that the mountains lie in ranges parallel to the coast. Yet Mr. Pratt, like the other deponents, is content to pass by these facts, proved by maps, Coast Pilots, and other official works, and by the evidence of unprejudiced travellers, without any mention, much less explanation, of their non-accord with the

theory of irregular arrangement of isolated peaks, and to rest upon the bare statement of the theory that there is no "defined" mountain range.

The phrase he uses is, "no defined mountain range within this region described by me." It is not clear what region he has described. The only description refers to the country to the east of the Stikine.

He further makes the remarkable statement that the great field of glacier ice, with which a large portion of the country "described" by him is covered, "slopes gently to the coast, and if not interrupted by the Stikine River, would be continually higher as you recede from the coast."

In other words, if the topographical features were different, the topography would not be the same as it is.

However, the statement that the glacier ice rises continually from the coast to the Stikine is incorrect. The proof is the Great Glacier, which is quite close to one of his points of observation, the peak 4,800 feet high. This glacier slopes down to the Stikine, indicating that there is a summit between the Stikine and the coast. It is seen from the Commission maps that the other mountains which Mr. Pratt, in company with Mr. Gibbon, ascended, lie on the coastal side of the glacier field.

From these he could see only the edge and lower slopes of the ice field. To determine the fact of continual rise, it would be necessary to obtain a view point near the top. His only view point was the peak near the Great Glacier. What he saw, or could see, from this place, as has been shown, is adverse to his deduction.

His statement as to the slope of the ice is, therefore, merely another instance of unsupported generalization.

Mr. Pratt also says:—

> "In my trips up and down Lynn Canal, I was impressed by the topography on each side. In general the mountains rise abruptly from the sea, but the mountains increase in elevation from the south towards the passes and east and west from the shores of the canal."

It is evident from the maps, which give the heights of the mountains bordering Lynn Canal, that it is impossible from the water, while travelling up and down Lynn Canal, to see over the immediately bordering range. See also the

photographs in the album of the British Counter-Case, especially those taken from station 169, on p. 33 of the album, and those from station 170, on p. 35. These views were taken not from the water, but from mountain summits high up on the west side of the canal.

Mr. Pratt cannot, therefore, have ascertained from his observations while on his trips that the mountains increase in elevation in the way he says they do.

The facts as to these mountains bordering Lynn Canal, attested by the maps and photographs, as well as by Mr. Flemer's account of them (referred to *ante*, p. 100), are sufficient to contradict the statement in the last sentence of Mr. Pratt's affidavit.

Mr. Welker's Deposition.

Mr. Welker accompanied Mr. McArthur in the ascent of some mountain peaks with him. For a list of Mr. Welker's ascents see affidavit by Mr. McArthur in the Appendix to British Counter-Case, p. 73.

United States' Counter-Case, App., p. 263.

As Mr. Welker says, the peak most remote from the shore, which he personally ascended, was about 5 miles from the mouth of Speel River. With the aid of Mr. McArthur's statement, this peak is identified with 12 m. of the British Commission map. This peak is between 2,000 and 2,250 feet high, on a ridge standing isolated in the valley of Speel River. Being closed in by mountains on each side upwards of 4,000 feet high, it was not a suitable view point for examination of the general features of the country.

As Mr. McArthur ascended many peaks much higher and much further inland, took photographs, and made a topographical map of the region (which forms part of the British Commission map), while Mr. Welker has not even furnished a sketch, Mr. Welker's vague descriptions can be of little service.

Mr. Welker speaks of high peaks from 20 to 30 miles further inland than the inner limits of the explored region, and then goes on to say that one of these inner peaks, which he called Tent Mountain, was distinctly higher than any peak on Holkham Bay or Tracy Arm, he "determined" to lie nearly in the axis of Tracy Arm and about 2 miles from its head.

The word "determined" would indicate that he had accurately placed the mountain by means of surveying instruments. The maps show that a

mountain 2 miles beyond the head of Tracy Arm, far from being 20 or 30 miles inland from the inner limits of the country explored, would be only 21 miles from the shore of Stephens Passage, *i.e.*, from the ocean coast of the continent.

App. III to British Case, United States' Commission map No 6.

If he had accurately determined this peak, it is strange that he did not report the determination at the time, and have it laid down on the United States' Commission map. Perhaps it may be the same as the peak marked on that map, at the head of Tracy Arm. That peak, however, is given an altitude of only 4,415 feet, an elevation far surpassed by a multitude of peaks nearer the coast.

It is unnecessary to devote further space to the usual formula respecting a defined mountain range, but it may be pointed out, with reference to the statement in the last sentence of the affidavit, that the maps and the photographs show a most clearly-defined mountain range lying to west of Endicott Arm, west of the upper part of Holkham Bay and west of Port Snettisham.

This range is completely separated from the inner mountains by the depression of Endicott Arm and Holkham Bay, and by that of Port Snettisham and the valley between Snettisham and Holkham Bay. This valley comes down almost to the sea level. The axis of this range, as nearly as possible, lies in a straight line, and is broken only by the outlets of Holkham Bay and Port Snettisham, which are comparatively narrow.

Mr. Nelson's Deposition.

United States' Counter-Case, App., p. 265.

The last affidavit furnished is that of Mr. Nelson. He does not appear to have been employed on the surveys of the Commission, but later, in his capacity as an officer of the Coast and Geodetic Survey, he made a survey of the region about the Katzehin River, near the head of Lynn Canal.

As has already been mentioned, this is the only one of the four affidavits of surveyors presented with the United States' Counter-Case, whose date indicates it to be a "reply to the Case, documents, correspondence and evidence" presented by Great Britain.

This affidavit itself does not seem to be a reply to anything in the British Case or the Appendices thereto. It deals solely with the region adjacent to the Katzehin River, a tributary of Lynn Canal, at a point far inland (some 30 miles) from any mountains described or referred to in the British Case as defining the line of demarcation.

The affidavit is inconsistent with the maps

prepared in 1903 in the office of the Coast and Geodetic Survey for the Case and Counter-Case of the United States, that is to say, United States' Maps Nos. 1, 2, 3, 25, and 26.

These maps all show the watershed between Lynn Canal and the interior to lie far to the seaward from the line claimed by the United States. It has already been noticed that these maps disagree with the testimony of Mr. Tittmann and others.

It is strange that the results of Mr. Nelson's "topographical survey" of 1898, by which it appears that he made the drainage for 30 miles back from Lynn Canal all flow into it, had not been incorporated into the maps of the Coast and Geodetic Survey, confessedly the most accurate bureau as regards actual surveys in the United States, before 1903.

It is noticed that Map 26, accompanying the Counter-Case, agrees with the Maps 1, 2, 3, and 25, accompanying the Case.

As to the intrinsic value of Mr. Nelson's statement, he says he ascended the Katzehin Valley for about 15 miles. The maps show that the whole length of the river from its mouth to its source in the glaciers is not more than 10 miles. He could see to a distance 30 miles from the coast, *i.e.*, 20 miles beyond his farthest point. As he says the mountains continue to increase in height the further back from the coast they are, it is difficult to see how he could see enough of the dividing valleys to determine with certainty that all the drainage of this region flowed into Lynn Canal.

His observation of this region was "at the head of the Katzehin River." The drainage of this 20 miles of "snow-capped peaks" flowing towards Lynn Canal would make a very fair-sized river. Where does this river flow into Lynn Canal? Not past his observation station, for he was at the "head" of Katzehin River.

In contradiction to the oft-repeated statement in all the affidavits of the absence of mountain formations parallel to the coast, reference may be had to the maps of the United States' Commission, where the mountain peaks delineated in a different manner from that adopted for the British Commission maps, without the detail of the connecting ridges, &c., show in a way better appreciated at a glance than do the latter maps, the universal arrangement of the mountains in ranges parallel to the coast.

In offering the above examination of the evidence presented by the United States with reference to the topographical features of the region in question, Great Britain expressly reserves her right to contend, as she does, that the materials upon which the Tribunal must proceed are those collected by the Commission under the Convention of 1892. These materials, and especially the maps, reveal the actual features of the country, and from them the Tribunal has to decide which are the mountains which satisfy the requirements of the Treaty.

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