

AWARD OF THE ALASKA BOUNDARY TRIBUNAL, 20 OCTOBER
1903¹

WHEREAS by a Convention signed at Washington on the 24th day of January, 1903, by Plenipotentiaries of and on behalf of His Majesty the King of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, Emperor of India, and of and on behalf of the United States of America, it was agreed that a Tribunal should be appointed to consider and decide the questions hereinafter set forth, such Tribunal to consist of six impartial Jurists of repute, who should consider judicially the questions submitted to them, each of whom should first subscribe an oath that he would impartially consider the arguments and evidence presented to the said Tribunal, and would decide thereupon according to his true judgment, and that three members of the said Tribunal should be appointed by His Britannic Majesty and three by the President of the United States:

And whereas it was further agreed by the said Convention that the said Tribunal should consider in the settlement of the said questions submitted to its decision the Treaties respectively concluded between His Britannic Majesty and the Emperor of All the Russias, under date of the 28th (16th) February, A.D. 1825, and between the United States of America and the Emperor of All the Russias, concluded under date of the 18th (30th) March, A.D. 1867, and particularly the Articles III, IV, and V of the first-mentioned Treaty, and should also take into consideration any action of the several Governments or of their respective Representatives, preliminary or subsequent to the conclusion of the said Treaties so far as the same tended to show the original and effective understanding of the parties in respect to the limits of their several territorial jurisdictions under and by virtue of the provisions of the said Treaties:

And whereas it was further agreed by the said Convention, referring to Articles III, IV, and V of the said Treaty of 1825, that the said Tribunal should answer and decide the following questions:—

1. What is intended as the point of commencement of the line?
2. What channel is the Portland Channel?
3. What course should the line take from the point of commencement to the entrance to Portland Channel?
4. To what point on the 56th parallel is the line to be drawn from the head of the Portland Channel, and what course should it follow between these points?
5. In extending the line of demarcation northward from said point on the parallel of the 56th degree of north latitude, following the crest of the mountains situated parallel to the coast until its intersection with the

¹ *United Kingdom State Papers*, vol. CXI 1904, p. 49.

141st degree of longitude west of Greenwich, subject to the conditions that if such line should anywhere exceed the distance of 10 marine leagues from the ocean, then the boundary between the British and the Russian territory should be formed by a line parallel to the sinuosities of the coast and distant therefrom not more than 10 marine leagues, was it the intention and meaning of the said Convention of 1825 that there should remain in the exclusive possession of Russia a continuous fringe, or strip, of coast on the mainland, not exceeding 10 marine leagues in width, separating the British possessions from the bays, ports, inlets, havens, and waters of the ocean, and extending from the said point on the 56th degree of latitude north to a point where such line of demarcation should intersect the 141st degree of longitude west of the meridian of Greenwich?

6. 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?

7. What, if any exist, are the mountains referred to as situated parallel to the coast, which mountains, when within 10 marine leagues from the coast, are declared to form the eastern boundary?

And whereas His Britannic Majesty duly appointed Richard Everard, Baron Alverstone, G.C.M.G., Lord Chief Justice of England, Sir Louis Amable Jetté, K.C.M.G., Lieutenant-Governor of the Province of Quebec, and Allen Bristol Aylesworth, one of His Majesty's Counsel; and the President of the United States of America duly appointed the Honourable Elihu Root, Secretary of War of the United States, the Honourable Henry Cabot Lodge, Senator of the United States from the State of Massachusetts, and the Honourable George Turner, of the State of Washington, to be members of the said Tribunal:

Now, therefore, we, the Undersigned, having each of us first subscribed an oath, as provided by the said Convention, and having taken into consideration the matters directed by the said Convention to be considered by us, and having judicially considered the said questions submitted to us, do hereby make Answer and Award as follows:—

In answer to the 1st question—

The Tribunal unanimously agrees that the point of commencement of the line is Cape Muzon.

In answer to the 2nd question—

The Tribunal unanimously agrees that the Portland Channel is the channel which runs from about 55° 56' north latitude, and passes to the north of Pearse and Wales Islands.

A majority of the Tribunal, that is to say, Lord Alverstone, Mr. Root, Mr. Lodge, and Mr. Turner, decides that the Portland Channel, after passing to the north of Wales Island, is the channel between Wales Island and Sitklan Island, called Tongass Channel. The Portland Channel above mentioned is marked throughout its length by a dotted red line from the

point B to the point marked C on the map signed in duplicate by the Members of the Tribunal at the time of signing their decision.

In answer to the 3rd question—

A majority of the Tribunal, that is to say, Lord Alverstone, Mr. Root, Mr. Lodge, and Mr. Turner, decides that the course of the line from the point of commencement to the entrance to Portland Channel is the line marked A B in red on the aforesaid map.

In answer to the 4th question—

A majority of the Tribunal, that is to say, Lord Alverstone, Mr. Root, Mr. Lodge, and Mr. Turner, decides that the point to which the line is to be drawn from the head of the Portland Channel is the point on the 56th parallel of latitude marked D on the aforesaid map, and the course which the line should follow is drawn from C to D on the aforesaid map.

In answer to the 5th question—

A majority of the Tribunal, that is to say, Lord Alverstone, Mr. Root, Mr. Lodge, and Mr. Turner, decides that the answer to the above question is in the affirmative.

Question 5 having been answered in the affirmative, question 6 requires no answer.

In answer to the 7th question—

A majority of the Tribunal, that is to say, Lord Alverstone, Mr. Root, Mr. Lodge, and Mr. Turner, decides that the mountains marked S on the aforesaid map are the mountains referred to as situated parallel to the coast on that part of the coast where such mountains marked S are situated, and that between the points marked P (mountain marked S, 8,000) on the north, and the point marked T (mountain marked S, 7,950), in the absence of further survey, the evidence is not sufficient to enable the Tribunal to say which are the mountains parallel to the coast within the meaning of the Treaty.¹

In witness whereof we have signed the above-written decision upon the questions submitted to us.

Signed in duplicate this 20th day of October, 1903.

(Signed) ALVERSTONE

Elihu ROOT

Henry Cabot LODGE

George TURNER

Witness:

(Signed) Reginald TOWER,

Secretary.

¹ See *Exchange of Notes* of 25 March 1905 between the British and the United States' Governments, relative to the acceptance of the report of the commissioners to complete the Award (*British and Foreign State Papers*, vol. 98, p. 155).

OPINION BY LORD ALVERSTONE (1).

Second Question

WHAT CHANNEL IS THE PORTLAND CHANNEL?

The answer to this question, as indicated by the learned Counsel on both sides, depends upon the simple question: What did the Contracting Parties mean by the words "the channel called the Portland Channel" in Article III of the Treaty of 1825? This is a pure question of identity. In order to answer it one must endeavour to put oneself in the position of the Contracting Parties, and ascertain as accurately as possible what was known to them of the geography of the district so far as relates to the channel called the Portland Channel.

There are certain broad facts which, in my opinion, establish beyond any reasonable question that the negotiators had before them Vancouver's maps, the Russian map (No. 5 in the British, No. 6 in the American Atlas), Arrowsmith's maps (probably the map numbered 10 in the American Atlas), and Faden's maps (British Appendix, pp. 10 and 11).

I have, moreover, no doubt that the negotiators were acquainted with the information contained in Vancouver's narrative. I do not think it necessary to state in detail the evidence which has led me to this conclusion beyond stating that, quite apart from the overwhelming probability that this was the case, there are passages in the documents which, in my judgment, establish it to demonstration, but, for the purpose of my reasons, it is sufficient to say that I have come to that clear conclusion after the most careful perusal of the documents.

I will now endeavour to summarize the facts relating to the channel called Portland Channel, which the information afforded by the maps and documents to which I have referred, establish. The first and most important is that it was perfectly well known before, and at the date of the Treaty, that there were two channels or inlets, the one called Portland Channel, the other Observatory Inlet, both of them coming out to the Pacific Ocean.

That the seaward entrance of Observatory Inlet was between Point Maskelyne on the south and Point Wales on the north.

That one entrance of Portland Channel was between the island now known as Kannaghunut and Tongas Island.

That the latitude of the mouth or entrance to the channel called Portland Channel, as described in the Treaty and understood by the negotiators, was at $54^{\circ} 45'$.

The narrative of Vancouver refers to the channel between Wales Island and Sitklan Island, known as Tongas Passage, as a passage leading south-south-east towards the ocean—which he passed in hope of finding a more northern and westerly communication to the sea, and describes his subsequently finding the passage between Tongas Island on the north and Sitklan and Kannaghunut on the south. The narrative and the maps leave some doubt on the question whether he intended the name Portland Canal to include Tongas Passage as well as the passage between Tongas Island on the north and Sitklan and Kannaghunut Island on the south. In view of this doubt, I think, having regard to the language, that Vancouver may have intended to include Tongas Passage in that name, and looking to the relative size of the two passages, I think that the negotiators may well have thought that the Portland Channel, after passing north of Pearse and Wales Island, issued into the sea by the two passages above described.

For the purpose of identifying the channel, commonly known as Portland Channel, the maps which were before the negotiators may be useful. This is one of the points upon which the evidence of contemporary maps as to general reputation is undoubtedly admissible. It is sufficient to say that not one of the maps which I have

enumerated above in any way contradicts the precise and detailed situation of Portland Channel and Observatory Inlet given by Vancouver's narrative, and the other documents to which I have referred. The Russian map of 1802 shows the two channels distinctly; and the same may be said of Faden's maps, on which so much reliance was placed on the part of the United States.

I do not attach particular importance to the way in which names on the maps are written or printed, and therefore I do not rely upon the fact that, in the case of some of these contemporary maps, the words "Portland Channel" are written so as to include, within the name, the lower part of the channel which is in dispute. From long experience I have found that it is not safe to rely upon any such peculiarities.

After the most careful consideration of every document in this Case, I have found nothing to alter or throw any doubt on the conclusion to which I have arrived, and there are certain general considerations which strongly support it.

Russia and Great Britain were negotiating as to the point on the *coast* to which Russian dominion should be conceded. It is unnecessary to refer to all the earlier negotiations, but it is distinctly established that Russia urged that her dominion should extend to 55° of latitude, and it was in furtherance of this object that Portland Channel, which issues into the sea at 54° 45', was conceded and ultimately agreed to by Great Britain. No claim was ever made by Russia to any of the islands south of 54° 45' except Prince of Wales Island, and this is the more marked because she did claim the whole of Prince of Wales Island, a part of which extended to about 54° 40'.

The islands between Observatory Inlet and the channel, to which I have referred above as the Portland Channel, are never mentioned in the whole course of the negotiations.

It is suggested on behalf of the United States that Portland Channel included both the channels, namely, the channel coming out between Point Maskelyne and Point Wales, and that running to the north of Pearse and Wales Islands, and that, upon the doctrine of the *thalweg*, the larger channel must be taken as the boundary. It is sufficient to say that, in my opinion, there is no foundation for this argument. The lengths and the points of land at their entrances are given in the case of each channel by Vancouver in a way which precludes the suggestion that he intended to include both channels under one name, and it must be remembered that he was upon a voyage of discovery, and named these channels when he had discovered and explored them.

Inasmuch as the question submitted to us only involves the determination of the channel described in the Treaty by the words already cited "the channel called Portland Channel," subsequent history can throw no light upon this question; but I think it right to say that the use in the year 1853 of the name Portland Inlet in the British Admiralty Chart, upon which much reliance was placed on behalf of the United States has, in my opinion, no bearing upon the question, and the references to Tongas Island in 1835 as being on the frontier of the Russian Straits, and in 1863 as being on the north side of the Portland Canal, and in 1869 as to Tongas being on the boundary between Alaska and British Columbia, are strongly confirmatory of the view at which I have arrived upon the consideration of the materials which were in existence at the date of the Treaty.

I therefore answer the Second Question as follows:

THE CHANNEL WHICH RUNS TO THE NORTH OF PEARSE AND WALES ISLANDS, AND ISSUES INTO THE PACIFIC BETWEEN WALES ISLAND AND SITKLAN ISLAND.

October 20, 1903.

(Signed) ALVERSTONE

*OPINION BY LORD ALVERSTONE (2).**Fifth Question*

IN EXTENDING THE LINE OF DEMARCATION NORTHWARD FROM SAID POINT ON THE PARALLEL OF THE 56TH DEGREE OF NORTH LATITUDE, FOLLOWING THE CREST OF THE MOUNTAINS SITUATED PARALLEL TO THE COAST UNTIL ITS INTERSECTION WITH THE 141ST DEGREE OF LONGITUDE WEST OF GREENWICH, SUBJECT TO THE CONDITION THAT IF SUCH LINE SHOULD ANYWHERE EXCEED THE DISTANCE OF 10 MARINE LEAGUES FROM THE OCEAN, THEN THE BOUNDARY BETWEEN THE BRITISH AND THE RUSSIAN TERRITORY SHOULD BE FORMED BY A LINE PARALLEL TO THE SINUOSITIES OF THE COAST, AND DISTANT THEREFROM NOT MORE THAN 10 MARINE LEAGUES, WAS IT THE INTENTION AND MEANING OF SAID CONVENTION OF 1825 THAT THERE SHOULD REMAIN IN THE EXCLUSIVE POSSESSION OF RUSSIA A CONTINUOUS FRINGE, OR STRIP OF COAST ON THE MAINLAND NOT EXCEEDING 10 MARINE LEAGUES IN WIDTH, SEPARATING THE BRITISH POSSESSIONS FROM THE BAYS, PORTS, INLETS, HAVENS, AND WATERS OF THE OCEAN, AND EXTENDING FROM THE SAID POINT ON THE 56TH DEGREE OF LATITUDE NORTH TO A POINT WHERE SUCH LINE OF DEMARCATION SHOULD INTERSECT THE 141ST DEGREE OF LONGITUDE WEST OF THE MERIDIAN OF GREENWICH?

Stated shortly, I understand this question to ask whether the eastern boundary whether fixed by the crest of the mountains or by a distance of 10 marine leagues, was to run round the heads of the bays, ports, inlets, havens, and waters of the ocean, or not, I have come to the conclusion in the affirmative, viz., that the boundary, whether running along the summits or crests of the mountains, or—in the absence of mountains—at a distance of 10 marine leagues, was to run round the heads of the inlets, and not to cross them.

The language of the Treaty of 1825 does not of itself enable this question to be answered distinctly—on the contrary, it contains the ambiguities which have given rise to the discussion upon the one side and the other.

Paragraph 2 of Article III states that the line of demarcation shall follow the summit of the mountains situated parallel to the coast (“*parallèlement à la côte*”). This is the clause upon which the question really depends, because in the event of mountains being found to exist, situated parallel to the coast within a distance of 10 marine leagues, no recourse need be had to Article IV. Article IV, however, is of importance, as it may tend to throw light upon what was the meaning of the word “coast” in Article III; and the words in paragraph 2 of Article IV are “wherever the summits of the mountains which extend in a direction parallel to the coast from the 56th degree of north latitude to the point of intersection of the 141st degree of west longitude shall prove to be at a distance of more than 10 marine leagues from the ocean.” It is, in my opinion, correctly pointed out, on behalf of the United States, that the word “coast” is an ambiguous term, and may be used in two, possibly in more than two, senses. I think, therefore, we are not only entitled, but bound, to ascertain as far as we can from the facts which were before the negotiators the sense in which they used the word “coast” in the Treaty.

Before considering this latter view of the case, it is desirable to ascertain, as far as possible from the Treaty itself, what it means, and what can be gathered from the language of the Treaty alone. The parties were making an Agreement, as the opening words of the Treaty show, as to the limits of their respective possessions on the north-west coast of America, and there cannot be any question that the word “coast” in Articles I and II refers to the north-west coast of America. In Article III the opening words, “upon the coast of the continent,” also refer to the north-west coast of America. The first ambiguity arises upon the word “coast” in the phrase “parallel to the coast” in the description of the boundary in Article III, and as to the word

"coast" in the words "parallel to the coast" in the second paragraph of Article IV, and the words "the line of coast" and "the windings of the coast" in the same paragraph. Article V does not bear directly upon the question in dispute, but the words "or upon the border of the continent" ("*lisière de terre ferme*"), which follow the words "upon the coast," afford some slight guide to the meaning of the word "coast" in Article III. The word "coast" in Article VI evidently means the coast of the continent, as it is in contrast with the words "ocean" and "the interior." I postpone the consideration of the meaning of the word "coast" in Article VII, as it raises a very important question, which is in controversy. Considering these various passages, and the use made of the word "coast" therein, do they enable one, without reference to the previous negotiations, to answer the question as to whether the strip of territory mentioned in Article III was to run round the heads of the bays and inlets, or to cross them? I am of opinion that they do not. The broad, undisputed facts are that the parties were engaged in making an Agreement respecting an archipelago of islands off the coast, and some strip of land upon the coast itself. The western limit of these islands extends in some places about 100 miles from the coast, and the channels or passages between the islands and between the islands and the coast are narrow waters of widths varying from a few hundred yards to 13 miles. In ordinary parlance no one would call the waters of any of these channels or inlets between the islands, or between the islands and the mainland, "ocean." I agree with the view presented on behalf of Great Britain, that no one coming from the interior and reaching any of these channels, and particularly the head of the Lynn Canal or Taku Inlet, would describe himself as being upon the ocean; but, upon the other hand, it is quite clear that the Treaty does regard some of these channels as ocean. For instance, to take points as to which no question arises, between Wrangell Island, Mitkoff Island, and Kupreanoff Island, all of which are north of latitude 56, it cannot, I think, be disputed that, for the purpose of the Treaty, the waters between these islands and the mainland were included in the word "ocean," and that the coast upon which the eastern boundary of the *lisière* was to be drawn was the coast of the continent, and the mountains referred to in Article III were to be upon that coast, and the line referred to in paragraph 2 of Article IV was to be measured from those waters. This consideration, however, is not sufficient to solve the question; it still leaves open the interpretation of the word "coast" to which the mountains were to be parallel.

Now, it is to be observed that *primâ facie* the eastern boundary is to be fixed under Article III; as already pointed out, it is not necessary to have recourse to Article IV unless the mountains which correspond to those described in Article III prove to be at a distance of more than 10 marine leagues from the ocean. Assuming that the boundary is being determined in accordance with Article III, the mountains which are on the continent are to be parallel to the coast, and a person fixing the boundary under Article III would not leave the line which follows the summits or crest of the mountains unless that line was situated at more than 10 marine leagues from the ocean. As I have already pointed out, for a considerable part of the distance referred to in Article III, namely, from the southern end of Wrangell Island up to the northern end of Kupreanoff Island, the distance must be measured from the shore of these inland waters, which, and which alone, are the ocean referred to in Article IV. I am unable to find any words in the Treaty which direct that the mountain line contemplated by Article III shall cross inlets or bays of the sea. In so far as the language of Article III of itself is a guide, it does not seem to me to contemplate such a state of things. Of course, if the main contention of Great Britain can be adopted, viz., that the words "line of coast" and "windings of the coast," in paragraph 2 of Article IV, should it be necessary to have recourse to that paragraph, mean the general line of coast or the windings of the general coast, excluding inlets, the difficulty would disappear; but, in order to establish that position, it

seems to me that Great Britain must show that the Treaty uses the word "coast" in the second paragraph of Article III, and in the second paragraph of Article IV, in that sense.

I see some broad objections to this view. In the first place, it necessitates the word "coast" being used with two different meanings in the same clause; and, secondly, it makes it necessary to assume a view of the geographical position as being known to the negotiators, or to postulate that they assumed some definition, or common understanding, as to what the general line of the coast was.

There is, as far as I know, no recognized rule of international law which would by implication give a recognized meaning to the word "coast" as applied to such sinuosities and such waters different from the coast itself.

As I have said more than once, the *locus in quo* to which the Treaty was referring precludes the possibility of construing the word "coast" in any particular Article in any special way, if it does not refer to the coast-line of the continent. I think the words, "upon the border of the continent (*lisière de terre ferme*) comprised within the limits of the Russian possessions," in Article V, rather confirm the view that Russia was to get a strip all along the continent, but I do not think that much reliance can be placed upon this because of the provision as to rivers and streams in Article VI.

Before leaving the Treaty, it is, in my opinion, necessary to notice the very important argument put forward by Great Britain, founded upon Article VII. It was contended by Great Britain that the words "gulfs, havens, and creeks on the coast mentioned in Article III," referred only to the gulfs, havens, and creeks on the *lisière* or strip bounded as described in that Article. If Great Britain could have made good that contention it would, in my opinion, have afforded the strongest argument that the Treaty contemplated that the *lisière* or strip might cross bays, inlets, and arms of the sea; but in my opinion the contention cannot be successfully maintained.

The coast mentioned in Article III is, in my opinion, the coast of the continent, and the coast referred to in the second paragraph of Article IV is also the coast of the continent. The *lisière*, ascertained by drawing the boundary in accordance with the directions in Article III, is a strip upon the coast, and would not, I think, be naturally described by the words "the coast mentioned in Article III." My view is that the provisions of Article VII are perfectly general, and gave mutual rights for a period of ten years to Russia and Great Britain respectively in respect of their possessions upon the north-west coast of America.

Turning now from the consideration of the language of the Treaty alone, what light is thrown upon this question by reference to the negotiations?

After most careful examination, I have been unable to find any passage which supports the view that Great Britain was directly or indirectly putting forward a claim to the shores or ports at the head of the inlets. This is not remarkable, inasmuch as no one at the time had any idea that they would become of any importance.

In March 1824, among the objects desired to be secured by Great Britain are stated to be the "embouchures" of such rivers as might afford an outlet. In the proposals referred to in the same letter the *lisière* is spoken of as a strip of land on the mainland, also as a strip of land on the coast of the continent. In the same documents the boundary is spoken of as "the mountains which follow the windings of the coast," and in correspondence of July 1824 as "following the sinuosities of the coast along the base of the mountains nearest the sea," and "the base of the mountains which follow the sinuosities of the coast," and "mountains designated as the boundary shall extend down to the very border of the coast." It is sufficient to say that these passages certainly do not suggest, or imply, that the line from summit to summit will cross any substantial arm of the sea; and that it was not so understood by the negotiators for Great Britain, seems to me to follow from the passage in the letter of the 24th July, 1824, in which Great Britain consented to substitute the

summit of the mountains for the seaward base, and suggested that a stipulation should be added that no fort should be established, or fortification erected, by either party, on the summit or in the passes of the mountains. It is difficult to see how such words could be applicable if it was contemplated that there might be a gap of 6 miles between summit and summit crossing the water. I have only to add upon this point that the language of both the British and Russian Representatives, in reporting the conclusion of the Treaty to their respective Governments, is in accordance with the view which I have suggested.

I have felt it my duty to express the reasons which have led me to the conclusion to which I have come, that the answer to the Fifth Question should be in the affirmative, because I am constrained to take a view contrary to that presented by the advocates on behalf of Great Britain; but it must not be thought that I am insensible to the fact that there are strong arguments which might be urged in favour of the British view. I have little doubt that, if shortly after the making of the Treaty of 1825 Great Britain and Russia had proceeded to draw the boundary provided by the Treaty in accordance with the terms thereof, the difficulties, and, in certain events, the impossibilities, of drawing a boundary in strict accordance with the Treaty would have been made evident. If, for instance, it had become necessary to draw a boundary in accordance with paragraph 2 of Article IV of the Treaty, I believe that the view expressed by both the American and British authorities, that it is impossible to do so, would at once have become apparent. And in the same way, if the contention of the United States be well founded that no mountains exist on the coast which correspond with the Treaty, a further difficulty would have been made manifest.

I can, therefore well understand and appreciate the contention of Great Britain, that, under the existing state of circumstances, difficulties in delimiting the boundaries described must arise in one view, and might arise in any view. But these considerations, strong as they are in favour of a just and equitable modification of the Treaty, do not in my opinion enable one to put a different construction upon the Treaty. I think that the parties knew and understood what they were bargaining about, and expressed the terms of their bargain in terms to which effect can be given. The fact that when, sixty-five years later, the representatives of the two nations attempted to draw the boundary in accordance with the Treaty, they were unable to agree upon its meaning, does not entitle me to put a different construction upon it.

In the view I take of the terms of the Treaty itself, it is not necessary to discuss subsequent action. Had the terms of the Treaty led me to a different conclusion, and entitled me to adopt the view presented by Great Britain, I should have felt great difficulty in holding that anything that had been done or omitted to be done by, or on behalf of, Great Britain, or that any conduct on her part, prevented her from insisting on the strict interpretation of the Treaty; nor do I think that the representations of mapmakers that the boundary was assumed to run round the heads of the inlets could have been properly urged by the United States as a sufficient reason for depriving Great Britain of any rights which she had under the Treaty, had they existed.

I THEREFORE ANSWER THIS QUESTION IN THE AFFIRMATIVE.

(Signed) ALVERSTONE.

October 20, 1903.

OPINION BY MR. AYLESWORTH

As the majority of the members of the Tribunal have arrived at a conclusion which is entirely opposed to what, "according to my true judgment," is the plain meaning of the Treaty we have to interpret, it appears necessary that I should state as briefly as I am able a few of the many reasons which compel me to dissent altogether from their Award.

With regard to the point of commencement of the boundary line no question arises, as all parties agree that it is Cape Muzon.

Upon the second question I quote the words of the President of this Tribunal, the italics, except in one instance, being my own.

Among the facts relating to Portland Channel he finds—

"That the latitude of the mouth or entrance to the channel called Portland Channel, *as described in the Treaty and understood by the negotiators, was at 54° 45'.*"

Among the general considerations which support his conclusion he states that—

"Russia and Great Britain were negotiating as to the point *on the coast* to which Russian dominion should be conceded. It is unnecessary to refer to all the earlier negotiations; but it is distinctly established that Russia urged that her dominion should extend to 55° of latitude, and it was in furtherance of this object *that Portland Channel, which issues into the sea at 54° 45', was conceded and ultimately agreed to by Great Britain.* No claim was ever made by Russia to *any of the islands south of 54° 45'* except Prince of Wales Island, and this is the more marked because she did claim the whole of Prince of Wales Island, a part of which extended to about 54° 40'.

"The islands between Observatory Inlet and the channel, to which I have referred above as the Portland Channel, are *never mentioned in the whole course of the negotiations.*"

These extracts are from Lord Alverstone's Memorandum, expressing his considered judgment on this branch of the case. These conclusions have been arrived at after full discussion among ourselves of the answer which, upon the evidence, should be given to the second question—in which discussion each member of the Tribunal has stated, at length, his individual views. Concurring, as I do, in the findings of fact stated in this Memorandum, I should have contented myself with differing from the conclusion reached but for the course our proceedings have taken.

Consideration of the second question has been to-day resumed, and by unanimous vote of the Tribunal it has been affirmed that each member, "according to his true judgment," believes the Portland Channel mentioned in the Treaty to be the channel extending towards the sea from latitude 55° 56', and lying to the north of Pearce and Wales Islands. But, notwithstanding this unanimous finding of fact, it has been, by the majority of the Tribunal, decided that the boundary line, starting from Cape Muzon, shall run to the south, instead of to the north, of Kannaghunut and Sitklan Islands, and so shall enter Portland Channel between Sitklan and Wales Islands.

This course for the boundary is directly opposed to the distinct findings made, and the whole line of reasoning adopted by the President in his Memorandum of reasons for the decision. It is a line of boundary which was never so much as suggested in the written Case of the United States, or by Counsel, during the oral argument before us. No intelligible reason for selecting it has been given in my hearing. No Memorandum in support of it has been presented by any member of the Tribunal, and I can, therefore, only conjecture the motives which have led to its acceptance.

It is admitted by everybody as absolutely clear and indisputable that on the occasion of his naming Portland Canal, Vancouver, in his exploration of that channel traversed it from its head inland to its entrance into the ocean in latitude 54° 45', that, in so doing, he sailed down Portland Channel, along the passage north of

Pearse and Wales Islands, and straight onward to the sea through the passage north of Sitklan and Kannaghunut Islands. Every one knows and admits that Vancouver never traversed the passage between Sitklan Island and Wales Island, through which this boundary line is now made to run. No more can it be pretended that this passage (which is now called Tongass Passage) was ever named by Vancouver, was ever treated by him, or by any mapmaker at any time, as in any way belonging to Portland Canal, or was ever thought of by those who negotiated the Treaty of 1825 as being any part of that channel.

The Lord Chief Justice finds as a fact, which the maps and documents establish, that *one* entrance of Portland Channel was between the islands now known as Kannaghunut and Tongass. I concur entirely in this finding, but must add that this entrance to the channel is the only entrance to it ever known, or in any way treated as part of the channel.

There is simply not the slightest evidence anywhere, that I am able to find, that either Vancouver or any subsequent explorer or mapmaker ever considered, or so much as spoke of, Portland Channel as having *two* entrances to the ocean, or as including the passage through which this boundary line is now made to run.

But even if there were two or more such entrances, Vancouver's narrative and maps absolutely fix the one he explored and named by giving its exact latitude to the minute—54° 45'. And the President finds, as a fact, that *this* mouth, or entrance, is the one "described in the Treaty and understood by the negotiators."

By what right, then, can this Tribunal, sitting judicially, and sworn to so determine and answer the questions submitted, reject the channel so "described in the Treaty and understood by the negotiators," and seek for a totally different channel, which, until now, no one ever thought of as any part of the Portland Channel mentioned in the Treaty?

I point to the additional circumstances so forcibly stated by my Lord. The whole negotiations were as to the "point on *the coast*" to which Russia's southern boundary should be carried. The Treaty fixes as that point the promontory of the mainland immediately to the north of Kannaghunut and Sitklan Islands, the latitude of which is 54° 45'. The next point of mainland coast to the southward is Point Maskeyne, and it, of course, is undisputably British territory. The islands which lie between were never asked for by Russia. As the President's Memorandum says, they were never so much as *mentioned* in the whole course of the negotiations. They lie wholly to the southward of 54° 45', wholly to the southward of that entrance to Portland Channel which alone is "described in the Treaty," or was "understood by the negotiators," that is to say, wholly to the southward of the true boundary, and yet the majority of this Tribunal is prepared to take two of those islands from Canada and transfer them to the United States.

How can such a determination be reconciled with our duty to decide judicially upon the question submitted to us?

It is no decision upon judicial principles; it is a mere compromise dividing the field between the two contestants.

The formal answer which the President's Memorandum makes to the question submitted is alone sufficient to condemn the boundary the Tribunal is making.

Question: "What channel is the Portland Channel?" *Answer:* "The channel which runs to the north of the *Islands of Sitklan and Kannaghunut*, and issues into the Pacific between Wales Island and Sitklan Island."

This language simply disregards entirely the relative position of the islands in question. Wales Island lies due east of Sitklan. But the channel which runs to the north of Sitklan and Kannaghunut joins the ocean there, and, therefore, of necessity issues into the Pacific at that place, and it is the undoubted mouth of Portland Channel. The Treaty makes Portland Channel the boundary, and if, as this answer for-

mally states, Portland Channel is that channel which runs to the *north* of these two islands, such two islands are necessarily British soil.

The whole truth of the matter is simply this: that, as to Portland Channel, the case of Great Britain before us has been demonstrated to be unanswerable. By unanimous vote of this Tribunal it has been so declared. It was, therefore, impossible to avoid awarding to Great Britain the islands called Pearse and Wales. It is equally impossible upon any intelligible principle for a Tribunal, acting judicially, to hold that Portland Channel, immediately on passing Wales Island, makes a turn at right angles to itself, and runs between the Islands of Wales and Sitklan. The sole question presented to us for decision on this branch of the case was whether the Portland Channel of the Treaty lay north of the four islands or south of the four, and until to-day it has been uniformly admitted by everybody that all four of these islands belonged, all together, either to Great Britain or to the United States. Instead of so finding, the majority of the Tribunal have chosen to compromise with the plain facts of the case, and, while awarding Pearse and Wales Islands to Great Britain, have determined to make those islands valueless to Great Britain or to Canada by giving to the United States the islands called Sitklan and Kannaghunut. The latter islands are of the utmost consequence, for they lie directly opposite to, and command the entrance to, the very important harbour of Port Simpson, British Columbia.

Upon such findings of fact as those above described, and after a solemn adjudication that the Portland Channel of the Treaty lies to the north of Pearse and Wales Islands, the taking of the two important islands, Sitklan and Kannaghunut, from Canada, and giving them to the United States by a proceeding said to be judicial, is, "according to my true judgment," nothing less than a grotesque travesty of justice.

In considering Questions 5, 6 and 7, the practical inquiry before us is where, upon the ground, the line of boundary described in the Treaty ought to be laid down. That line, from the 56th parallel to the 141st meridian, is to follow "*la crête des montagnes situées parallèlement à la côte.*" Our duty is, therefore, to find what mountains those are which the High Contracting Powers intended to describe by the words just quoted.

To do so we must first determine the meaning of the words "*la côte,*" by reference to which the particular mountains meant by the Treaty are to be identified.

It may be that the word "coast" is generally used as meaning the edge of the land next to the sea, or the line where the water and the land meet, though the double word "coast-line" would more accurately express that idea, but the word "coast" has another well-recognized signification. It frequently means the frontier of a country or territories near to the sea.

"Herod . . . slew all the children that were in Bethlehem and in all the coasts thereof."—Matthew ii, 16.

"The Jews . . . raised persecution against Paul and Barnabas, and expelled them out of their coasts."—Acts xiii, 50.

Exactly the same usage obtains in French in regard to the words "*la côte.*"

In the Treaty of 1825 the word is used sometimes in the one sense, sometimes in the other, as the context will readily demonstrate.

The preamble speaks of the possessions of the two Powers "on the north-west coast of America."

Article I secures to the subjects of both Powers the right to land for purposes of trade at any unoccupied places "on the coasts."

Article II prohibits landing without permission at any establishment "on the north-west coast."

Article III defines a line of boundary between the possessions of the Powers "upon the coast of the continent."

Articles IV and VI each speak of "*la lisière de côte*" which is to belong to Russia. In all these cases the word is used in its territorial signification.

But in Articles III and IV the word is used as well in another sense. By Article III the boundary line, on leaving the 56th parallel, is to follow the top of the mountains "*situées parallèlement à la côte.*" By Article IV, if these mountains should anywhere turn out to be more than 10 leagues "from the ocean," the line is there to run parallel to the "*sinuosités de la côte,*" but so as never to be more than 10 leagues away from it.

It is perfectly plain that "*la côte*" here does not mean territorial possessions. The word is undoubtedly used in the same Treaty and in the same Article of the Treaty in different senses.

With what signification, then, is the word used in the instances just quoted?

Plainly, in Article IV the meaning is synonymous with the edge "of the ocean." The 10 leagues spoken of are to be measured "from the ocean" or "from the coast." The result of the measurement must be the same in either case—therefore, water which is not the ocean cannot have a "coast-line" from which the measurement of the 10 leagues could be made.

This consideration alone seems to me to demonstrate that the head of such an inlet as the Lynn Canal forms no part of the coast-line within the contemplation of this Treaty. It would seem to me ridiculous to speak of a ship as making an ocean voyage while sailing along Lynn Canal. It may be answered that the waters of Stephen's Passage, or at the mouth of the Stikine, are not ocean either, and I agree that such waters are, by reason of the outlying islands opposite, territorial waters, and not the open ocean, but in this Treaty the Powers were, with reference to the *lisière*, dealing with mainland coast alone, and, in that regard, speaking and contracting exactly as though no islands existed, and as though the shore of the mainland were washed by the open sea.

Lynn Canal, from Point Couverden to Skagway, is some 90 miles in length, and of a width varying from 2 or 3 to 7 or 8 miles. It is occupied at its mouth by islands which divide the entrance into three channels, of which the widest is not more than 3 nautical miles across, and each of the other two less than half that size. It is simply a land-locked lake of salt water, literally one of "*les mers intérieures*" mentioned in Article VII of the Treaty.

If it were a question of determining the coast-line of Lynn Canal itself, such line would undoubtedly cross these islands at the entrance, just as the coast-line of Lake Ontario would cross from island to island where the waters of the lake, flowing through the Thousand Islands, become the River St. Lawrence.

Such line, crossing at its narrowest part the entrance of Lynn Canal from shore to shore, passing over the islands which lie in such entrance and the three intervening channels of water, is literally the dividing line between Lynn Canal on the one side of it and the ocean on the other. Such line, in my opinion, is part of the line of "coast" mentioned in Article IV, and the descriptive portion of Article III, of the Treaty.

The whole negotiations leading to the Treaty of 1825 grew out of the Russian Ukase of 1821, prohibiting foreign vessels from approaching the coast of North-west America, within 100 miles. The language of the Ukase in which this prohibition is worded contrasts the coasts with the islands, and shows that the coast of the mainland was that from which the 100 miles were intended to be measured, and M. Poletica, writing to Count Nesselrode (November 3, 1823) so describes it, saying that this Edict had extended the maritime jurisdiction of Russia to the distance of 100 miles "*des côtes de la terre ferme.*"

The mainland coast-line within the meaning of this Ukase would, beyond doubt, cross Lynn Canal at the entrance, and Russia would have laughed at a foreign navigator contending that his ship off the entrance to Lynn Canal, at say 30 miles distance, was not transgressing the Ukase, or that she was not within 100 miles of

the coast, because she was more than 100 miles from the head of Lynn Canal inland.

Ignoring the presence of the islands in front of the *lisière*, as we must do in considering what meaning the makers of this Treaty attached to the words "la côte" when applying them to the mainland of the continent, it is too plain for argument to the contrary that the waters of Lynn Canal are territorial or inland waters, as distinguished from the main sea or the high sea.

It is the open uninclosed waters of the ocean, and not waters within the *fauces terræ* on the sea coast which constitute the high sea.

United States of America *v.* Grush (1829), 5 Mason 290.

Manchester *v.* Massachusetts (1890), 139 U.S., 139.

So, leaving the islands out of consideration, the mainland coast-line from which, if the islands were absent, one would have to measure the 3-mile strip of territorial sea water over which the Power owning the *lisière* would have jurisdiction would pass from headland to headland, following in a general way the windings of the natural shore, but never entering long and narrow inlets or departing substantially from the general trend of the coast.

That the Plenipotentiaries who negotiated the Treaty considered the coast as not ascending such an inlet as Lynn Canal is abundantly evident from their language. They considered the head of Lynn Canal as not ocean, but something very different. This is clearly shown by the language in which they speak of Portland Channel, an inlet of practically identical character, though not extending so far inland.

In their observations on Sir Charles Bagot's amended proposal (February-March 1824), the Russians speak of Portland Channel as having its "origine dans les terres" at the 56th parallel.

In writing Count Lieven, under date the 5th (17th) April, 1824, Count Nesselrode says the Russians were willing to fix as their southern boundary Portland Canal "dont l'embouchure dans l'océan est à la hauteur de l'Île du Prince de Galles et l'origine dans les terres entre les 55° et 56° degrés de latitude."

It certainly never could have been Count Nesselrode's idea that the head of Portland Canal, 80 miles from its "embouchure dans l'océan," was none the less ocean, and no more ought any one now to think he could persuade an impartial mind that the head of Lynn Canal, still further inland, was the Pacific Ocean.

Reference may well be made also to the language of the Russian "contre-projet" of August 1824, by Article 1 of which it is proposed that the boundary-line shall ascend Portland Channel "jusqu'au point où cette passe se termine dans l'intérieur de la terre ferme."

In the draft of the proposed Treaty forwarded by Mr. George Canning to Mr. Stratford Canning on the 8th December, 1824, the boundary-line was described as to ascend Portland Channel till it strikes "the coast" of the continent in the 56th degree of north latitude. Translating this document into the French language, Mr. Stratford Canning submitted his final "projet," in which it is proposed that the boundary-line shall ascend Portland Channel until it reaches "la côte de terre ferme" at the 56th parallel. M. Matusevich, for the Russian Government, recognizing the impropriety of describing the head of such a channel as "the coast," changed the phraseology into "l'endroit où cette passe se termine dans l'intérieur de la terre ferme."

Surely, under such circumstances, Russia could never afterwards have pretended that the head of Portland Channel, or of any similar inlet, was upon the coast or formed part of the coast.

It seems to me equally an utter misapprehension and perversion of language to term a long, narrow fiord such as Lynn Canal a mere "sinuosité de la côte," parallel to the sides of which the Treaty intended this boundary-line to be drawn. The coast "parallèlement" to which the mountains forming the boundary are situate is, in my opinion, clearly the general trend or direction of the mainland coast-line, disre-

garding alike narrow inlets and narrow peninsulas—cutting off a headland, it may be, where physical features justify it, or crossing the mouth of an inlet as readily as though it were the mouth of a river. And it seems to me of much importance to note that this was the view adopted by the Superintendent of the United States' Coast and Geodetic Survey when issuing to his assistants instructions for their work of survey under the Convention of the 22nd July, 1892. It was upon this footing that the work of survey was done by the United States' and British Governments, and the object of such survey was to ascertain the facts and data necessary to the permanent delimitation of the boundary-line. This work, done upon this principle by the parties now litigating, affords to us by their Convention the information upon which the boundary-line must now be established in accordance with the spirit and true intent of the Treaty in regard to it.

From such general trend of mainland coast-line the inner boundary of the *lisière* can never be *more than* 10 marine leagues distant; it may be much less if, nearer to the coast, mountains exist such as the Treaty contemplates.

Such a coast-line will follow literally the windings of the coast ("les sinuosités de la côte"), but will not depart from such coast to penetrate the interior 80 or 90 miles along a salt-water inlet any more than it would ascend for that distance a fresh-water river of possibly equal width.

If this is the true meaning of the words "la côte" as used in the Treaty in describing the boundary-line, such boundary-line must inevitably cross any inlet which is deeper than the maximum width of the *lisière* and leave the head waters of such inlet within British territory, and, in my judgment, the Treaty itself furnishes conclusive inherent evidence that such result was exactly what the Powers entering into it contemplated.

By Article VII of the Treaty the vessels of the two Powers were for ten years to be reciprocally at liberty to frequent, for purposes of fishing and trading, all the inland seas, gulfs, havens, and bays, "sur la côte mentionnée dans l'Article III."

What waters, then, were these, to frequent which the Russians were accepting from Great Britain a ten years' licence?

If it can be shown that these waters were those of the *lisière*, or that the Russians so understood, it follows that they contemplated the boundary-line at least possibly crossing inlets, and leaving the upper waters of such inlets within British territory.

The waters are those "sur la côte mentionnée dans l'Article III," but Article III speaks first of the possessions of the High Contracting Parties "sur la côte du continent," and afterwards of the boundary of the *lisière* on the mountains "situées parallèlement à la côte."

Is it, then, the coast of the continent or the coast of the *lisière* to which Article VII refers?

Let the history of the Article as traced from the negotiations give the answer.

Mr. George Canning first proposed it in his letter to Count Lieven of 29th May, 1824, and in his draft Convention forwarded from London on 12th July following.

As to the *lisière*, the proposal was (Article III, 2) that British subjects should *for ever* freely navigate and trade along its coast, nothing being offered to Russian subjects as to British waters *there*. But with regard to the other parts of the north-west coast of America, Article V proposed that for years the vessels of the respective Powers and of their subjects should reciprocally enjoy the liberty of visiting for purposes of fishery and commerce the gulfs, havens, and creeks in places not already occupied.

Article V in this draft did not affect the *lisière* now in question, and made no mention of any right to either Power to fish or trade in "les mers intérieures" of the other's territory. Article V, as so presented to Russia, was merely an offer by Great Britain of a temporary licence to fish and trade in British waters south of Portland Channel upon Russia according to Great Britain similar licence in respect

of Russian waters west of Mount St. Elias. But the Russians were unwilling to concede to Great Britain the right to navigate and trade along the coast of the *lisière* for ever, and with regard to the other parts of the continental coast, having never asked from Great Britain any privileges of fishing or trading south of Portland Channel, they absolutely refused to grant to her similar privileges north of the 60th parallel, or, which is to say, west of Mount St. Elias.

In his letter to Count Lieven of 31st August (4th September), 1824 (App., Br. Case at p. 98, last paragraph, and p. 99 first paragraph), Count Nesselrode is emphatic and indignant in his declaration that except as to the *lisière*, no concession whatever in regard to either fishing, hunting, or trading would be made to Great Britain. Adhering firmly to this determination as the Russians did, refusing inflexibly to grant to Great Britain any fishing or trading privileges west of Mount St. Elias, with what grace could Russia have demanded what she had never before asked, viz., exactly such privileges in the British territories south of Portland Canal?

Nor was any such suggestion made. On the contrary, in the same letter Count Nesselrode was careful to point out (App., Br. Case, p. 99, last paragraph), that Russia was leaving free to the trade of future establishments which English Companies might form on the north-west coast "tout le territoire situé au midi du Portland Channel."

After consideration of Count Nesselrode's despatch, Mr. George Canning, on the 8th December, 1824, instructed Mr. Stratford Canning to conclude the Treaty, accepting in above respects the objections of Russia, and saying—

"We are content also to assign the period of ten years for the reciprocal liberty of access and commerce with each other's territories."

This was in its very terms that which alone Russia had signified she would agree to, viz., reciprocity in access and commerce limited in time to ten years, and limited in extent to the waters between Mount St. Elias and Portland Canal. Between these points Britain could not possibly have any waters to give except the heads of inlets.

In the draft Convention which accompanied these instructions to Mr. Stratford Canning, the Article which is now No. VII of the Treaty was amended by inserting therein the words "the inland sea" before the words "gulfs, havens, and creeks," which alone had appeared in the corresponding Article of the draft Convention sent by the same Minister to Sir Charles Bagot five months before.

There is no body of water between Mount St. Elias and Portland Channel of which these words are so apt a description as they are of Lynn Canal.

In his "projet," submitted to the Russian Plenipotentiaries, Mr. Stratford Canning changed the words "the inland sea" to "toutes les mers intérieures," as they stand in Article VII of the Treaty as signed.

In Mr. Stratford Canning's "projet," as amended by the Russians in the hand-writing of M. Matusevich, it is absolutely clear that the Russians understood the ten years' licence of fishing and trading they were giving to the British, and reciprocally receiving from the British, related to the waters of the *lisière*, and to no other waters whatever. The wording of the Article is "toutes les mers intérieures, les golphes, havres, et criques dans les parties de la côte mentionnées dans l'Article III," while in Article III the only coast mentioned, and the only parts of the coast included, are the "coast" and the parts of it between latitude 54° 40' and longitude 141.

In the Treaty, as finally signed, the words "dans les parties de la côte" become simply "sur la côte," and the possessions of the Powers are, in Article III, described as "on the coast of the continent" instead of as "on the continent," but the true meaning and intention of the parties has been in no way altered thereby, and from the time of Count Nesselrode's refusal to treat as to reciprocal trading rights elsewhere than in the *lisière* and Mr. Canning's acquiescence in such refusal, no further negotiations whatever on that subject took place.

I am, therefore, of the clear opinion that Russia, by the Treaty in question in-

tended and understood that the boundary-line might cross inlets which would penetrate and divide the *lisière* exactly as a river would, and that, in that event, the heads of such inlets would lie within British territory, exactly as the upper reaches of a river would where that river flowed across the *lisière*.

With reference to the seventh question, as the majority of the Tribunal has decided that the mountains which shall form the eastern boundary of the *lisière* are to be sought inland at some place behind the head waters of every inlet, it is idle for me to express my views at any length.

Over and over again in the negotiations this "*lisière de côte*" which Russia was asking and England giving was spoken of by the Russians as a mere "*point d'appui*," as extending inland only "*une très petite distance*," as being only "*une étroite lisière sur la côte même*," or "*une simple lisière du continent*."

Consistently with this understanding of the width of the *lisière*, the mountains which were to form the inner boundary are always spoken of as being very near to the sea. The only knowledge of these mountains the negotiators of the Treaty had was derived from Vancouver's travels, and Vancouver had seen the mountains only from his ships as these explored the coast.

The mountains nearest the sea for the whole length of the *lisière* are, in fact, lofty peaks, 3,000 feet or more in height, often rising to double or treble that elevation, and sometimes exceeding 15,000 feet. It is manifest that from the water, and close to shore, as Vancouver's course lay, mountains such as these would completely shut out any view of the country further inland. Except for possibly an occasional glimpse between seaward peaks of another mountain further away, Vancouver could have no knowledge what the nature of the country was behind the mountains he saw, and the language used by those who negotiated the Treaty of 1825 shows that the extent of their knowledge was in this regard equally limited.

Under such circumstances, it is difficult for me to understand how the Treaty, when it speaks of "*montagnes situées parallèlement à la côte*," can refer to mountains, miles inland, invisible from the sea, which lie far behind the seaward mountains, and which it is an admitted impossibility that Vancouver ever saw or the negotiators of the Treaty ever knew the existence of.

The words of the Treaty, "*montagnes situées parallèlement à la côte*," and the idea of parallelism thereby conveyed, imply the line of mountains next adjacent to the coast. Apart from the circumstance that no kind of reason can be assigned for skipping over one or two, or it may be half-a-dozen, lines of mountains between the coast and the boundary, the very fact that the Treaty couples the boundary-line directly with the coast-line argues in favour of the first line of mountains being meant. I think any one who spoke of two lines as parallel one to the other would scarcely have in contemplation a third line parallel to each, but situate between the two.

In the present case we have, moreover, the circumstance that throughout the negotiations preceding the Treaty, these mountains are invariably spoken of as near to the coast.

In February 1824 the first proposal of Russia as to the line (p. 70, Br. Case, App.) was that it should follow Portland Canal "*jusqu'aux montagnes qui bordent la côte*."

Repeating this proposal in their observations on Sir Charles Bagot's amended proposal, the Russians say they would make the limit of the *lisière* to the east the chain of mountains "*qui suit à une très petite distance les sinuosités de la côte*."

In narrating to Count Lieven the course of these negotiations, Count Nesselrode, in his letter of the 5th (17th) April, 1824, says they were willing their eastern frontier should run along the mountains "*qui suivent les sinuosités de la côte*."

On Sir Charles Bagot's despatches reaching England, the Hudson's Bay Company suggested that the boundary ought to be fixed at the "*nearest chain of mountains not exceeding a few leagues off the coast*."

Thereupon, Mr. George Canning sent to Sir Charles Bagot a draft Convention,

with instructions to conclude the negotiations. In these instructions (12th July, 1824) Mr. Canning directs that the line of boundary be drawn along the "base of the mountains nearest the sea."

This draft Convention prepared by Mr. Canning shows very clearly his understanding of the trifling width the *lisière* would have, as it contains a provision (not carried into the final Treaty, as the Russians objected) that the British should for ever have the right to trade "sur la dite lisière de côte, et sur celle des isles qui l'avoisinent."

Mr. Canning's proposal that the boundary should be drawn along the base line of the mountains was objected to by Count Lieven for the reason, among others, that, considering the little certainty there then was in the geographical knowledge anybody had of the regions they were negotiating about, it would not be impossible that the mountains they were fixing as a boundary "s'étendissent par une pente insensible jusqu'aux bords même de la côte."

This language makes it absolutely certain that the Russians understood their boundary to be the mountains nearest the sea.

On their proposing to take the top instead of the base of these mountains as the line of boundary Mr. Canning assented, and the existing Treaty resulted. It is not pretended that any change in the particular mountains intended was ever made or suggested. Whatever mountains those were, the base of which the British proposed as the boundary, those were the mountains the tops of which, by the concluded Treaty, are the true boundary to-day, and it is to my mind clear to a demonstration that these were the mountains nearest the sea.

Three days after the Treaty was signed, Count Nesselrode, in advising Count Lieven of the fact, says it would have been more just if, without any occasion possibly arising for application of the 10-league limitation, the boundary-line had all along its length followed the natural frontier formed by "les montagnes qui bordent la côte."

Ten days later, in writing again to Count Lieven on the subject, he directs him to make this observation to Mr. Canning, then describing the boundary Russia would have preferred to have taken throughout as "la crête des montagnes qui suivent les sinuosités de la côte."

I am therefore of opinion that, upon the true interpretation of this Treaty, the mountains which constitute the boundary are those which skirt the coast, the more prominent peaks among which have been pointed out in the British Case and in the argument of Counsel before us.

Finally, I have merely to say this further, that the course the majority of this Tribunal has decided to take in regard to the islands at the entrance of Portland Channel is, in my humble judgment, so opposed to the plain requirements of justice, and so absolutely irreconcilable with any disposition of that branch of this case upon principles of a judicial character, that I respectfully decline to affix my signature to their Award.

(Signed) A. B. AYLESWORTH

London, October 17, 1903.

OPINION OF SIR LOUIS JETTÉ

By a majority of four the Alaska Boundary Tribunal has come to a decision on the questions upon which it had to pass judgment in accordance with the provisions

of the Treaty signed between Great Britain and the United States on the 24th January, 1903.

My honourable colleague, Mr. Aylesworth, and myself, have been unable to concur in most of the findings of the majority, and, although the Treaty does not call for any expression of opinion by those who differ, I feel it my duty to place on record, as briefly as I can, a few of the reasons by which I have been guided in arriving at conclusions different from those adopted by the other members of the Commission.

I have no intention of writing exhaustively on the different questions submitted to the Tribunal, as it would be more than useless at this moment. I will therefore refrain from any comment which could only be a repetition of the able argument advanced by the distinguished Counsel in the Case, and I will confine myself to a short and concise statement of the views which I firmly believe should have been accepted by the Tribunal.

The first Article of the Treaty of 1903 gives the following directions to the members of the Commission:—

“The Tribunal shall consist of six impartial jurists of repute, who shall consider judicially the questions submitted to them, each of whom shall first subscribe an oath that he will impartially consider the arguments and evidence presented to the Tribunal, and will decide thereupon according to his true judgment.”

Thus, the character of the functions which had been confided to us is clearly defined. We have not been intrusted with the power of making a new Treaty, and it was not in our province to make concessions for the sake of an agreement; we had simply to give a judicial interpretation of the Articles of that Treaty which were submitted to us. And this position, as I take it, was rendered still more clear by the fact that, if a majority could not be found to agree, no harm was done, the way being then still left open for the Governments of both countries to do what would, unquestionably, be in their power, that is, to settle the difficulty by mutual concessions if they found it advantageous to each other.

Finding, thus, that the line of demarcation between our duties and our powers had been very clearly defined, I took it to be my first duty, in passing on the different questions submitted to us, not to assume any more power than had been given to me by this Ist Article of the Convention of 1903.

Article III of this Treaty of 1903 then provides:—

“It is agreed by the High Contracting Parties that the Tribunal shall consider, in the settlement of the question submitted to its decision, the Treaties respectively concluded between His Britannic Majesty and the Emperor of All the Russias, under date of the 28th February (16th March), A.D. 1825, and between the United States of America and the Emperor of All the Russias, concluded under date of the 30th March (18th April), A.D. 1867, and particularly the Articles III, IV, and V of the first-mentioned Treaty, which in the original text are word for word as follows:—

“III. La ligne de démarcation entre les possessions des Hautes Parties Contractantes sur la côte du continent et les îles de l'Amérique Nord-ouest, sera tracée ainsi qu'il suit:—

“A partir du point le plus méridional de l'île dite *Prince of Wales*, lequel point se trouve sous le parallèle du 54° 40' de latitude nord, et entre le 131^e et le 133^e degré de longitude ouest (méridien de Greenwich) la dite ligne remontera au nord le long de la passe dite *Portland Channel*, jusqu'au point de la terre ferme où elle atteint le 56^e degré de latitude nord; de ce dernier point la ligne de démarcation suivra la crête des montagnes situées parallèlement à la côte, jusqu'au point d'intersection du 141^e degré de longitude ouest (même méridien); et, finalement,

du dit point d'intersection, la même ligne méridienne du 141^e degré formera, dans son prolongement jusqu'à la Mer Glaciale, la limite entre les possessions Russes et Britanniques sur le continent de l'Amérique Nord-ouest.

"IV. Il est entendu, par rapport à la ligne de démarcation déterminée dans l'Article précédent—

"1. Que l'île dite *Prince of Wales* appartiendra tout entière à la Russie.

"2. Que partout où la crête des montagnes qui s'étendent dans une direction parallèle à la côte depuis le 56^e degré de latitude nord au point d'intersection du 141^e degré de longitude ouest, se trouverait à la distance de plus de 10 lieues marines de l'océan, la limite entre les possessions Britanniques et la lisière de côte mentionnée ci-dessus comme devant appartenir à la Russie sera formée par une ligne parallèle aux sinuosités de la côte, et qui ne pourra jamais en être éloignée que de 10 lieues marines.

"V. Il est convenu, en outre, que nul établissement ne sera formé par une des deux Parties dans les limites que les deux Articles précédents assignent aux possessions de l'autre. En conséquence, les sujets Britanniques ne formeront aucun établissement soit sur la côte, soit sur la lisière de terre ferme comprise dans les limites des possessions Russes, telles qu'elles sont désignées dans les deux Articles précédents; et, de même, nul établissement ne sera formé par des sujets Russes au delà des dites limites."

The Treaty then further provides:—

"The Tribunal shall also take into consideration any action of the several Governments or of their respective Representatives, preliminary or subsequent to the conclusion of said Treaties, so far as the same tends to show the original and effective understanding of the Parties in respect to the limits of their several territorial jurisdictions under and by virtue of the provisions of said Treaties.

"Article IV

"Referring to Articles III, IV, and V of the said Treaty of 1825, the said Tribunal shall answer and decide the following questions:—

"1. What is intended as the point of commencement of the line?

"2. What channel is the Portland Channel?

"3. What course should the line take from the point of commencement to the entrance to Portland Channel?

"4. To what point on the 56th parallel is the line to be drawn from the head of the Portland Channel, and what course should it follow between these points?

"5. In extending the line of demarcation northward from said point on the parallel on the 56th degree of north latitude, following the crest of the mountains situated parallel to the coast until its intersection with the 141st degree of longitude west of Greenwich, subject to the condition that if such line should anywhere exceed the distance of 10 marine leagues from the ocean, then the boundary between the Russian and the British territory should be formed by a line parallel to the sinuosités of the coast and distant therefrom not more than 10 marine leagues, was it the intention and meaning of said Convention of 1825 that there should remain in the exclusive possession of Russia a continuous fringe or strip of coast on the mainland, not exceeding 10 marine leagues in width, separating the British possessions from the bays, ports, inlets, havens, and waters of the ocean, and extending from the said point on the 56th degree of latitude north to a point where such line of demarcation should intersect the 141st degree of longitude west of the meridian of Greenwich?

"6. 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?

"7. What, if any exist, are the mountains referred to as situated parallel to the coast, which mountains, when within 10 marine leagues from the coast, are declared to form the eastern boundary?"

The Treaty then provides for the meetings of the Tribunal and the rendering of the Award in the following terms:—

"Article V

"The Tribunal shall assemble, for their first meeting, at London as soon as practicable after receiving their commissions, and shall themselves fix the times and places of all subsequent meetings.

"The decision of the Tribunal shall be made as soon as possible after the conclusion of the Arguments in the Case, and within three months thereafter. . . . The decision shall be made in writing, and dated, and shall be signed by the members of the Tribunal assenting to the same. It shall be signed in duplicate, one copy whereof shall be given to the Agent of the United States of America for his Government, and the other to the Agent of His Britannic Majesty for his Government.

"Article VI

"Should there be, unfortunately, a failure by a majority of the Tribunal to agree upon any of the points submitted for their decision, it shall be their duty to so report in writing to the respective Governments through their respective Agents. Should there be an agreement by a majority upon a part of the questions submitted, it shall be their duty to sign and report their decision upon the points of such agreement in the manner hereinbefore prescribed."

As I have already said, these two last Articles do not provide for any expression of opinion by those members of the Tribunal who have the misfortune to find themselves in the minority.

The questions to be answered by the Tribunal are seven in number. I will now take them in the order of the Treaty:—

1st Question

"What is intended as the point of commencement of the line?"

The answer to this question is as follows:—

"The Tribunal unanimously agrees that the point of commencement of the line is Cape Muzon."

The Representatives of both Governments having agreed to accept Cape Muzon as the southernmost point of Prince of Wales Island, and to take it as the point of commencement of the line, nothing further need be said on this first question.

2nd Question

"What channel is the Portland Channel?"

The following is the answer of the Commission to this question:—

"The Tribunal unanimously agrees that the Portland Channel is the channel which runs from about 55° 56' north latitude, and passes to the north of Pearse and Wales Islands.

"A majority of the Tribunal, that is to say, Lord Alverstone, Mr. Root, Mr. Lodge, and Mr. Turner decides that the Portland Channel after passing to the north of Wales Island is the channel between Wales Island and Sitklan Island called Tongass Channel.

"The Portland Channel above mentioned is marked throughout its length by a dotted red line from the point marked B to the point marked C on the map, signed in duplicate by the members of the Tribunal at the time of signing their decision."

The contention of the United States on this point was that Portland Channel is that body of water which goes seaward between Pearse Island and the peninsula, passes Ramsden Point in (or at the entrance of) Observatory Inlet, and reaches the ocean by the channel between Pearse and Wales Islands on the west and the easterly continental shore, entering the ocean between Point Wales on the west and Point Maskelyne on the east.

The contention of Great Britain was, that it is the channel which enters the ocean between Tongass Island and Kannaghunut Island, leaving Sitklan, Wales and Pearse Islands on the south and east, and extending northerly 82 miles to its head.

The difference between the two contentions will be rendered more striking by saying that the British Portland Channel would run straight from its head to the ocean, whilst the American Portland Channel would divide in two passages at the head of Pearse Island, and there leaving its northern branch would make a curve, and, entering Observatory Inlet, would run down to the sea through that inlet, at the south of Pearse and Wales Islands.

The contention of Great Britain is, to my mind, clearly supported by Vancouver's narrative of his voyage of 1794, when, after relating his movements in these waters, day by day, and specially from the 27th July to the 2nd August, he says:—

"In the morning of the 2nd (August) we set out early, and passed through a labyrinth of small islets and rocks, along the continental shore; this, taking now a winding course to the south-west and west, showed the south-eastern side of the canal to be much broken, through which was a passage leading S.S.E. towards the ocean. We passed this in the hope of finding a more northern and westerly communication, in which we were not disappointed, as the channel we were then pursuing was soon found to communicate also with the sea, making the land to the south of us one or more islands. From the north-west point of this land, situated in latitude 54° 45½', longitude 229° 28', the Pacific was evidently seen between N. 88 W. and S. 81 W."

Adding finally (under date 15th August):—

"In the forenoon we reached that arm of the sea whose examination had occupied our time from the 27th of the preceding to the 2nd of this month. The distance from its entrance to its source is about 70 miles, which, in honour of the noble family of Bentinck, I named PORTLAND CANAL."

When this second question was put to the Commissioners, at the time of rendering the Award, every one of them, as will appear by the official Report, answered that Portland Channel was the channel that passed—contrary to the American contention—to the north of Pearse and Wales Islands.

But on a sub-question being put, the majority of the Commission decided that

after passing north of Pearse and Wales Islands, it should pass south of Sitklan and Kannaghunut Islands, which lie directly to the westward of Pearse and Wales Islands; should make a curve there, and, abandoning its northern course, should reach the sea through Tongass Passage instead of following the continuous straight line which, a moment before, had been found to be the proper one.

I voted against this sub-proposition, because I found that it was totally unsupported either by argument or authority, and was, moreover, illogical. The Commission had, just a moment before, decided—and very properly, I believe—that Portland Channel, as described by Vancouver, was that channel indicated on all the maps as running straight to the sea; it had refused to accept the contention of the United States to have it leave its northern course, and, making a curve at Pearse Island, to run through Observatory Inlet, and all at once it is decided that this very channel shall make a curve lower down, that it will now leave its straight northern course and run into the sea through Tongass Passage.

I can only say that if this decision is a correct and just one, I am very much afraid that the majority of the Commission has committed an injustice towards the United States in refusing to admit its contention that the channel ought to make that curve a little higher up, at the head of Pearse Island, which solution would appear, to any one having studied the map, a much more sensible and reasonable one than that which has been adopted.

The result of this last decision, on the sub-question above mentioned, is to deprive Canada of the two islands which lie at the very entrance of Portland Channel, Sitklan, and Kannaghunut Islands. It will strike the eye of everyone who looks at the map that the position of those two islands, at the entrance of the channel, is a most important one from a military point of view, and that the loss of them to Canada may be felt seriously in the future.

3rd Question

“What course should the line take from the point of commencement to the entrance to Portland Channel?”

The answer of the majority of the Tribunal to this question is as follows:—

“A majority of the Tribunal, that is to say, Lord Alverstone, Mr. Root, Mr. Lodge, and Mr. Turner decide that the course of the line from the point of commencement to the entrance of Portland Channel is the line marked A B in red on the aforesaid map.”

The line indicated in this answer is a direct line from Cape Muzon to the south entrance of Tongass Passage.

This being in opposition to the language of the Treaty, which is: “Commencing from the southernmost point of the island called Prince of Wales Island, . . . the said line shall ascend to the north along the channel called *Portland Channel*,” I feel bound to differ from the decision of the majority. *Tongass Passage*, as I have stated, on the previous question, is not *Portland Channel*, and the Treaty says that the line shall be drawn along Portland Channel, but does not say that it can be drawn along Tongass Passage.

4th Question

“To what point of the 56th parallel is the line to be drawn from the head of the Portland Channel, and what course should it follow between these points?”

This has been answered as follows:—

“A majority of the Tribunal, that is to say, Lord Alverstone, Mr. Root, Mr. Lodge, and Mr. Turner decides that the point to which the line is to be drawn from the head of Portland Channel is the point on the 56th parallel of latitude

marked D on the aforesaid map, and the course which the line should follow is drawn from C to D on the aforesaid map."

The decision on this point is not of great importance, as it affects only a few miles of territory. I must say, however, that it is not in accordance with the rule given by the Treaty, which requires that, from this point, the 56th degree of north latitude, "the line of demarcation shall follow the summit of the mountains situated parallel to the coast, . . . and that whenever the summit of such mountains . . . shall prove to be at a distance of more than 10 marine leagues from the ocean, the limit shall be formed by a line parallel to the windings of the coast, and which shall never exceed the distance of 10 marine leagues therefrom."

But, as I have just said, the territory affected by this decision is not of great importance, and the rule adopted by the majority on this point will, I may add, be examined further on, when dealing with Question 7.

5th Question

"In extending the line of demarcation northward from said point on the parallel of the 56th degree of north latitude, following the coast of the mountains situated parallel to the coast, until its intersection with the 141st degree of longitude west of Greenwich, subject to the condition that if such line should anywhere exceed the distance of 10 marine leagues from the ocean, then the boundary between the British and the Russian territory should be formed by a line parallel to the sinuosities of the coast, and distant therefrom not more than 10 marine leagues, was it the intention and meaning of said Convention of 1825 that there should remain in the exclusive possession of Russia a continuous fringe or strip of coast on the mainland, not exceeding 10 marine leagues in width, separating the British possessions from the bays, ports, inlets, havens, and waters of the ocean, and extending from the said point on the 56th degree of latitude north to a point where such line of demarcation should intersect the 141st degree of longitude west of the meridian of Greenwich?"

The answer to this question, in the Award rendered by the majority, is in the following terms:—

"A majority of the Tribunal, that is to say, Lord Alverstone, Mr. Root, Mr. Lodge, and Mr. Turner decide that the answer to the above question is in the affirmative."

The contention of the United States on this point is therefore accepted as well founded. It follows from this decision that the strip of territory granted to Russia by the Treaty runs around all the openings of the coast, specially Lynn Canal, and thus deprives British possessions of any access to the sea on the whole length of the said *lisière*.

This Treaty of 1825 was signed between England and Russia after very protracted negotiations, which took place during a period extending from November 1821 to February 1825. At the end of a considerable amount of communication and diplomatic correspondence the parties had come to an understanding, and agreed on the terms of a Convention apparently satisfactory to both, and which seemed to contain, if not what each would have liked to have obtained, at least what they had mutually conceded to each other.

It will be useful here to recall briefly the circumstances which led the Governments of Great Britain and Russia to sign this Treaty, and to go back to the negotiations which preceded it, in order to have a fair understanding of its importance and bearing.

The Emperor of Russia, Paul the First, following the course adopted by all the

Governments of Europe from the beginning of the 17th century, had, in 1799, granted to an important Company, called the Russian American Company, the monopoly of trade, hunting, and fishing on all the territory claimed by Russia on that part of North America (indicating as the limit the 55th degree of latitude), and also "on the chain of islands extending from Kamschatka to the north, to America, and southward to Japan."

Great Britain, whose possessions on the North American continent extended as far as those of Russia, had granted a similar monopoly to the Hudson's Bay Company, and in their adventurous explorations, advancing more and more every year in the unknown regions of this vast continent, the trappers of this Company and of the North-west Company had at last met with the agents of the Russian American Company.

Hence there soon arose the necessity of determining the limit of both Empires' territory on this continent.

But another reason also necessitated the attention and action of the Government of Great Britain in this instance.

Emperor Alexander the First, wishing to grant additional favour to the Russian American Company, had published, in 1821, by a Ukase bearing date the 4th September, a regulation prohibiting all foreign vessels from approaching the coasts of this part of the Russian territory within less than 100 Italian miles.

The two great maritime nations, Great Britain and the United States, could not acquiesce in a prohibition so completely antagonistic to the rules of international law and to the interests of commerce. Consequently, representations were made to the Russian Government.

In the course of the negotiations which followed, the question of maritime supremacy over a distance of 100 Italian miles was soon settled, as stated in a despatch of Mr. George Canning to Sir Charles Bagot, bearing date the 15th January, 1824. Mr. Canning clearly and concisely analyses the situation in the following terms:—

"The questions at issue between Great Britain and Russia are short and simple.

"The Russian Ukase contains two objectionable pretensions: first, an extravagant assumption of maritime supremacy; second, an unwarranted claim of territorial dominion.

"As to the first, the disavowal of Russia is, in substance, all we could desire."

The only thing remaining to be settled, therefore, was the question of the frontier.

Russian establishments at that date were more especially on the islands, and Count Nesselrode acknowledges that on the continent they had none below the 57th degree of latitude. These establishments were therefore the ones whose protection was specially desired and intended, and we will now see that it was in that spirit that the negotiations, which were to end in this Treaty of 1825, were begun and continued.

In order to indicate the true character of these negotiations, a few quotations will be sufficient.

In a despatch dated the 3rd November, 1823, and addressed to Count Nesselrode, M. de Poletica, giving the account of an interview he had had with Sir Charles Bagot, His Britannic Majesty's Ambassador to St. Petersburg, says:—

"In the midst of this argument the British Ambassador suddenly suspended the discussion in order to tell me that his Government had, after all, no intention of discussing the territorial question according to the abstract principles of public law or of international law; that that would have the effect of rendering the discussion interminable; that the Cabinet of London expected a more satisfactory result, for the two parties interested, from an amicable arrangement which would be based only upon mutual consent, and that his instructions had been drawn up in that spirit.

"I replied to Sir Charles Bagot that in the matter in question, so far as I could foresee the views of the Imperial Government, I believed that I could take upon myself boldly to assure him that they were in perfect agreement with those of the Cabinet of London."

The position of both parties is therefore clearly defined by these very plain and very full declarations.

Let us see now what were the claims of Russia as to this strip of territory, which is the subject of the present difficulty.

As I have already said, Russian establishments at that time were more especially situated on the islands, and the Russian Plenipotentiaries openly declare that it is for the protection of those establishments that they require this strip of territory on the coast of the mainland, coming so far down towards the south, when the principal line of separation between the possessions of the two Empires on this continent was, however, to be placed much higher up.

So we find in the counter-proposition offered by Russia, in answer to a draft of Convention submitted by Sir Charles Bagot in March 1824, the following declaration:—

"The principal motive which forces Russia to insist upon retaining the sovereignty over the strip of land described previously on the mainland from the Portland Canal as far as the point of intersection of the 60th degree of latitude with the 139th degree of longitude is that, if deprived of this territory, the Russian American Company would be left without any means of supporting the establishments, which would thereby be left without any support, and could not have any strength nor solidity."

A few days later (29th March, 1824), in the document containing the final answer to the British proposition, the Russian Plenipotentiaries, affirming their previous claims, also say:—

"The Emperor instructs his Plenipotentiaries to declare once again to the Ambassador of England—

"That the possession of Prince of Wales Island without a portion of territory *on the coast opposite*, this island could not be of any use to Russia.

"That any establishment formed on the said island, or on those around it, would, in some manner, be turned by the English establishments of the mainland, and be completely at the mercy of the latter."

On the 5th April following Count Nesselrode, in a despatch to Count Lieven, Russian Ambassador to London, says:—

"In order to avoid intersecting the Prince of Wales Island, which, according to this arrangement, should belong to Russia, we proposed to carry the southern frontier of our domains to the 54th degree 40 minutes of latitude, and to make it strike on the continent the Portland Canal, the mouth of which, on the ocean, lies at the height of Prince of Wales Island, and the head inland between the 55th and 56th degree of latitude.

"This proposition only secured to us *a narrow strip on the coast* itself, and left to the English establishments all the space required for their increase and extension." And a little further on he adds:—

"As for us, we restrict our demands to a small strip (*lisière*) of coast on the continent, and in order to dispel all objections whatsoever, we guarantee the free navigation of the rivers, we proclaim the opening of the Port of Novo-Archangelsk."

One month later, Count Nesselrode in another despatch to Count Lieven again says:—

"If the principle of reciprocal convenience is advocated, Russia gives up for the progressive extension of the English establishments a vast extent of coast and of

territory; she guarantees free markets; she makes provision for the interests of their trade, and, as a compensation for so many offers inspired by the sincerest spirit of conciliation, she reserves for herself only *a point of support*, without which it would not be possible for her to keep one half of her dominions."

It is unnecessary to multiply these quotations.

Let us see now how—after coming to such an understanding—the final Convention was drafted.

A number of drafts and counter-drafts were exchanged between the Representatives of the two Governments, and it is interesting to note the successive changes made in the wording of those documents as to the strip of territory claimed by Russia.

In the draft of Agreement sent by Mr. George Canning to Sir Charles Bagot on the 12th July, 1824, it is stated, in Article II, that the line "shall be carried along the coast in a direction parallel to its windings, and at or within *the seaward base* of the mountains by which it is bounded."

Mr. Canning, in his letter inclosing this draft, uses the following expressions: "thence following the sinuosities of the coast, along the base of *the mountains nearest to the sea*."

Article III of this draft then mentioned a width—to be determined upon—which this strip of land could not exceed.

This proposal was not accepted, and Count Nesselrode sent to Count Lieven a counter-draft, the terms of which, with regard to the *lisière*, he himself analyzes in the following terms: "Our counter-draft carries our boundary from the 51st degree of north latitude to 54° 40'. It leaves the establishments which the English Companies may form hereafter on the north-west coast all the territory situated to the south of Portland Channel. It abolishes the establishment of the mountains as the boundary of the strip of mainland which Russia would possess on the American continent, and limits the width of this strip to 10 marine leagues, in accordance with the wishes of England."

In a letter addressed to Mr. Stratford Canning, dated the 8th December, 1824, Mr. George Canning replied to Count Nesselrode's proposal as follows:—

"The Russian Plenipotentiaries propose to withdraw entirely the limit of the *lisière* on the coast which they were themselves 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. It is quite obvious the boundary of mountains, where they exist, is the most natural and effectual boundary. The inconvenience against which we wished to guard was that which you know 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 the 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 the sea coast*. . . .

"Where the mountains are the boundary, we are content to take the *summit* instead of the seaward base as the line of demarcation."

Article III of the draft of Treaty sent with this letter by Mr. George Canning to Mr. Stratford Canning, says: "Provided, nevertheless, 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 Pacific*, then that, *for that space*, the line of demarcation shall be a line of parallel to the coast and its windings," &c.

This draft having been submitted to M. Matusevich—an official of the Russian Office, and afterwards Ambassador Extraordinary—was slightly changed. Thus, in Article IV, instead of maintaining the expression "*the Pacific*," he says: "That wherever the distance between the crest of the mountains and *the sea* shall be more than 10 marine leagues, the boundary of this same strip shall be formed by a line parallel to the sinuosities of the coast, and which shall nowhere be more than 10 marine leagues *from the sea*."

Was it M. Matusevich's intention, in substituting this word *sea*, to the word *Pacific* which had been used by Mr. Canning, to weaken the force and bearing of the expression chosen by him? It is impossible to know; but one thing is certain, however, and it is that if such was his intention it was not realized, the Treaty in its definite form using the word "*ocean*," which, in this instance, is the equivalent of the expression used by Mr. Canning.

Thus the second paragraph of Article IV of the Treaty of 1825 provides:—

"Que partout où la crête des montagnes qui s'étendent dans une direction parallèle à la côte, depuis le 56^e degré de latitude nord au point d'intersection du 141^e degré de longitude ouest, se trouverait à la distance de plus de 10 lieues marines *de l'océan*, la limite entre les possessions Britanniques et la lisière de côte mentionnée ci-dessus comme devant appartenir à la Russie, sera formée par une ligne parallèle aux sinuosités de la côte et qui ne pourra jamais en être éloignée que de 10 lieues marines."

It is a well-known rule in the interpretation of contracts that one of the safest modes of arriving at the true intention of the parties is to take into consideration the circumstances which have led to the settlement, to study the claims which each party pressed upon the other, and to ascertain the end which it would have wished to secure.

Now, if I apply this rule to the Treaty of 1825, it seems to me impossible to arrive at the conclusion that the intention of the parties to this Treaty was that this strip of territory should be traced so as to run up to the source of all the rivers, and to the head of all the inlets, which passed through this strip to reach the sea.

This, however, is the meaning which a majority of the Tribunal has given to this Treaty when by an interpretation of the word *coast*, which appears to me to be forced and untenable under the circumstances, they are led to say that Lynn Canal is the ocean, and that the coast of the ocean means equally the coast of Lynn Canal!

I cannot accept this interpretation. My humble opinion, after having maturely considered the documents from which I have taken the quotations made above, is that those who prepared and drafted this Treaty of 1825 never contemplated such a result. Consequently, leaving aside the learned distinctions which were pressed upon us as to the meaning of the word *coast*, to retain only what I believe was the intention of the parties, I still say that even if we were to consider Lynn Canal as an arm of the sea, or even as an inland sea, the coast of Lynn Canal could not, even then, be considered the coast of the ocean!

There is, in my country, one of the largest rivers of the world, and I have often heard it said by some of my compatriots, when contemplating with pride the immense sheet of water at its mouth: "Why, but this is the sea!"

However, it has not yet entered the mind of any one to say: "This is the ocean!" It has been reserved for Lynn Canal to be raised to that dignity!

6th Question

"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 majority of the Tribunal declares that:—

"Question 5 having been answered in the affirmative, Question 6 requires no answer."

The opinion of the members of the Tribunal on this question, moreover, is made apparent from the views expressed on the other question, and it would be useless to add anything more.

7th Question

"What, if any exist, are the mountains referred to as situated parallel to the coast, which mountains when within 10 marine leagues from the coast, are declared to form the eastern boundary?"

Answer:—

"A majority of the Tribunal, that is to say, Lord Alverstone, Mr. Root, Mr. Lodge, and Mr. Turner, decides that the mountains marked S on the aforesaid map, are the mountains referred to as situated parallel to the coast, where such mountains marked S are situated.

"Between the point marked P (mountain marked S 8,000) on the north and the point marked T (mountain marked S 7,950), in the absence of further survey the evidence is not sufficient to enable the Tribunal to say which are the mountains parallel to the coast within the meaning of the Treaty."

Article III of the Treaty of 1825, after declaring that the line of demarcation shall ascend to the north along the channel called Portland Channel, as far as the point of the continent where it strikes the 56th degree of north latitude, adds:—

"From this last-mentioned point the line of demarcation shall follow the summit of the mountains situated parallel to the coast as far as the point of intersection of the 141st degree of west longitude."

Article IV, § 2, then provides:—

"That whenever the summit of the mountains which extend in a direction parallel to the coast, from the 56th degree of north latitude to the point of intersection of the 141st degree of west longitude, shall prove to be at the distance of more than 10 marine leagues from the ocean, the limit between the British possessions and the line of coast which is to belong to Russia, as above mentioned, shall be formed by a line parallel to the windings of the coast, and which shall never exceed the distance of 10 marine leagues therefrom."

The contention of the United States, on this point, is stated in the following words, on p. 206 of the Case:—

"The United States request the Tribunal to answer and decide that such mountains (as mentioned in question 7) do not exist within 10 marine leagues from the coast."

This, however, cannot be said to express correctly what was argued before the Tribunal on this question. It would perhaps be safer to say that the real contention of the United States, on this point, was that in the intention of the negotiators of the

Treaty the line was to follow a chain of mountains, and that there being no such chain, the line was to be drawn at a uniform and regular distance of 35 miles from the coast.

It was also suggested, in the argument, that the word *crest* carries with it the indication of a continuous chain or range of mountains, and that this does not exist within the limit of the 10 leagues.

The British contention was that mountains answering the description of the Treaty do exist.

The evidence on this point clearly establishes the contention of Great Britain.

Mr. King, chief astronomer of the Department of the Interior, at Ottawa, in his Affidavit (p. 307, British Case Appendix), says:—

“Throughout its entire length, from the 56th parallel to Lynn Canal, the coast is bordered by mountains 3,000 to 5,000 feet in height, having rocky peaks and ridges. Their summits average 5 or 6 miles in distance from the sea, and in many places they approach even nearer. These mountains preserve for considerable distances much uniformity of height, and also of direction, forming elongated mountain masses lying with their lengths parallel to the general line of the coast. Penetrating inlets and valleys separate these mountain masses from one another, but without greatly disturbing their continuity of direction.”

And on p. 308:—

“Hence a line following mountain summits parallel to the general line of the mainland is possible, subject only to the breaks caused by inlets and river valleys, which breaks are comparatively short compared with the lengths of the continuous lines of the mountain summits.”

The decision of the Tribunal, on this point, is adverse to the contention of the United States; it acknowledges that the Treaty, does not call for a continuous chain of mountains, and that those mountains which exist along the coast, answer the requirements of the Treaty for the tracing of the line-frontier.

I entirely concur in the foregoing part of the decision of the Tribunal on this question, but I stop there, and cannot follow the majority in the adoption of its system for the demarcation of the line.

The Treaty of 1825 clearly indicates, in my opinion, that the mountains which were to constitute the boundary-line, were those *nearest to the coast*. In fact, when the Treaty says: “the summit of the mountains situate parallel to the coast,” it evidently points to the mountains on the coast, those which are situated on the border of the coast, and if we were to suppose two chains of mountains, one parallel to the other, the one which would lie the farthest from the coast would not be situated parallel to the coast, but it would be situated parallel to the other chain of mountains. Therefore, the first range of mountains, the one nearest to the coast, is the one which is alone indicated by the Treaty. This, to me, seems unanswerable.

But a few quotations from the opinions of those who have negotiated this Treaty, will render the point still more evident.

Mr. George Canning, in a despatch to Sir Charles Bagot, dated the 12th July, 1824, says:—

“His Majesty’s Government have resolved to authorize your Excellency to consent to include the south points of Prince of Wales Island within the Russian frontiers, and to take as the line of demarcation a line drawn from the southernmost point of Prince of Wales Island from south to north through Portland Channel, till it strikes the mainland in latitude 56, thence following the sinuosities of the coast, along the base of the *mountains nearest the sea* to Mount Elias . . .”

Count Lieven, in a Memorandum which he prepared on the North-west Coast Convention (24th July, 1824), says:—

"In the case now under consideration, the word *base*, by the indefinite meaning which it presents, and the greater or less extension which can be given to it, would appear hardly suitable to secure the delimitation against subsequent disputes, for it would not be impossible, in view of the little exactness of the geographical ideas which we as yet possess as to these regions, *that the mountains designated as the boundary should extend, by an insensible slope, down to the very border of the coast.*"

In his despatch to Count Lieven, bearing date the 20th February, 1825, Count Nesselrode again mentions "the natural frontier formed by *the mountains bordering on the coast.*"

There is, therefore, no doubt in my mind that the mountains indicated by the Treaty are those situated nearest to the coast.

Nevertheless, instead of following the evident meaning of the Treaty, the majority of the Tribunal has adopted a line which, at a number of points of its course, rests on mountains which lie far from the coast, and are separated from it by nearer ones, which ought consequently to have been chosen in their stead, as the points of demarcation of the line.

I found it impossible, under such circumstances, to concur in this arbitrary determination of a line which, although it does not concede all the territory they claimed to the United States, nevertheless deprives Canada of the greater part of that to which she was entitled.

(Signed) L. A. JETTÉ

October 22, 1903

OPINION OF THE UNITED STATES' MEMBERS OF THE TRIBUNAL (1)

Opinion on Second Question

Question number two of the Convention, "What is the Portland Channel?" has presented such peculiar difficulties that the Undersigned feel it necessary to set forth the reasons which have led them to join in the decision rendered by a majority of the Tribunal.

An inlet of great depth, starting just below the 56th parallel, runs down to the head of Pearse Island. At this point the inlet divides, and down to this point of division there is no question of identity, and none has ever been seriously raised. From the north-eastern corner of Pearse Island to within five miles of the 56th parallel the identity of this inlet with the Portland Channel, as intended by the negotiators of the Treaty of 1825, is undisputed, but after the division at Pearse Island the question has arisen whether the channel south of Pearse and Wales Islands is the Portland Channel, or whether that which passes to the north of those two islands is entitled to the name. Were we able to rest a decision solely on maps which we know to have been before the negotiators of the Treaty of 1825, the weight of evidence in the opinion of the Undersigned would be in favour of the view that the Portland Channel passed south of Wales and Pearse Islands, with Observatory Inlet entering it on the other side, and so on to the sea. The northern channel as indicated on contemporary maps is narrow and indistinct, so that it is not easy to believe that any negotiators would have taken it as a clear, well-defined, natural boundary, such as they were seeking to establish in the Treaty of Delimitation. The testimony of maps subsequent to the Treaty is fluctuating, but general opinion seems to have settled down to the belief that the more obvious southern channel was a continuation and part of the Portland Channel, and on many of the later maps we find the channel passing south of Pearse and Wales Islands denominated "Portland Inlet." In determining, how-

ever, what should now be called Portland Channel, the question to be decided was what the negotiators meant when they used that term, and in arriving at the intention of the negotiators of the Treaty of 1825, it was not possible to reach it by an inspection of the maps alone. The negotiators undoubtedly intended when they named Portland Channel as the southern boundary of the Russian possessions to refer to that inlet or body of water which Vancouver named Portland Canal, for it was Vancouver who gave the name, as is well known, to this inlet. If Vancouver had left us nothing but maps the Case, although not free from doubt and obscurity, would be comparatively simple. But Vancouver also published in addition to his maps a detailed narrative of all his explorations upon the north-western coast of America.

It was argued very forcibly by the Counsel for the United States that there was no proof that the negotiators had read Vancouver's narrative, but while it is no doubt true that they made no such examination of that narrative as has lately been pursued, it is almost impossible to suppose that men of trained ability seeking to establish a natural boundary in a little-known region should not have read the only book which contained any detailed information as to that portion of the globe with which they were dealing. We know from undoubted evidence that Mr. Pelly, the representative of the Hudson Bay Company, who was consulted by Mr. Canning at every stage of the negotiations, had read Vancouver's narrative, or, at least, those portions relating to the part of the coast which was under discussion. It is almost incredible, therefore, that Mr. Canning and Sir Charles Bagot should not also have examined the narrative, and it is equally unlikely that the Russians should have failed to consult the one book which contained a detailed examination of that region, and which had appeared in no less than four editions, two in English and two in French.

It has seemed, therefore, to the Undersigned impossible to exclude the narrative in endeavouring to reach a conclusion as to what the negotiators meant by the Portland Channel. In 1888 Mr. Dall, of the Smithsonian Institution, in a Memorandum sent to Mr. Bayard, said (pp. 104 and 105, United States' Counter-Case):—

"At this point we come across another difficulty, or, rather, one has been suggested very recently. By a careful study of Vancouver's text it is evident that there is on this point a certain discrepancy between his charts and his text. In reading over his whole account of the survey of this inlet and its branches (Vancouver, official English edition, vol. ii, pp. 329, 330, 331, 334-340, and 371), he seems to have varied a little in his notions, but his final treatment of Observatory Inlet extends it to Points Wales and Maskelyne, while in another place he seems to regard it as beginning at Point Ramsden (*cf. op. cit.* 2, p. 375). On the other hand, he treats Portland Inlet as continuing to the sea behind Wales and Pearse Islands. So that, if the Treaty is to be tried by Vancouver's text, it will result in giving to Great Britain the above-mentioned islands and some other small ones."

Mr. Dall there points out for the first time the discrepancy which appeared to exist between the maps and the text of the narrative, or, perhaps, to state it more exactly, the discrepancy between the text and what appeared to be the obvious, though not necessarily the only, meaning of the maps. There is no need here to enter into all the details of Vancouver's narrative, but on page 379 of his narrative he says, under the date of Monday, the 19th August, 1793:—

"A want of wind and a flood tide prevented our weighing until nine the following morning, when with an ebb tide we again proceeded, but did not reach the entrance to Observatory Inlet until two of the morning of the 20th, a distance of not more than thirteen leagues from Salmon Cove. The western point of Observatory Inlet I distinguished by calling it Point Wales."

That is, he called that stretch of water from Salmon Cove, on Observatory Inlet, where his ships had been anchored, to the south-western extremity of Wales Island,

a distance of 13 leagues, "Observatory Inlet." This includes, as a glance at the map will show, the channel which passes south of Pearse and Wales Islands. If, therefore, he intended to name that whole stretch of water Observatory Inlet, it is exclusive, and the name of Portland Canal cannot be applied to it. Portland Canal, therefore, must either have stopped at the north-eastern extremity of Pearse Island or must have continued by the channel north of that island to the eastern end of Wales Island.

The question is a very close one, but if we admit the text of the narrative it seems difficult to avoid the conclusion that by "Observatory Inlet" he included all the water from Salmon Cove to the south-western extremity of Wales Island. We also know that he explored the northern channel, occupying himself in that work from the 27th July to the 2nd August. He followed the channel westerly, passing what has been known as Tongass Passage, between Wales and Sitklan Islands, through which he looked and saw at a short distance the ocean. Desiring, however, to find, if possible, another opening to the ocean which followed the general line of the Continent, he kept on through the narrow passage which passes north of Sitklan and Kannaghunut Islands, and came out into the ocean opposite Cape Fox. Near Cape Fox he encamped. He then explored the waters around Revilla Gigedo Island, and on the 14th August returned to Cape Fox. At dawn the next morning, which in that latitude and in August must have been at a very early hour, he set out to return to his vessels, and he writes that in the forenoon, which must have been some hours after he started from the point opposite the narrow channel out of which he had issued the 2nd August, he passed the mouth of the channel which he had previously explored, and which he named "Portland's Canal, in honour of the noble family of Bentinck."

His exact language is as follows:—

"In the forenoon we reached that arm of the sea whose examination had occupied our time from the 27th of the preceding to the 2nd of this month. The distance from its entrance to its source is about 70 miles, which, in honour of the noble family of Bentinck, I named 'Portland's Canal' " (pp. 370-71, Vancouver).

It seems clear from this statement that if he considered, as the other extracts from his narrative already cited seem to prove, the northerly channel as the natural extension of the deep inlet running to the 56th parallel, he must have looked into it through Tongass Passage, and then and there gave it its name. Moreover, it is quite obvious from the maps that there are three outlets for the waters which come through the northern channel and are swelled by those from the inlets about Fillmore Island. Two of them are very small, so small as to be practically impossible to navigate. The third is the Tongass Passage, and that seems beyond a question, on the face of both the maps and the text, to be the true entrance to the channel which passes north of Wales and Pearse Islands. Accepting Vancouver's narrative as having the greatest weight, the conclusion follows that the award of the Tribunal must be that the Portland Channel intended by the makers of the Treaty of 1825 was that body of water which entered the sea by the Tongass Passage and passed thence north of Wales and Pearse Islands, and so onward to the immediate neighbourhood of the 56th parallel.

(Signed) Elihu ROOT

Henry Cabot LODGE

George TURNER

October 20, 1903

*OPINION OF THE UNITED STATES' MEMBERS OF THE TRIBUNAL (2)**Opinion on Fifth Question*

The following statement presents in brief the chief considerations which have led the Undersigned Members of the Alaskan Boundary Tribunal to the conclusion that the Fifth Question submitted under the Treaty of the 24th January, 1903, should be answered in the affirmative.

The question calls for a construction of the Treaty between Great Britain and Russia signed the 16th (28th) February, 1825, agreeing upon a boundary-line between Alaska and British Columbia. The particular provisions which undertake to describe the boundary-line are in these words:—

“III. The line of demarcation between the possessions of the High Contracting Parties, upon the coast of the continent, and the islands of America to the north-west, shall be drawn in the manner following:—

“Commencing from the southernmost point of the island called Prince of Wales Island, which point lies in the parallel of 54° 40' north latitude, and between the 131st and the 133rd degrees of west longitude (meridian of Greenwich), the said line shall ascend to the north along the channel called Portland Channel, as far as the point of the continent where it strikes the 56th degree of north latitude; from this last-mentioned point, the line of demarcation shall follow the summit of the mountains (*‘la crête des montagnes’*) situated parallel to the coast, as far as the point of intersection of the 141st degree of west longitude (of the same meridian); and, finally, from the said point of intersection, the said meridian line of the 141st degree, in its prolongation as far as the Frozen Ocean, shall form the limit between the Russian and British possessions on the continent of America to the north-west.

“IV. With reference to the line of demarcation laid down in the preceding Article, it is understood:

“First. That the island called Prince of Wales Island shall belong wholly to Russia.

“Second. That whenever the summit of the mountains (*‘la crête des montagnes’*) which extend in a direction parallel to the coast, from the 56th degree of north latitude to the point of intersection of the 141st degree of west longitude, shall prove to be at the distance of more than 10 marine leagues from the ocean, the limit between the British possessions and the line of coast which is to belong to Russia, as above mentioned, shall be formed by a line parallel to the windings of the coast, and which shall never exceed the distance of 10 marine leagues therefrom.”

Portland Channel begins on the full ocean, at a point very near latitude 54° 40', and ascends for about 70 miles, in a general direction slightly east of north, to a point which is, in fact, about 5 miles from the 56th parallel.

The Fourth Question relates to the course of the line through this intervening space.

The Tribunal has agreed that as the intervening distance is not more than would naturally be covered in climbing from the sea level to the summit of the high mountains which were known in 1825 to exist, and which do in fact exist, at the head of the Portland Channel, the simple and obvious way to give effect to the intent of the Treaty is to take the shortest route from the water to the summit of the mountain, which is in plain sight from the water; and this course brings us to the 56th parallel, upon a mountain ridge over 5,000 feet in height, the foot of which is washed by the waters of the Portland Channel.

The Fifth Question relates to the course of the line northward from that point. It is in the following words:—

“In extending the line of demarcation northward from said point on the parallel of the 56th degree of north latitude, following the crest of the mountains situated parallel to the coast until its intersection with the 141st degree of longitude west of Greenwich, subject to the condition that if such line should anywhere exceed the distance of 10 marine leagues from the ocean, then the boundary between the British and Russian territory should be formed by a line parallel to the sinuosities of the coast, and distant therefrom not more than 10 marine leagues, was it the intention and meaning of said Convention of 1825 that there should remain in the exclusive possession of Russia a continuous fringe or strip of coast on the mainland, not exceeding 10 marine leagues in width, separating the British possessions from the bays, ports, inlets, havens, and waters of the ocean, and extending from the said point on the 56th degree of latitude north to a point where such line of demarcation should intersect the 141st degree of longitude west of the meridian of Greenwich?”

The main practical effect of the answer will be to determine whether the line was to run around the heads of the inlets, leaving them in Russian territory, or was to cut across the inlets, leaving their heads in British territory.

We are of the opinion that the true construction of the Treaty is that which carries the line around the heads of the inlets, and that the following considerations all require the adoption of this construction:—

1. The purpose of the Treaty, well understood by the negotiators, would be accomplished by this construction, and would be defeated by the other construction.
2. The natural and ordinary meaning of the terms used in the Treaty, when applied to the natural features of the country known to the negotiators, or supposed by them to exist, requires this construction.
3. The meaning expressly given to the words used in the Treaty by the negotiators, in their written communications during the course of the negotiations, requires this construction.
4. The official maps published by Russia, Great Britain, Canada, British Columbia, and the United States—many in number—for a period of more than sixty years after the Treaty, known to the public officers of the different Governments, and accepted as the basis of official action, without a single exception carried the line around the heads of all the inlets, and were wholly irreconcilable with the other construction.

During all that period the cartographers of England, France, Germany, Russia, Spain, the United States, and Canada were permitted to represent the line in the same way, without any question or suggestion to the contrary, so that it was permitted to become part of the common understanding of mankind that the region now in dispute was Russian and not British territory. And the United States were permitted to purchase the territory, forty-two years after the Treaty, with this understanding.

These things show a practical interpretation of the Treaty.

5. For more than sixty years after the Treaty, Russia, and in succession to her the United States, occupied, possessed, and governed the territory around the heads of the inlets without any protest or objection, while Great Britain never exercised the rights or performed the duties of sovereignty there, or attempted to do so, or suggested that she considered herself entitled to do so.

This was a practical interpretation of the Treaty by all parties concerned.

The purpose of the Treaty is not open to doubt and was, in substance, conceded upon the arguments before the Tribunal.

Both Russia and Great-Britain had chartered great fur-trading Companies. On the one hand, the Russian-American Company had extended its establishments from the west up the chain of Aleutian Islands, and down the north-west coast of America as far as the 57th parallel, where it had a post at New Archangel, or Sitka, on Baranof Island. On the other hand, the Hudson's Bay Company, crossing the Rocky Mountains from the east, had pushed its posts west to the Mackenzie River and the upper waters of the Fraser River, to within about 100 miles of the coast at about latitude 55° or 56°. It was evident that before very long the agents of these two Companies would meet and dispute the control of the same hunting-grounds and of trade with the same native tribes.

By a Ukase dated the 8th July, 1799, Russia had granted to the Russian-American Company the exclusive right to hunt and trade upon the coast as far south as the 55th parallel; and by a Ukase dated the 4th September, 1821, Russia had undertaken to protect the Russian Company by prohibiting all foreign vessels not only to land on the coasts and islands which were declared to belong to Russia as far south as latitude 51 degrees, but also to approach the coast within less than 100 miles.

Great Britain protested against this assumption of exclusive jurisdiction over the Pacific Ocean, and incidentally to the settlement of that question, the two nations undertook to delimit their respective territorial possessions in that part of the world.

Russia based her claims upon occupation and trade by the Russian-American Company; Great Britain based her claims upon occupation and trade by the Hudson's Bay Company.

Both parties soon agreed to drop the discussion of strict right, and to make such a settlement as should be for their mutual convenience and interest. Proceeding upon this ground, the British negotiators proposed to confine Russia to the continent west of the Lynn Canal, and the islands in the immediate neighbourhood of the post at Sitka. Russia, upon the other hand, insisted that it was necessary for the protection of her trade, of which the post at Sitka was the centre, to have a substantial strip or *lisière* of territory upon the mainland, opposite the islands, and extending as far south as the Portland Canal. To this contention Great Britain yielded, and the line now under consideration was designed to give to Russia a strip or *lisière* on the mainland which would afford to the Russian-American Company the protection desired.

The purpose of the *lisière* was stated by the Russian negotiators to be—

“the establishment of a barrier at which would be stopped once for all to the north as to the west of the coast allotted to our American Company the encroachments of the English agents of the amalgamated Hudson Bay and North-west English Company, whom a more intimate acquaintance with the country traversed by the Mackenzie River might easily bring, in the course of time, into the neighbourhood of our establishments.” (B.C., App., p. 53.)

It is more fully stated in the observations of the Russian Plenipotentiaries upon the proposal of Sir Charles Bagot in February 1824 to assign to Russia a strip with the uniform width of 10 marine leagues from the shore, limited on the south by a line between 30 and 40 miles north from the northern end of the Portland Canal. They then said:—

“The motive which caused the adoption of the principle of mutual expediency to be proposed, and the most important advantage of this principle, is to prevent the respective establishments on the north-west coast from injuring each other and entering into collision.

“The English establishments of the Hudson's Bay and North-west Companies have a tendency to advance westward along the 53° and 54° of north latitude.

“The Russian establishments of the American Company have a tendency to descend southward toward the fifty-fifth parallel and beyond, for it should be

noted that, if the American Company has not yet made permanent establishments on the mathematical line of the 55th degree, it is nevertheless true that, by virtue of its privilege of 1799, against which privilege no Power has ever protested, it is exploiting the hunting and the fishing in these regions, and that it regularly occupies the islands and the neighbouring coasts during the season, which allows it to send its hunters and fishermen there.

"It was, then, to the mutual advantage of the two Empires to assign just limits to this advance on both sides, which, in time, could not fail to cause most unfortunate complications.

"It was also to their mutual advantage to fix these limits according to natural partitions, which always constitute the most distinct and certain frontiers.

"For these reasons the Plenipotentiaries of Russia have proposed as limits upon the coast of the continent, to the south, Portland Channel, the head of which lies about ('par') the fifty-sixth degree of north latitude, and to the east the chain of mountains which follows at a very short distance the sinuosities of the coast." (U.S.C., App., p. 161.)

The reply of Sir Charles Bagot was that the line proposed by him would secure the advantage desired by Russia. He said:—

"Any argument founded on the consideration of practical advantage to Russia could not fail to have the greatest weight, and the Plenipotentiary of His Britannic Majesty did not hesitate to give up, in consequence of this observation of the Russian Plenipotentiaries, the line of demarcation which he had first proposed . . . and to offer another which would secure to Russia not only a strip on the continent opposite the southernmost establishment which she possesses on the islands, but also the possession of all the islands and waters in its vicinity, or which are situated between that establishment and the mainland ('terre ferme'), in short, possession of all that could in future be of any service either to its stability or its prosperity." (U.S.C., App., p. 163.)

And he then proposed to include the Prince of Wales Island within the Russian line. But Russia insisted upon having her *lisière* run to the Portland Canal, saying—

"That the possession of Prince of Wales Island, without a slice (portion) of territory upon the coast situated in front of that island, could be of no utility whatever to Russia. That any establishment formed upon said island, or upon the surrounding islands, would find itself, as it were, flanked ('tourné') by the English establishments on the mainland, and completely at the mercy of these latter." (U.S.C., App., p. 164.)

England finally yielded to the Russian demand that the *lisière* should extend to the Portland Canal.

It was thus the intent of the Treaty makers to provide for a strip of Russian territory on the mainland which would protect the trade of the Russian-American Company, from its central post at Sitka, against the competition of the Hudson's Bay traders, coming from the east. To ascertain what kind of a barrier was intended to furnish that protection, it is necessary only to inquire what the trade was. It was a trade with the Indian tribes who lived around the heads of the inlets, and the subject-matter of the trade consisted of the skins of the fur-bearing animals taken in and about the inlets and the streams flowing into them. It is quite incredible that for the purpose of protecting that Russian trade against competition of the Hudson's Bay Company the Treaty makers intended to draw a line which would throw all the natives with whom the trade was conducted, and substantially all the territory which produced the material of the trade, into the Hudson's Bay territory. Instead of a protection to Russian trade with the mainland, that would have been a complete abandonment of it. Instead of excluding the Hudson's Bay agents from

those parts of the coast which were frequented by the Russian hunters and fishermen, it would have excluded the Russians, and given a monopoly to the Hudson's Bay Company. The line proposed by Great Britain cuts across some sixteen bays and inlets, leaving upon the Russian side substantially nothing but rocky and inaccessible promontories, and on the British side, including substantially all the harbours, anchorages, habitable shores, river mouths, avenues of access to the interior, hunting grounds and native tribes. It is plain that such a strip of territory, part land and part water, would have furnished no protection to Russian trade, would have interposed no barrier to the extension of Hudson's Bay posts as far as, in the nature of things, they could come, would have completely failed to furnish the natural boundary which both parties intended, and would not, in any respect, have answered the avowed purpose of the *lisière* intended by the Treaty.

We are not at liberty to ascribe a meaning to the terms of a Treaty which would frustrate the known and proved purpose of the instrument, unless the words used in the instrument are such as to permit no other construction. Whoever asserts a construction which would produce such a result must show not merely that it is a possible construction, but that it is a necessary construction, and that any other is impossible.

The most important and determining question in construing the words of the Treaty is the question: in what sense did the Treaty makers use the words "coast" and "sinuosities of the coast"? The primary boundary provided for in Article III was to be "the crest of the mountains situated parallel to the coast." And, by Article IV, when that crest proves to be at the distance of more than 10 marine leagues from the ocean, the boundary is to be formed by "a line parallel to the sinuosities of the coast, and which shall never exceed the distance of 10 marine leagues therefrom."

In what sense did the Treaty makers use the word "coast"?

Counsel for Great Britain contend that since the 10-marine-league line measured from the coast was to be applied only when the mountains proved more than 10 marine leagues from the ocean, the words "coast" and "ocean" must be deemed correlative, and the coast intended must be taken to be the line where land and ocean, properly so called, meet; and they say that the word "ocean" cannot be taken to describe the waters of long and narrow inlets, or fiords, like the Lynn Canal and the Taku Inlet, less than 6 miles in width, but must be taken to mean the great body of water which puts a limit to territorial jurisdiction, and they infer that the coast which is coterminous with the ocean must be the line upon one side of which is the mainland, including its territorial waters, and on the other the full ocean, excluding territorial waters. In other words, the general line or trend of the mainland coast, cutting across the mouths of inlets.

It is, however, impossible to give this meaning to the word "ocean," as used in this Treaty, because there stretches along the coast for 300 miles—from Cape Spencer down to the Portland Canal, and covering a space from 80 to 100 miles wide—an archipelago of islands, separated from each other and from the mainland by a multitude of narrow and tortuous passages, which do not at all answer to this meaning of the word "ocean." If this were the meaning of the word as used in the Treaty, the coast line would be outside of the islands, and a line drawn at 10 marine leagues from that coast would give to Russia no territory whatever upon the mainland. It is only by assigning to the word "ocean" an entirely different meaning, and making it include the narrow passages—which are no more and no less ocean than the inlets—that the Treaty can be made to provide any *lisière* upon the mainland. In this sense, which is necessary to effect the purpose of the Treaty, "ocean" means the salt water that washes the shore of the mainland, and "coast" means the line where the mainland meets the salt water, however narrow may be the passage, and however distant from the broad expanse of full ocean.

It is further to be observed that the contention of Great Britain completely ignores the provision that the 10-marine-league line, whenever drawn, is to be parallel to the sinuosities of the coast ("parallèle aux sinuosités de la côte"). The general trend of a coast takes no account of sinuosities. The two terms are directly opposed. The meaning of "general trend" is that sinuosities are ignored, and the meaning of "following the sinuosities" is that the general trend is departed from whenever the line where the land and water meet departs from it. Counsel for Great Britain were asked upon the argument to lay down on a map a line from which they contended that the 10 marine leagues were to be measured. The line which they presented took no account whatever of the sinuosities of the coast. According to their contention, precisely the same course was followed that would have been followed if those words had been omitted from the Treaty. We are not at liberty to omit them, or to refuse to give them effect. The only real effect they can have is to carry the line around the bays and inlets.

If we turn to the maps which were before the negotiators, and with reference to which they used the words of the Treaty, and seek to learn their meaning of the word "coast" by ascertaining what were the mountains which they describe as parallel to the coast, we reach the same result. We know that they had before them, and consulted, Vancouver's chart No. 7 (British Atlas, No. 2); Vancouver's chart No. 12 (British Atlas, No. 3); the Russian Official Map of 1802 (British Atlas, No. 5); Faden's Map of 1823 (British Atlas, No. 10), this last being specially relied upon by the British negotiators. Upon every one of these maps there appears a distinct and well-defined chain or ridge of mountains, running from near the head of the Portland Canal, and northerly along the coast, and in general parallel thereto, and furnishing the means of defining a line of natural boundary as distinctly as the mountain chains which constitute boundaries between countries in other parts of the world, such as the Pyrenees between France and Spain and the Andes between Chile and Peru. These maps embodied the results both of British and of Russian exploration, and they appear to justify the unquestioning confidence of the negotiators in the existence of a mountain crest extending generally parallel to the coast, and capable of defining the proposed boundary line. They clearly present a chain or range, and we know from numerous passages in the written communications which passed during the negotiations that the negotiators on both sides had in mind a chain or range of mountains, when they referred to mountains as defining the boundary. Thus the Russian negotiators described the proposed boundary which they had proposed, and which is the one adopted in the Treaty, as "the chain of mountains which follow, at a very small distance, the windings of the coast," and they say that they leave to Great Britain "all the territory situated behind the chain of mountains referred to previously." (B.C., App., pp. 71, 72.)

In July 1824, when Mr. Canning proposed that the line should run along the base of the mountains, Count Lieven represented to him "that when a chain of mountains is made to serve for the establishment of any boundary whatever, it is always the crest of those mountains that forms the line of demarcation." (B.C., App., pp. 90, 91.)

On the 20th October, 1824, the Hudson's Bay Company, through Mr. Pelly, wrote to the Foreign Office insisting that the eastern boundary from the Portland Canal northerly should be "the chain of mountains at a 'très petite distance de la côte,' but that if the summit of those mountains exceed 10 leagues, the said distance be substituted instead of the mountains," thus accepting and quoting the Russian language above cited. (B.C., App., p. 110.)

At the time of exchanging the Ratifications of the Treaty, the Russian Representative presented a formal expression of dissatisfaction on the part of Russia at Great Britain's insistence upon the alternative or corrective 10-marine-league line, and Mr. Canning replied that under the Treaty of Ghent, between Great Britain

and the United States, "which likewise fixed a chain of mountains as the frontier between the possessions of the two States," dispute had arisen because the mountains had been found to deviate from the direction given them on the maps, and he wished to avoid such a dispute. (B.C., App., p. 135.)

When Great Britain finally accepted the Portland Canal line, the Russian Ambassador at London wrote to Count Nesselrode at St. Petersburg as follows:—

"The proposition of our Court was to make this frontier run along the mountains which follow the windings of the coast to Mount Elias. The English Government fully accepts this line as it is laid off on the maps (*"désignée sur les cartes"*); but as it thinks that the maps are defective, and that the mountains which are to serve as a frontier might, by leaving the coast beyond the line designated, inclose a considerable extent of territory, it wishes the line claimed by us to be described with more exactness, so as not to cede, in reality, more than our Court asks and more than England is disposed to grant." (B.C., App., p. 84.)

There can be no doubt that the chain of mountains depicted upon all of these maps as running northerly from the head of the Portland Channel along the coast to Mount St. Elias was the mountain crest described in the Treaty as running parallel to the coast. There are no other mountains on any of the maps which were before the negotiators which answered to the description of the Treaty and of the written negotiations.

That chain of mountains upon all the maps runs around the heads of all the bays and inlets. It is substantially parallel to those sinuosities, and it is not parallel to a line which cuts across the inlets.

The negotiators have themselves, however, furnished an explanation of their meaning of the word "coast" which leaves that provision of the Treaty in no possible doubt. The 10-marine-league line was proposed to the Russian negotiators by Sir Charles Bagot as the measure of the width of the *lisière* at the time when he proposed to fix its southern boundary a short distance north of the Portland Canal. He proposed it in these words:—

"Thence extending in the same direction upon the mainland as far as a point 10 marine leagues distant from the coast. From this point 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."

The coast, to the sinuosities of which the line was to be drawn parallel, was thus explained as being equivalent to the shore (*"rivage"*). (B.C., App., p. 71.)

When Mr. Canning was about to assent to the mountain boundary proposed by Russia, the Hudson's Bay Company, which was consulted at every step of the negotiations by Mr. Canning, understood that the proposed line "parallel to the sinuosities of the coast" was equivalent to "parallel to the sinuosities of the shore," for in subsequently advising Mr. Canning upon the Russian proposal, Mr. Pelly says 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, and to provide for which case the distance ought to be limited, as Sir Charles Bagot proposed, to a few leagues, say not exceeding ten, from the shores." (B.C., App., p. 80.)

When the Russians accepted the 10-marine-league line parallel to the sinuosities of the coast, as proposed by Sir Charles Bagot, as an alternative line to be applied in case the mountain chain proved to run off into the interior, and when they signed the Treaty with the provision for that line, there had never been the slightest intimation that the word "coast" was used in any other sense than that ascribed to it by Sir Charles Bagot in his original proposal of the line, that is to say, as equivalent to shore.

That the Russians understood that the word "coast" was used in this sense appears clearly from the fact that while the draft Treaty proposed by Mr. Canning, and inclosed in his letter of the 12th July, 1824, contained the same words that are used in the Treaty, that the line should be "carried along that coast in a direction parallel to its windings" (B.C., App., p. 87.) Count Lieven transmits the draft to Count Nesselrode in a letter which describes this line as running along the base of the mountains which follow the sinuosities of the shore ("les sinuosités du rivage"). (B.C., App., pp. 88, 89.)

That the negotiators understood that the shore which they were describing was on a line parallel to which would give Russia the heads of all the inlets is apparent from Sir Charles Bagot's description of the effect of his offer of the 10-marine-league line, already cited, in which he declares that it would give to Russia all the islands and the waters adjacent or which are to be found between the Russian establishment and the mainland (B.C., App., p. 73), and by the letter of the Hudson's Bay Company to Mr. Canning, in which Mr. Pelly says that he is at a loss to understand "why Great Britain should cede to Russia the exclusive right to the islands and the coast from latitude 54° 40' northward to Mount Elias" (B.C., App., p. 81). An arrangement under which substantially all the harbours and ports for trade on the coast were retained by Great Britain certainly would not be a cession of the exclusive right to the coast. If Great Britain was retaining the most valuable part of the coast it was unknown to the Hudson's Bay Company, upon whose settlements Great Britain based all her claims to territory, which was conducting all the trade that Great Britain was endeavouring to protect, which was most familiar with the country to which the Treaty related, most interested in the result, and which was consulted at every step of the negotiations. If Mr. Canning had considered that such was the effect of the proposed arrangement, a prompt explanation of his advisers' mistake would have followed, and a modification of the terms of the Treaty in such a way as to make it clear that he was not ceding an exclusive right to the whole coast.

In the face of this clear statement by the Hudson's Bay Company of their understanding that the effect of drawing a line either along the mountains or at 10 marine leagues from the shore would be to "cede to Russia the exclusive right to the islands and the coast, from latitude 54° 40' northward to Mount Elias," the absence of any single word in the Treaty, or any draft of it, or in any of the negotiations, referring in any way whatever to Great Britain's having the heads of the bays and inlets, or the territory about them, has a special significance, and indicates most clearly that no such idea was entertained by the British negotiators.

It is argued by Counsel for Great Britain that Article VII of the Treaty, which gives to the vessels of the two Powers reciprocal rights to frequent the inland seas, gulfs, havens, and creeks on the coast mentioned in Article III, shows that Great Britain was the possessor of inland seas, gulfs, havens, and creeks on the coast along which the *lisière* ran, that is, between latitude 54° 40' and latitude 60°. The argument is that Article VII applies exclusively to that part of the coast, and it is to be inferred, therefore, that the reciprocal rights which were granted on the part of Great Britain in that Article were rights to inlets, &c., which she had under the Treaty in that part of the coast.

But the coast mentioned in Article III is the "coast of the continent." It is true the same Article describes the boundary of the *lisière* as being parallel to the coast, but there is no warrant whatever for limiting the reference of Article VII to anything less than the possessions of the two parties upon the coast of the continent—the entire coast mentioned in Article III. If Great Britain had no other possessions upon the coast of the continent in which she could give reciprocal rights to Russia, there would be some force in the argument, but by the terms of this very Treaty the coast from the head of the Portland Canal to the southern limits of the Russian

claims, viz., latitude 51°, was assigned to Great Britain, and upon that stretch of coast, a part of the coast mentioned in Article III, there were numerous gulfs, havens, and creeks. The terms of Article VII are, therefore, entirely satisfied, without assigning the rights granted by Great Britain to any part of the coast north of the head of the Portland Canal.

The view that the grant by Great Britain in Article VII was intended to apply, not to the *lisière*, but to the coast to the south of it, is supported by the fact that by the terms of the Treaty of 1818 between the United States and Great Britain, those countries acknowledged equal rights, each in the other, to the coast south of 54° 40', and that Article VII of the Treaty now under consideration was taken bodily from the Treaty of the 5th April, 1824, between Russia and the United States, which, in the same words, granted reciprocal rights in the possessions of the two parties on "the north-west coast of America." The provision of the American Treaty could not have been intended to confer upon Russia any rights except below 54° 40', for America had none. The natural inference from the incorporation of this same provision into the British Treaty would be that it was intended to give Russia the same rights from the co-tenant of the same coast.

A further examination of the history of Article VII leaves no doubt that instead of the grant of rights by Great Britain to Russia in that Article being intended to apply exclusively to the coast of the *lisière*, it was intended to apply exclusively to the coast below the *lisière*; for the first appearance of the Article was in the draft Treaty prepared by Mr. Canning, and inclosed by him in his letter to Sir Charles Bagot of the 12th July, 1824. In that draft Mr. Canning proposed, in Article III, a provision, not that there should be reciprocal rights in regard to the *lisière*, but that Russia should grant to British subjects a perpetual right to navigate and trade along the coast of the *lisière*; while the reciprocal provision for ten years, which now constitutes Article VII, was proposed as Article V of the draft, "with regard to the other parts of the north-west coast of America" (B.C., App., p. 87). This was after the American Treaty of 1824, and Article V of Mr. Canning's draft, providing for reciprocal relations in the other parts of the north-west coast, copied the language of the American Treaty. As England had unquestionably no interests in the parts of the north-west coast other than the *lisière*, except south of the *lisière*, the reciprocal provision proposed by Mr. Canning in Article V of his draft applied, so far as it involved a grant of right by Great Britain, solely to the same coast which was affected by the American grant in the Treaty of 1824.

Russia refused to grant to British subjects the perpetual right to trade in the *lisière*, but expressed a willingness to give such a right for ten years, and she carried into the Treaty of 1825, now under consideration, the reciprocal provision which Mr. Canning proposed as to the other parts of the north-west coast, unchanged except that the words "other parts" were stricken out; so that the reciprocal clause operated not only to accomplish the original effect of a British grant of rights to Russia below the *lisière* for ten years, but also of a Russian grant to British subjects of rights in the *lisière* for ten years.

There is absolutely no ground for claiming that, in broadening the scope of Mr. Canning's original reciprocal provision so that it would include a grant by Russia in the *lisière*, it was intended to exclude the other parts of the coast, to which solely the provision originally applied.

The maps which we have said furnished an interpretation of the Treaty by the parties include—

The Russian Admiralty Chart of 1826 (U.S. Atlas, No. 11); the Russian Admiralty Chart of 1844 (U.S. Atlas, No. 22, British Atlas, No. 15); Atlas sent by Sir J. H. Pelly, the Governor of the Hudson's Bay Company, 13th September, 1849, to Earl Grey, as part of a statement of the rights as to territory, trade, taxation, and government, claimed and exercised by the Hudson's Bay Company, and printed

in the Parliamentary Papers of the House of Commons, 11th July, 1850 (U.S. C.-C., p. 253; British Atlas, No. 19); map produced by Sir George Simpson, Governor of the Hudson's Bay territories, before a Select Committee of the House of Commons on the affairs of the Hudson's Bay Company, as showing the territory leased by that Company from the Russian-American Company, and published by order of the House of Commons in 1857 (U.S. C.-C., App. pp. 38, 39; British Atlas, No. 21); British Colonial Office manuscript map of 1831 (British Atlas, No. 13); British Admiralty Chart of 1856, corrected 1861, 1862, and 1864 (U.S. Atlas, No. 23); British Admiralty Chart of 1876 (U. S. Atlas, No. 38); official map of the Dominion of Canada, showing the extent and situation of its public lands, published by the Canadian Department of the Interior in 1878 (U.S. Atlas, No. 39); map published by the Canadian Department of Railways, 1883 (U.S. Atlas, No. 43); official map of Province of British Columbia published by the Commissioner of Lands and Works, Victoria, 1884 (British Atlas, No. 31); map of the Dominion of Canada, published in 1884 by the Director of the Canadian Geological Survey from surveys made by the Geological Corps, 1842 to 1882 (British Atlas, No. 32); the map published by the United States' Coast Survey in 1867, compiled for the Department of State at the time of the purchase of Alaska by the United States (U.S. Atlas, No. 24).

In all of these maps the boundary line is drawn around the heads of the inlets. It is not contended that this boundary line was an accurate location of the true boundary. In the absence of knowledge as to the mountains, it appears to have been drawn on the 10-marine-league line, measuring from the heads of the bays and inlets. It precludes no one from saying that the occurrence of a mountain crest within 10 marine leagues of the coast would call for a change of the position of the line. But it is manifest that in every case the line was drawn in accordance with the American theory of what constituted the coast, and not in accordance with the theory now maintained by the Counsel for Great Britain as to what constitutes the coast. According to the construction of the Treaty claimed by the British Case, the 10-marine-league line should have been drawn across the Lynn Canal $34\frac{1}{2}$ miles from its mouth. In all those maps it is drawn 90 miles away from that point, $34\frac{1}{2}$ miles above the head of the Lynn Canal. It is not contended that the action of any one of the officials making these maps worked an estoppel against his Government, but the uniform and continuous adoption and promulgation for sixty years, by all these officers, of the view that the line went around the head of the Lynn Canal, without a single map, or paper, or act, or word indicating the existence of any differing view on the part of their Governments, certainly does lead to a strong inference that their Governments understood the Treaty consistently with the maps, and not inconsistently with them.

It would be a strange thing if, six years after the Treaty was made, the British Colonial Office recorded the limits of the British possessions in North-west America inconsistently with the views of the British Government; that for fifty years after the making of this Treaty of 1825, the British Admiralty should issue the charts which constituted the guide for the vessels of the British Navy, putting down upon them the heads of the bays and inlets in Southern Alaska as being Russian waters, if the British Government regarded them as British waters; that the Government of British Columbia, the Canadian Department of the Interior, Department of Railroads and Geological Survey, should all be mistaken regarding the construction which the British Government put upon this Treaty. It would be a still stranger thing if Mr. Pelly, Governor of the Hudson's Bay Company, who was Mr. Canning's adviser throughout the negotiations of the Treaty, and Sir George Simpson, who was the Resident Governor in America, both at the time the Treaty was made and at the time the Hudson's Bay Company leased the property from the Russian-American Company, were ignorant of the construction put upon the Treaty by

the British Government, and, being in charge of the great interests directly affected by that construction, continued the rest of their lives in that ignorance.

It is impossible to resist the conclusion that the construction of the Treaty now contended for by Great Britain is an after-thought, never entertained by any officer of the British Government during the lifetime of the makers of the Treaty, and originated at least sixty years after the Treaty was signed.

The principal feature of Russia's occupation of Alaska was that in 1839 the Russian-American Company, with the express assent of the Russian Government, leased to the Hudson's Bay Company the mainland coast from Cape Spencer to the Portland Canal, and that this lease was renewed from time to time until the American purchase. The terms of the lease were apt to describe the entire coast, and the maps showing the leased territory, which were furnished to the British Government by Sir J. H. Pelly in 1849 and Sir George Simpson in 1857, showed that territory to include the heads of the bays and inlets and all the land surrounding them. It is conceded that the British Government knew of the lease, for it was given in settlement of a claim which the British Government was pressing against the Russian Government, the subject of a diplomatic controversy regarding the construction of the Treaty of 1825. The knowledge of the territory leased is brought home to the British Government by the last-mentioned maps. If the Government of Great Britain considered that the true construction of the Treaty gave to that Government, and therefore to the Hudson's Bay Company, the heads of the inlets and the territory surrounding them, it is quite impossible that, without a word upon that subject, the Hudson's Bay Company should have recognized Russia's title to that very territory by becoming a tenant.

Upon the purchase of Alaska by the United States in 1867, the officers of the United States took formal possession, with appropriate ceremonies, of the territory at the head of the Lynn Canal, and the officers of the Hudson's Bay Company surrendered the possession which they had theretofore held as tenants of Russia, and departed, leaving the head of the Lynn Canal in the possession of the United States. From that time until the present the United States has retained that possession, and has performed the duties and exercised the powers of sovereignty there.

For certainly more than twenty years after that, there was not a suggestion from the British Government that the possession was not rightful. In the meantime, the Naval and Military officers of the United States governed the Indians who lived at the heads of the inlets; those Indians were included in the United States' Census; order was enforced among them, and their misdeeds were punished by the United States; a public school and mission schools were established at the head of the Lynn Canal, under the auspices of the United States' Government; the land laws of the United States were extended over the territory, and mineral claims were located in the territory now in question; the revenue laws of the United States were extended over the territory, and were enforced in the territory in question; foreign vessels were forbidden to unload at Chilkat, and obeyed this prohibition; a post-office was established at the head of the Lynn Canal; an astronomical station of the United States' Coast Survey was established there; factories for the canning of salmon were erected and operated by American citizens; and all these operations of Government were unaccompanied by any suggestion that the United States was not rightfully there. In the meantime, Great Britain refrained from exercising, or attempting to exercise, any of the functions of Government in the neighbourhood of these inlets. The true condition was stated by the Prime Minister of Canada, in the Canadian Parliament, on the 16th February, 1898, when he said:—

“My honourable friend is aware that, although this is disputed territory, it has been in the possession of the United States ever since they acquired this

country from the Russian Government in 1867, and, so far as my information goes, I am not aware that any protest has ever been raised by any Government against the occupation of Dyea and Skaguay by the United States;”

and when, on the 7th March, 1898, he said:—

“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. Now, I will not recriminate here; this is not the time nor the occasion for doing so, but, so far as I am aware, no protest has ever been entered against the occupation of Dyea by the American authorities, and when the American authorities are in possession of that strip of territory on the sea which has Dyea as its harbour, succeeding the possession of the Russians from time immemorial, it becomes manifest to everybody that at this moment we cannot dispute their possession, and that, before their possession can be disputed, the question must be determined by a settlement of the question involved in the Treaty.”

It is manifest that the attempt to dispute that possession to which the Prime Minister refers is met by the practical, effective construction of the Treaty presented by the long-continued acquiescence of Great Britain in the construction which gave the territory to Russia and the United States, and to which the Prime Minister testifies. Only the clearest case of mistake could warrant a change of construction, after so long a period of acquiescence in the former construction, and no such case has been made out before this Tribunal.

(Signed) Elihu ROOT

Henry Cabot LODGE

George TURNER

October 20, 1903.

ADDITIONAL DOCUMENTS

CONVENTION BETWEEN GREAT BRITAIN
AND RUSSIA, SIGNED AT ST. PETERSBURGH,
FEBRUARY 28 (16), 1825¹

Au Nom de la Très Sainte et Indivisible Trinité

Sa Majesté le Roi du Royaume Uni de la Grande Bretagne et de l'Irlande, et Sa Majesté l'Empereur de toutes les Russies, désirant resserrer les liens de bonne intelligence et d'amitié qui les unissent, au moyen d'un accord qui régleroit, d'après le principe des convenances réciproques, divers points relatifs au Commerce, à la Navigation, et aux Pêcheries de leurs Sujets sur l'Océan Pacifique, ainsi que les limites de leurs Possessions respectives sur la Côte Nord-Ouest de l'Amérique, ont nommé des Plénipotentiaires pour conclure une Convention à cet effet, savoir :

— Sa Majesté le Roi du Royaume Uni de la Grande Bretagne et de l'Irlande, Le Très Honorable Stratford Canning, Conseiller de Sa dite Majesté en Son Conseil Privé, etc. Et Sa Majesté l'Empereur de toutes les Russies, le Sieur Charles Robert Comte de Nesselrode, Son Conseiller Privé actuel, Membre du Conseil de l'Empire, Secrétaire d'Etat dirigeant le Ministère des Affaires Etrangères, etc. ; et le Sieur Pierre de Poletica, Son Conseiller d'Etat actuel, etc. Lesquels Plénipotentiaires, après s'être communiqué leurs Plein-pouvoirs respectifs, trouvés en bonne et due forme, ont arrêté et signé les Articles suivants :—

I. Il est convenu que dans aucune partie du Grand Océan, appelé communément Océan Pacifique, les Sujets respectifs des Hautes Puissances Contractantes ne seront ni troublés, ni gênés, soit dans la navigation, soit dans l'exploitation de la pêche, soit dans la faculté d'aborder aux Côtes, sur des Points qui ne seraient pas déjà occupés, afin d'y faire le commerce avec les Indigènes, sauf toutefois les restrictions et conditions déterminées par les Articles qui suivent.

II. Dans la vue d'empêcher que les droits de navigation et de pêche exercés sur le Grand Océan par les Sujets des Hautes Parties Contractantes, ne deviennent le prétexte d'un commerce illicite, il est convenu que les Sujets de Sa Majesté Britannique n'aborderont à aucun Point où il se trouve un Etablissement Russe, sans la permission du Gouverneur ou Commandant, et que, réciproquement, les Sujets Russes ne pourront aborder, sans permission, à aucun Etablissement Britannique sur la Côte Nord-Ouest.

III. La ligne de démarcation entre les Possessions des Hautes Parties Contractantes sur la Côte du Continent et les Iles de l'Amérique Nord-Ouest, sera tracée ainsi qu'il suit :—

A partir du Point le plus méridional de l'Ile dite *Prince of Wales*, lequel

¹ *British and Foreign State Papers*, vol. 12, p. 38, English translation: *ibid.*

Point se trouve sous le parallèle du 54^{me} degré 40 minutes de latitude Nord, et entre le 131^{me} et le 133^{me} degré de longitude Ouest (Méridien de Greenwich), la dite ligne remontera au Nord le long de la passe dite *Portland Channel*, jusqu'au Point de la terre ferme où elle atteint le 56^{me} degré de latitude Nord; de ce dernier point la ligne de démarcation suivra la crête des montagnes situées parallèlement à la Côte, jusqu'au point d'intersection du 141^{me} degré de longitude Ouest (même Méridien); et, finalement, du dit point d'intersection, la même ligne méridienne du 141^{me} degré formera, dans son prolongement jusqu'à la mer Glaciale, la limite entre les Possessions Russes et Britanniques sur le Continent de l'Amérique Nord-Ouest.

IV. Il est entendu, par rapport à la ligne de démarcation déterminée dans l'Article précédent;

1. Que l'Ile dite *Prince of Wales* appartiendra toute entière à la Russie.

2. Que partout où la crête des montagnes qui s'étendent dans une direction parallèle à la Côte depuis le 56^{me} degré de latitude Nord au point d'intersection du 141^{me} degré de longitude Ouest, se trouverait à la distance de plus de dix lieues marines de l'Océan, la limite entre les Possessions Britanniques et la lisière de Côte mentionnée ci-dessus comme devant appartenir à La Russie, sera formée par une ligne parallèle aux sinuosités de la Côte, et qui ne pourra jamais en être éloignée que de dix lieues marines.

V. Il est convenu en outre, que nul Etablissement ne sera formé par l'une des deux Parties dans les limites que les deux Articles précédens assignent aux Possessions de l'Autre. En conséquence, les Sujets Britanniques ne formeront aucun Etablissement soit sur la Côte, soit sur la lisière de terre ferme comprise dans les limites des Possessions Russes, telles qu'elles sont désignées dans les deux Articles précédens; et, de même, nul Etablissement ne sera formé par des Sujets Russes au delà des dites limites.

VI. Il est entendu que les Sujets de Sa Majesté Britannique, de quelque Côté qu'ils arrivent, soit de l'Océan, soit de l'intérieur du Continent, jouiront à perpétuité du droit de naviguer librement, et sans entrave quelconque, sur tous les fleuves et rivières, qui, dans leurs cours vers la Mer Pacifique, traverseront la ligne de démarcation sur la lisière de la Côte indiquée dans l'Article 3 de la présente Convention.

VII. Il est aussi entendu que, pendant l'espace de dix Ans, à dater de la signature de cette Convention, les Vaisseaux des deux Puissances, ou ceux appartenant à leurs Sujets respectifs, pourront réciproquement fréquenter, sans entrave quelconque, toutes les Mers intérieures, les Golfes, Havres, et Criques sur la Côte mentionnée dans l'Article 3, afin d'y faire la pêche et le commerce avec les Indigènes.

VIII. Le Port de Sitka, ou Novo Archangelsk, sera ouvert au Commerce et aux Vaisseaux des Sujets Britanniques durant l'espace de dix Ans, à dater de l'échange des Ratifications de cette Convention. Au cas qu'une prolongation de ce terme de dix Ans soit accordée à quelque autre Puissance, la même prolongation sera également accordée à la Grande Bretagne.

IX. La susdite liberté de commerce ne s'appliquera point au trafic des liqueurs spiritueuses, des armes à feu, des armes blanches, de la poudre à canon, ou d'autres munitions de guerre; les Hautes Parties Contractantes s'engageant réciproquement à ne laisser ni vendre, ni livrer, de quelque manière que ce puisse être, aux Indigènes du Pays, les articles ci-dessus mentionnés.

X. Tout Vaisseau Britannique ou Russe naviguant sur l'Océan Pacifique,

qui sera forcé par des tempêtes, ou par quelque accident, de se réfugier dans les Ports des Parties respectives, aura la liberté de s'y radoubler, de s'y pourvoir de tous les objets qui lui seront nécessaires, et de se remettre en mer, sans payer d'autres Droits que ceux de Port et de Fanaux, lesquels seront pour lui les mêmes que pour les Bâtiments Nationaux. Si, cependant, le Patron d'un tel navire se trouvait dans la nécessité de se défaire d'une partie de ses marchandises pour subvenir à ses dépenses, il sera tenu de se conformer aux Ordonnances et aux Tarifs de l'Endroit où il aura abordé.

XI. Dans tous les cas de plaintes relatives à l'infraction des Articles de la présente Convention, les Autorités Civiles et Militaires des deux Hautes Parties Contractantes, sans se permettre au préalable ni voie de fait, ni mesure de force, seront tenues de faire un rapport exact de l'affaire et de ses circonstances à leurs Cours respectives, lesquelles s'engagent à la régler à l'amiable, et d'après les principes d'une parfaite justice.

XII. La présente Convention sera ratifiée, et les Ratifications en seront échangées à Londres dans l'espace de six semaines, ou plutôt si faire se peut.

En Foi de quoi les Plénipotentiaires respectifs l'ont signée, et y ont apposé le Cachet de leurs Armes.

Fait à St. Pétersbourg, le 28 (16) Février, de l'An de Grâce mil huit cent vingt-cinq.

(L.S.) Stratford CANNING

(L. S.) Le Comte DE NESSELRODE

(L. S.) Pierre DE POLETICA

TREATY BETWEEN RUSSIA AND THE UNITED STATES,
FOR THE CESSION BY RUSSIA TO THE UNITED STATES
OF ALL TERRITORY AND DOMINION POSSESSED BY
RUSSIA, ON THE CONTINENT OF AMERICA, AND THE
ADJACENT ISLANDS, SIGNED AT WASHINGTON, MARCH
18 (30) 1867¹

The United States of America and His Majesty the Emperor of All the Russias being desirous of strengthening, if possible, the good understanding which exists between them, have, for that purpose appointed as their Plenipotentiaries:

The President of the United States, William H. Seward, Secretary of State;

And His Majesty the Emperor of All the Russias, the Privy Councillor Edward de Stoeckl, his Envoy Extraordinary and Minister Plenipotentiary to the United States.

And the said Plenipotentiaries having exchanged their full powers, which were found to be in due form, have agreed upon and signed the following Articles:

Art. I. His Majesty the Emperor of All the Russias agrees to cede to the United States by this Convention, immediately upon the exchange of the

¹ *British and Foreign State Papers*, vol. 57, p. 452.

ratifications thereof, all the territory and dominion now possessed by His said Majesty on the continent of America and in the adjacent islands, the same being contained within the geographical limits herein set forth, to with: the eastern limit is the line of demarcation between the Russian and the British possessions in North America, as established by the Convention between Russia and Great Britain, of February, 28 (16) 1825 and described in Articles III and IV of said Conventions, in the following terms:

"Commencing from the southernmost point of the Island called Prince of Wales Island, which point lies in the parallel of $54^{\circ} 40'$ north latitude, and between the 131° and the 133° of west longitude (meridian of Greenwich), the said line shall ascend to the north along the channel called Portland Channel, as far as the point of the continent where it strikes the 56° of north latitude; from this last mentioned point the line of demarcation shall follow the summit of the mountains situated parallel to the coast as far as the point of intersection of the 141° of west longitude (of the same meridian); and finally, from the said point of intersection, the said meridian line of the 141° in its prolongation as far as the Frozen Ocean.

"IV. With reference to the line of demarcation laid down in the preceding Article, it is understood:

"1st. That the island called Prince of Wales Island shall belong wholly to Russia (now, by this cession, to the United States).

"2nd. That whenever the summit of the mountains which extend in a direction parallel to the coast from the 56° of north latitude to the point of intersection of the 141° of west longitude shall prove to be at the distance of more than 10 marine leagues from the ocean, the limit between the British possessions and the line of coast which is to belong to Russia as above mentioned (that is to say the limit to the possessions ceded by this Convention), shall be formed by a line parallel to the winding of the coast, and which shall never exceed the distance of 10 marine leagues therefrom."

The western limit within which the territories and dominion conveyed are contained passes through a point in Behring's Straits on the parallel of $65^{\circ} 30'$ north latitude, at its intersection by the meridian which passes midway between the Islands of Krusenstern, or Ignalook, and the Island of Ratmanoff, or Noonarbook and proceeds due north, without limitation, into the same Frozen Ocean. The same western limit, beginning at the same initial point, proceeds thence in a course nearly south-west, through Behring's Straits and Behring's Sea, so as to pass midway between the north-west point of the Island of St. Lawrence and the south-east point of Cape Choukotski, to the meridian of 172° west longitude; thence, from the intersection of that meridian, in a south-westerly direction, so as to pass midway between the Island of Attou and the Copper Island of the Kormandorsi couplet or group in the North Pacific Ocean, to the meridian of 193° west longitude, so as to include in the territory conveyed the whole of the Aleutian Islands east of the meridian.

II. In the cession of territory and dominion made by the preceding Article are included the right of property in all public lots and squares, vacant lands, and all public buildings, fortifications, barracks, and other edifices which are not private individual property. It is, however, understood and agreed that the churches which have been built in the ceded territory by the Russian Government shall remain the property of such

members of the Greek Oriental Church resident in the territory as may choose to worship therein. Any Government archives, papers, and documents relative to the territory and dominion aforesaid, which may be now existing there, will be left in the possession of the Agent of The United States; but an authenticated copy of such of them as may be required will be, at all times, given by the United States to the Russian Government, or to such Russian officers or subjects as they may apply for.

III. The inhabitants of the ceded territory, according to their choice, reserving their natural allegiance, may return to Russia within 3 years; but if they should prefer to remain in the ceded territory, they, with the exception of uncivilized native tribes, shall be admitted to the enjoyment of all the rights, advantages, and immunities of citizens of The United States, and shall be maintained and protected in the free enjoyment of their liberty, property, and religion. The uncivilized tribes will be subject to such laws and regulations as the United States may from time to time adopt in regard to aboriginal tribes of that country.

IV. His Majesty the Emperor of All the Russias shall appoint, with convenient despatch, an agent or agents for the purpose of formally delivering to a similar agent or agents appointed on behalf of the United States, the territory, dominion, property, dependencies, and appurtenances, which are ceded as above, and for doing any other act which may be necessary in regard thereto. But the cession, with the right of immediate possession, is nevertheless to be deemed complete and absolute on the exchange of ratifications without waiting for such formal delivery.

V. Immediately after the exchange of the ratifications of this Convention, any fortifications or military posts which may be in the ceded territory shall be delivered to the agent of The United States, and any Russian troops which may be in the territory shall be withdrawn as soon as may be reasonably and conveniently practicable.

VI. In consideration of the cession aforesaid, The United States agree to pay at the treasury in Washington, within 10 months after the exchange of the ratification of this Convention, to the diplomatic representative or other agent of His Majesty the Emperor of All the Russias, duly authorized to receive the same 7,200,000 dollars in gold. The cession of territory and dominion herein made is hereby declared to be free and unincumbered by any reservations, privileges franchises, grants, or possessions, by any associated companies, whether corporate or incorporate, Russian or any other, or by any parties, except merely private individual property-holders; and the cession hereby made conveys all the rights, franchises, and privileges now belonging to Russia in the said territory or dominion and appurtenances thereto.

VII. When this Convention shall have been duly ratified by the President of The United States, by and with the advice and consent of the Senate, on the one part, and on the other by His Majesty the Emperor of All the Russias, the ratifications shall be exchanged at Washington within 3 months from the date hereof, or sooner, if possible.

In faith whereof the respective Plenipotentiaries have signed this Convention, and thereto affixed the seals of their arms.

Done at Washington, the 30th day of March, in the year of our Lord 1867.

(L. S.) William. H. SEWARD

(L. S.) Edouard D. STOECKL