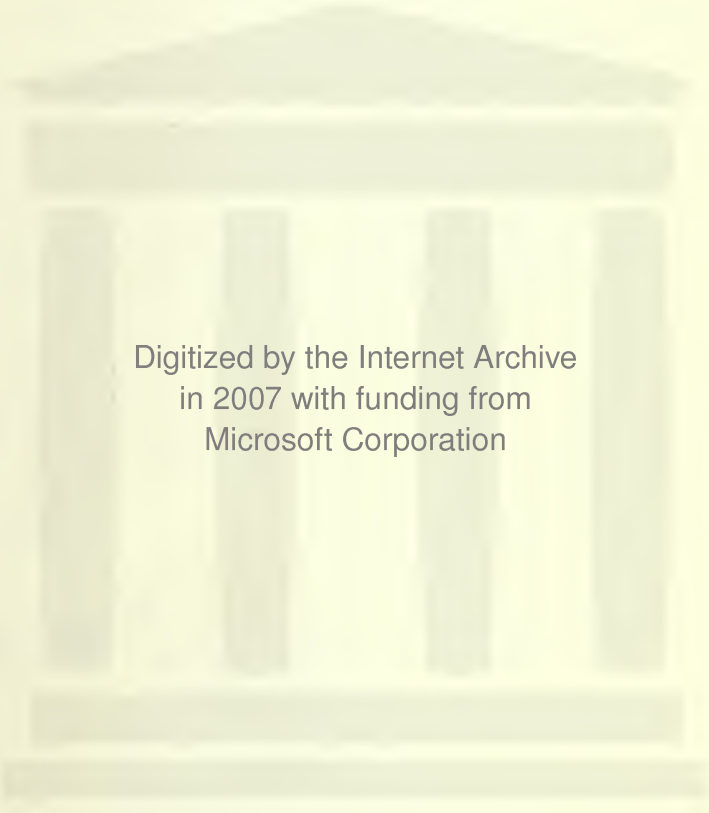

MINNESOTA'S NORTHERN BOUNDARY.*

BY ALEXANDER N. WINCHELL.

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*Read at the University of Minnesota October 12, 1895; awarded "The '89 Memorial Prize in History" at the twenty-fourth annual commencement, June 4, 1896; accepted by the Publication Committee, July 16, 1896.

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Books of Reference.

American State Papers, Foreign Relations.
Diplomatic Correspondence. Jared Sparks.
Senate and House Executive Documents.
Secret Journals of Congress.
Life and Works of John Adams. C. F. Adams.
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Treaties and Conventions of the United States.
Journal of the House of Representatives.
Congressional Globe.
Narrative and Critical History of America. Justin Winsor.
Minnesota Historical Society Collections, vol. vii., pp. 305-352, "How the Mississippi river and the Lake of the Woods became instrumental in the establishment of the Northwestern Boundary of the United States," Alfred J. Hill; vol. viii., pp. 1-10, "The International Boundary between Lake Superior and the Lake of the Woods," Ulysses Sherman Grant.

NOTE. Mr. Hill's article in volume VII. of the Minnesota Historical Society Collections will be found to cover much of the earlier history of this subject quite fully. In such parts, where I have been obliged to parallel Mr. Hill, I have condensed the account; and I would refer the reader who desires more details of that period to his article. I am indebted to the same article for several references of value.

INTRODUCTION.

On September 4, 1895, there appeared in the Minneapolis Times a special telegram from Tower, Minn., entitled, "Where is the Boundary?" and reading as follows:

Tower, Minn., Sept. 3. (Special.)

The trouble between the Arion Fish Company, of Crane Lake, and the Canadian authorities, over the seizure of their nets said to have been in Canadian waters, threatens to result in an international difficulty and revive a long-disputed question. By the last treaty with Great Britain the boundary line between northeastern Minnesota and Canada was established in the navigable channel or deepest water in the chain of lakes and rivers between the two countries. Several times disputes have arisen, and good authorities claim that if the line were properly adjusted it would give the valuable tract known as Hunter's island to the United States. Minnesota parties have found extensive and valuable deposits of iron ore on the island, and were it within the United States it would become a flourishing and prosperous district. The island comprises several thousand square miles of territory, and many locations for iron have been taken on it by Minnesota capitalists.

While the statements in this clipping have no more truth than the average newspaper report, they are a good indication of the importance of the subject.

I.

BOUNDARIES IN COLONIAL TIMES.

To find the origin of this boundary it is necessary to go back to colonial times. The Hudson Bay Company gradually enlarged its territorial claims until in the eighteenth century it claimed the whole watershed of the Bay of Hudson as far south as the forty-ninth parallel. This claim was recognized in the Treaty of Utrecht, and it is this recognition, misunderstood to refer to a boundary line of Canada, that is the prototype of our present northern boundary.

II.

FIRST BOUNDARY OF THE UNITED STATES, 1783.

When Canada was ceded to Great Britain in 1763, this line naturally became of no importance. But within twenty

years another boundary line was defined that trenched upon the watershed of Hudson Bay; but with this new boundary neither of the former parties had anything to do. It was in February, 1779,* that Joseph Mathias Gérard de Rayneval, the minister from France to the United States, urged upon Congress the appointment of a commissioner to take part in negotiations for a general peace, when such should occur. Such an appointment made it necessary to formulate conditions of peace beyond the main demand of independence. On the 23rd of that month, therefore, a special committee, to whom had been referred certain "official letters and communications received from Paris," reported that certain articles were absolutely necessary for the safety and independence of the United States, and therefore ought to be insisted upon as ultimata. The first of these articles was concerning the bounds, which were to be as follows: †

> Northerly by the ancient limits of Canada, as contended for by Great Britain, running from Nova Scotia, south-westerly, west, and north-westerly, to Lake Nepissing, thence a west line to the Mississippi; . . . and westerly by the river Mississippi.

On March 19th, Congress took into consideration the report of the Committee of the Whole, and agreed to the following ultimata:‡

> 1. That the thirteen United States are bounded, north, by a line to be drawn from the north-west angle of Nova Scotia, along the high lands which divide those rivers which empty themselves into the river St. Lawrence from those which fall into the Atlantic ocean to the north-westernmost head of Connecticut river; thence down along the middle of that river to the forty-fifth degree of north latitude; thence due west in the latitude forty-five degrees north from the equator, to the north-westernmost side of the river St. Lawrence or Cadaroqui; thence strait to the south end of lake Nepissing; and thence strait to the source of the river Mississippi; west, by a line to be drawn along the middle of the river Mississippi from its source to where the said line shall intersect the latitude of thirty-one degrees north. . .

This second description of the boundary was adopted by Congress in the draft of instructions approved on August 14th

*Minn. Hist. Soc. Collections, vol. VII., p. 307.
†Secret Journals of Congress, 1775-88, vol. II., p. 133.
‡Ibid., pp. 138, 225; Diplomatic Correspondence, Jared Sparks, vol. IV., p. 340.

for the use of the minister to be appointed to negotiate a peace. Continuing, the instructions read:*

> But, notwithstanding the clear right of these states, . . . if the line to be drawn from the mouth of the lake Nepissing to the head of the Mississippi cannot be obtained without continuing the war for that purpose, you are hereby empowered to agree to some other line between that point and the river Mississippi; provided the same shall in no part thereof be to the southward of latitude forty-five degrees north. . . .

John Adams was first appointed as the commissioner, and he went to France; but there he found scant favor, partially on account of his bluntness; moreover official influence was opposed to initiating a peace at that time, or through any man but Franklin. Adams went the next year to Holland, to which country he had been made minister.

On June 15, 1781, Mr. Adams' commission was annulled by Congress, and he was reappointed as one of the five persons to negotiate the treaty. His colleagues were Benjamin Franklin, John Jay, Henry Laurens, and Thomas Jefferson. They were given some discretionary power, and they used probably more than was given.

On the British side, Mr. Oswald, and later Mr. Strachey, were the negotiators. On October 8, 1782, certain articles† were agreed upon by Franklin, Jay, and Oswald, which the British commissioner took to England for the King's consideration. The first article defined the boundary exactly according to the description contained in the instructions given by Congress on March 19, 1779, already fully quoted. These were rejected by the King, and Mr. Oswald returned, furnished by the King's ministers with arguments for a more southerly line. Mr. Strachey came over also to help on the argument.

November 5, 1782, the commissioners had again reached an understanding, and Mr. Strachey took a second proposition to England for the King's consideration. In these articles‡ the northern and western boundaries were given as running "thence down along the middle of that [Connecticut] river to the 45th degree of north latitude, following the said latitude until it strikes the river Mississippi; thence by a line to be

*Secret Journals of Congress, 1775-88, vol. II., p. 227.
†Diplomatic Correspondence, Jared Sparks, Vol. X., pp. 88-92.
‡Ibid., p. 94.

drawn along the middle of the said river Mississippi, until it shall intersect the northernmost part of the 31st degree of latitude north of the equator."

The next day* John Adams, writing to Livingston, the Secretary of Foreign Affairs, said, "We have at last agreed to boundaries with the greatest moderation. We have offered them the choice of a line through the middle of all the great lakes or the line of 45 degrees of latitude, the Mississippi, with a free navigation of it at one end, and the river St. Croix at the other."

On the 25th of November,† Adams, Franklin, and Jay met at Mr. Oswald's lodgings, and after some conference, Mr. Oswald delivered to them certain articles as fresh proposals of the British ministry, sent by Mr. Strachey. The second one of these articles defined boundaries for the United States, and the words there used were in effect the same as those employed in the provisional Articles of Peace. So far as concerned the northwestern boundary, the following were the terms:

. . . from thence [i. e. the point of intersection of the Connecticut river and the forty-fifth parallel] by a line due west on said latitude until it strikes the river Iroquois or Cataroquy; thence along the middle of said river into Lake Ontario, through the middle of said Lake until it strikes the communication by water between that Lake and Lake Erie; thence along the middle of said communication, into Lake Erie, through the middle of said Lake, until it arrives at the water communication between that Lake and Lake Huron; thence along the middle of said water communication into Lake Huron; thence through the middle of the said Lake, to the water communication between that Lake and Lake Superior; thence through Lake Superior, northward of the Isles Royal and Philippeaux to the Long Lake; thence through the middle of said Long Lake, and the water communication between it and the Lake of the Woods, to the said Lake of the Woods; thence through the said Lake to the most north-western point thereof; and from thence on a due western course to the river Mississippi, thence by a line to be drawn along the middle of the said river Mississippi until it shall intersect the northernmost part of the 31st degree of north latitude.

In addition, the navigation of the river Mississippi, from its source to the ocean, was to remain forever free and open to the subjects of Great Britain and the citizens of the United States.

*Life and Works of John Adams, by C. F. Adams, vol. VII., p. 661.
†Diplomatic Correspondence, Jared Sparks, vol. X., p. 101.

Thus the famous phrase, "the most northwestern point of the Lake of the Woods," originated with the British. As stated before, the same line, defined a little more fully, was that adopted in the Provisional Articles of 1782; and these were exactly the same as those signed ten months later as the Definitive Treaty of Peace.

Concerning this boundary the Commissioner wrote to Robert Livingston:*

> The Court of Great Britain insisted on retaining all the territories comprehended within the Province of Quebec, by the Act of Parliament respecting it. They contended that Nova Scotia should extend to the river Kennebec; and they claimed not only all the lands in the western country and on the Mississippi, which were not expressly included in our charters and governments, but also all such lands within them as remained ungranted by the King of Great Britain. It would be endless to enumerate all the discussions and arguments on the subject.
>
> We knew this Court and Spain to be against our claims to the western country, and having no reason to think that lines more favorable could ever have been obtained, we finally agreed to those described in this Article; indeed they appear to leave us little to complain of, and not much to desire. Congress will observe, that although our northern line is in a certain part below the latitude of fortyfive, yet in others it extends above it, divides the Lake Superior, and gives us access to its western and southern waters, from which a line in that latitude would have excluded us.

Franklin,† writing to Livingston, said that the British "wanted to bring their boundary down to the Ohio, and to settle their loyalists in the Illinois country. We did not choose such neighbors."

In reply, Mr. Livingston‡ said: "The boundaries are as extensive as we have a right to expect."

The extent of the boundaries was a great surprise to foreigners generally. Luzerne§ wrote to the French minister Vergennes that the northern boundary from Lake Superior to the sources of the Mississippi had surpassed all expectation. It gave the Americans four forts that they had found it impossible to capture. Lands nearer the coast had already depreciated in value, owing to the new acquisitions. "There is a belief," he said,—and the remark shows the view then

*Diplomatic Correspondence, Jared Sparks, vol. X., p. 117.
†Works of Franklin, Jared Sparks, vol. IX., p. 442.
‡Diplomatic Correspondence, Jared Sparks, vol. X., p. 129.
§Narrative and Critical History of America, Justin Winsor, vol. VII., p. 158.

opening of the future of America,—"that the plenipotentiaries, in pushing their possessions as far as the Lake of the Woods, are preparing for their remote posterity a communication with the Pacific." And later he wrote that the vast extent of the boundaries had caused great surprise and satisfaction.

Now, there are two geographical errors in the line as indicated in the treaty, which made it impossible to determine where the line really ran, and which required forty years to eradicate.

These errors were both wholly due to the inaccuracies of the map upon which the line of demarcation was drawn. This was Mitchell's map, published first in 1755, and brought to the negotiation by the British Commissioners. Other maps much better were not wanting, and some were even before the commission; but it was not known at that time that they were more accurate, and no great care was put upon the line in the northwest corner, as that was not supposed to be of any present importance and was especially insignificant when compared to the pressing need of an accurate boundary in the northeast corner. The errors were:

1st. The idea that the Lake of the Woods outflowed southeastward instead of northward, and that it was at the head of the basin of the Great Lakes instead of near the base of the Hudson Bay watershed. This error was undoubtedly of great benefit to the United States, because the evident and plainly stated intention of the commissioners was to run the line through the middle of all the Great Lakes and onward to the source of the greatest lake. This would have brought the boundary down through Lake Superior to its southwest end, and then up the St. Louis river to its source in Seven Beaver lake, which is very nearly due north of Duluth and a little farther south from the international boundary than it is north from Duluth.

2nd. The idea that the Mississippi took its rise northwestward of the Lake of the Woods, and that a line could therefore be run due west from that lake to the Father of Waters. This made it, of course, physically impossible to run the line as the treaty required, and thus introduced to diplomacy what was long known as the "Northwest Boundary Question." If the first error had not been made, the second would scarcely have existed; for, though the St. Louis river rises a short distance

north of lake Itasca, yet its source is almost exactly on an east and west line with the northernmost bend of the Mississippi and is considerably south of several small branches of the river.

The result of the first error was the addition to the United States of a very large tract of land,—how large we cannot, of course, precisely know, but it is at least fifteen thousand square miles, or as large as the combined areas of Massachusetts, Connecticut, and Rhode Island.

To whose advantage the second error worked is not so clear. It may be said that through it the British obtained the right to the free navigation of the river Mississippi. That is undoubtedly true, but did that right amount to anything? And even if it did, there is strong probability that the Americans were very willing to grant this right in order to have a strong ally in demanding of Spain, which controlled the lower Mississippi, the free navigation of that end of the great river.

III.

UNEXECUTED ARTICLE OF TREATY OF 1794.

The provisions of this first treaty betweeen the two great English-speaking Powers were not fully observed by either one; and, other questions also arising, there was very soon a necessity for another treaty. With this in view, John Jay was sent to England by Washington in 1794. Lord Grenville, the British minister, giving voice to a suspicion* that had been gradually growing stronger, considered it as an established fact that a due west line from the Lake of the Woods to the Mississippi could not be drawn, because such a line would pass entirely to the north of any of the sources of that stream. In accordance with this supposition he suggested to the American envoy two new lines between the waters of lake Superior and the Mississippi, either of which would rectify the geographical error of the former treaty. The first was a line drawn due west from "the bottom of West Bay in the said Lake" to the "river of the Red Lake, or eastern branch of the Mississippi, and down the said branch to the main river of the Mississippi." This line would have been as impossible as

*Minn. Hist. Soc. Collections, vol. VII.; appendix, A. J. Hill, p. 315.

the one he was trying to correct. The other plan was to follow the "water communication" described in the treaties, until a point due north of the mouth of the St. Croix river should be reached, whence a line should be run directly to the Mississippi at the mouth of its said tributary. Mr. Jay would not listen at all to such proposals, which involved a cession of territory. Nor was he willing to concede to his lordship that the position of the head of the Mississippi in relation to the Lake of the Woods was certainly known. He suggested, however, that the truth should be ascertained by actual survey, and to this proposition the British minister agreed.

The fourth article of this treaty, as finally signed, was as follows:*

> Whereas it is uncertain whether the river Mississippi extends so far to the northward as to be intersected by a line to be drawn due west from the Lake of the Woods, in the manner mentioned in the treaty of peace between His Majesty and the United States: it is agreed that measures shall be taken in concert between His Majesty's Government in America and the Government of the United States, for making a joint survey of the said river from one degree of latitude below the Falls of St. Anthony, to the principal source or sources of the said river, and also of the parts adjacent thereto; and that if, on the result of such survey, it should appear that the said river would not be intersected by such a line as is above mentioned, the two parties will thereupon proceed, by amicable negotiation, to regulate the boundary line in that quarter, as well as all other points to be adjusted between the said parties, according to justice and mutual convenience, and in conformity to the intent of said treaty.

This survey was never made, as it was not long afterward that the astronomer David Thompson, in 1798, visited the most northern sources of the Mississippi and proved that they lie nearly two degrees south of the northern end of the Lake of the Woods. The reliability of his observations was questioned by no one, and accordingly the survey was considered unnecessary.

Nevertheless, the clause requiring the two parties to "proceed, by amicable negotiation, to regulate the boundary line in that quarter," was not neglected.

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*Treaties and Conventions concluded between the United States of America and other Powers since July 4, 1776, (Washington, 1889, printed as Sen. Ex. Doc., Second Session, 48th Congress, vol. I., Part 2), p. 382.

IV.

UNRATIFIED CONVENTION OF 1803.

Mr. Madison, Secretary of State, on the 8th of June, 1802, wrote* to Rufus King, minister at London, directing him to reopen negotiations on the unsettled portion of the boundaries between Great Britain and the United States. In his communication he pointed out that the second article of the treaty of 1783 was rendered void by reason of the impossibility of running a line due west from the Lake of the Woods to the Mississippi river, and suggested another one in place of it, which was:

> . . . a line running from that source of the Mississippi which is nearest to the Lake of the Woods, and striking it, westwardly, as a tangent, and, from the point touched, along the water-mark of the lake, to its most northwestern point, at which it will meet the line running through the lake.

Mr. King was not in London when this letter arrived, and the matter thus passed into the hands of the chargé d'affaires, Christopher Gore, who was afterward commissioned from Washington to carry on the negotiations. On September 28, 1802, Mr. Gore had an interview with Lord Hawksbury, the British Commissioner, and, after explaining the anomaly which it was proposed to straighten out, he continued:†

> Supposing the most northern branch of the source of the Mississippi to be south of the Lake of the Woods, as seems now to be understood, it is suggested, as consistent with justice and the mutual convenience of the parties, to establish the boundary of the United States in this quarter, by a line running from that source of the Mississippi which is nearest to the Lake of the Woods, and striking it westwardly, as a tangent, and from the point touched along the watermark of the lake to its most northwestern point, at which it will meet the line running through the lake.
>
> Commissioners might be appointed to ascertain the local relation of the Mississippi to the Lake of the Woods, and, if as was supposed by the treaty of peace, to run the line there agreed on. But if the relative position of these two waters be as now believed, to establish the boundary by running a line as above described.

*American State Papers, Foreign Relations, vol. II., p. 585.
†Ibid., p. 589.

On October 6, in a report to the Secretary of State, Mr. Gore said in reference to Lord Hawksbury's views:*

On that part of the boundary which is to connect the northwest point of the Lake of the Woods with the Mississippi, he observed that it was evidently the intention of the treaty of peace that both nations should have access to, and enjoy the free use of that river; and he doubtless meant that this access should be to each nation through their own territories. He remarked, that commissions, which I had proposed for . . . running the line . . . might establish such a boundary as would secure to each nation this object. To the remark I made no reply, other than by observing that the line suggested was what naturally seemed to be demanded by just interpretation, . . . but this I did, however, chiefly with a view of not assenting to his proposal, and in a manner rather declining than courting the discussion. It will probably be persisted in; and I much doubt if this Government will be inclined to adjust any boundary in this quarter, that has not the right desired for its basis.

After receiving this news from Mr. Gore, Mr. Madison wrote to Rufus King, under date of December 16, 1802:†

It appears that the proposition for adjusting the boundary in the northwest corner of the United States is not relished by the British Government. The proposition was considered by the President as a liberal one, inasmuch as the more obvious remedy for the error of the treaty would have been by a line running due north from the most northern source of the Mississippi, and intersecting the line running due west from the Lake of the Woods; and inasmuch as the branch leading nearest the Lake of the Woods may not be the longest or most navigable one, and may, consequently, favor the wish of the British Government to have access to the latter.

This reasoning clearly proceeds on the assumption that the British possessions westward of the Mississippi reached south at least as far as to the sources of that river; and yet within two months exactly the opposite view was strenuously and successfully maintained by the Americans. The change was probably brought about by a study of the "possibilities" of the Louisiana purchase. Mr. Madison continued:

The proposition, for these reasons, would not have been made but from a desire to take advantage of the present friendly dispositions of the parties for the purpose of settling all questions of boundary between them. As it is not probable, however, that the settlement of this particular boundary will for some time be material, and as the

*American State Papers, vol. II., p. 587.
†Ibid., p. 589.

adjustment proposed is not viewed by the British Government in the same light as by the President, it is thought proper that it should not for the present be pursued; and that the other questions of boundary should be adjusted with as little delay as possible. In the mean time, further information with respect to the head waters of the Mississippi, and the country connected with them, may be sought by both parties; it being understood that the United States will be as free to be guided by the result of such inquiries, in any future negotiation, as if the proposition above referred to had never been made by them. Should it be most agreeable to the British Government to have an early survey instituted, with a view to a proper boundary in this case, the President authorizes you to concur in such an arrangement.

The British Government proved to be more yielding than Mr. Madison expected and the convention, as drawn up by Mr. King, was finally signed on the 12th of May, 1803. In his letter of transmittal accompanying the document, which was sent the next day, Mr. King said:*

The convention does not vary in any thing material from the tenor of my instructions. . . . . The source of the Mississippi nearest to the Lake of the Woods, according to McKenzie's report, will be found about twenty-nine miles to the westward of any part of that lake, which is represented to be nearly circular. Hence a direct line between the northwesternmost part of the lake, and the nearest source of the Mississippi, which is preferred by this Government, has appeared to me equally advantageous with the lines we had proposed.

The terms of this convention relating to the part of the boundary adjoining Minnesota were as follows:†

ART. 5. Whereas it is uncertain whether the river Mississippi extends so far to the northward as to be intersected by a line drawn due west from the Lake of the Woods, in the manner mentioned in the treaty of peace between His Majesty and the United States, it is agreed that, instead of the said line, the boundary of the United States in this quarter shall, and is hereby declared to be the shortest line which can be drawn between the northwest point of the Lake of the Woods and the nearest source of the river Mississippi: and for the purpose of ascertaining and determining the northwest point of the Lake of the Woods and the source of the river Mississippi that may be nearest to the said northwest point, as well as for the purpose of running and marking the said boundary line between the same, three commissioners, upon the demand of either Government, shall be appointed, and authorized, upon their oaths, to act; . . . and the decisions and proceedings of the said commissioners, or of a majority of them, made and had pursuant to this convention, shall be final and conclusive.

*American State Papers, vol. II., p. 590.
†Ibid., p. 584.

But twelve days before the signing of this convention, and entirely without the knowledge of these negotiators, Louisiana, recently acquired by France, was sold by Napoleon to the United States, and our Senate feared that this fifth article might limit the rights of this country concerning the boundary of the newly acquired territory. They consequently ratified the convention with the exception of the fifth article. The British would not agree to this partial ratification, and so the convention failed entirely.

V.

NEGOTIATIONS OF 1807.

On the very last day of 1806 American and British commissioners signed a treaty in London, mainly concerning commerce and navigation. It contained no article concerning impressments, and for this reason the President did not send it to the Senate. Thus for the lack of one good feature an otherwise excellent treaty died an untimely death. But the commissioners were still at work on additional articles, and "after many intermissions and much discussion, the British commissioners at length presented" a proposition, the fifth article of which ran as follows:*

ART. 5. It is agreed that a line drawn due west from the Lake of the Woods along the forty-ninth parallel of north latitude shall be the *line of demarcation* [division line] between His Majesty's territories and those of the United States to the westward of the said lake, *as far as the territories of the United States extend in that quarter;* and that said line shall, *to that extent*, form the southern boundary of His Majesty's said territories, and the northern boundary of the said territories of the United States; provided that nothing in the present article shall be construed to extend to the northwest coast of America, or to the territories belonging to or claimed by either party, on the continent of America, to the westward of the Stony mountains.

The American commissioners objected that the line should be drawn due north or south from the northwest point of the Lake of the Woods, until it intersected the forty-ninth parallel, and thence west. This was agreed to by the British.

After considerable discussion as to the westward extension of the line and the free navigation of the Mississippi by the

*American State Papers, vol. III., p. 164.

British, the American commissioners proposed that the fifth article should read:*

> It is agreed that a line drawn due north or south (as the case may require) from the most northwestern point of the Lake of the Woods, until it shall intersect the forty-ninth parallel of north latitude, and from the point of such intersection, due west, along and with said parallel, shall be the dividing line between His Majesty's territories and those of the United States to the westward of the said lake; and that the said line, to and along and with the said parallel, shall form the southern boundary of His Majesty's said territories, and the northern boundary of the said territories of the United States. . . .

The article being submitted to the British commissioners in this form, they agreed to it with the exception that they wanted to add after the words, "to the westward of the said lake," the following: "as far as their said respective territories extend in that quarter; and that the said line shall, to that extent, form the southern boundary," etc.

Secretary Madison, writing† July 30th, 1807, to the commissioners, authorized them to agree to this addition if they could not secure their own wording. But at this point the negotiations were broken off; for, on account of a change of ministry in England, the commissioners were recalled, and the subject was never again resumed.

VI.

TREATY OF GHENT, 1814.

The War of 1812 was the cause of the next negotiations, which resulted in the Treaty of Ghent in 1814. The Secretary of State, writing to the commissioners‡ on June 23, 1813, said that, if a restitution of territory should be agreed upon, provision should be made for settling the boundary line between the two powers from the St. Lawrence to the Lake of the Woods, on account of the valuable islands in the rivers and lakes claimed by both parties, and suggested that commissioners be appointed on each side, with full powers to adjust this boundary on fair and equitable considerations.

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*Ibid., p. 165.
†Ibid., p. 185.
‡American State Papers, vol. III., p. 700.

The American commissioners at Ghent, writing to Mr. Monroe on August 19th, 1814, presented the wishes of the British, as follows:*

> 2d. The boundary line west of Lake Superior, and thence to the Mississippi, to be revised; and the treaty-right of Great Britain to the navigation of the Mississippi to be continued. When asked, whether they did not mean the line from the Lake of the Woods to the Mississippi? the British commissioners repeated, that they meant the line from Lake Superior to that river.

Five days later the American commissioners wrote† to the British that they perceived that Great Britain proposed, "without purpose specifically alleged, to draw the boundary line westward, not from the Lake of the Woods, as it now is, but from Lake Superior;" and they objected to that intention as demanding a cession of territory.

To this the British made a spirited reply, as follows:‡ "As the necessity for fixing some boundary for the northwestern frontier has been mutually acknowledged, a proposal for a discussion on that subject cannot be considered as a demand for a cession of territory, unless the United States are prepared to assert that there is no limit to their territories in that direction, and, that availing themselves of the geographical error upon which that part of the treaty of 1783 was formed, they will acknowledge no boundary whatever; then, unquestionably, any proposition to fix one, be it what it may, must be considered as demanding a large cession of territory from the United States," etc. Were the American commissioners prepared to assert such unlimited right? Or were the plenipotentiaries willing to acknowledge the boundary from the Lake of the Woods agreed to, but not ratified, in 1803? The British commissioners would be contented to accept favorably such a proposition, or to discuss any other line of boundary which might be submitted for consideration.

After some further sparring on paper, the American commissioners submitted the draft of several articles for the treaty.§ The sixth article provided that the part of the boundary from Lake Huron to the Lake of the Woods should be fixed and determined by commissioners. The eighth article was the same as the fifth of the unfinished treaty of 1807, in

*Ibid., p. 709.
†Ibid., p. 712.
‡Ibid., p. 714.
§Ibid., pp. 735-740.

the form agreed to by the British at that time. But the British plenipotentiaries of this negotiation substituted for it the original British article of 1807, and added a clause which gave to British subjects free access to the Mississippi river and the enjoyment of its free navigation. After considerable discussion the negotiators concluded that they could not agree as to the eighth article, and so decided to leave it out altogether.

That part of this treaty in which we are especially interested is contained in its seventh article, as follows:*

It is further agreed that the said two last-mentioned Commissioners, after they shall have executed the duties assigned to them in the preceding article, shall be, and they are hereby, authorized upon their oaths impartially to fix and determine, according to the true intent of the said treaty of peace of one thousand seven hundred and eighty-three, that part of the boundary between the dominions of the two Powers which extends from the water communication between Lake Huron and Lake Superior, to the most northwestern point of the Lake of the Woods, to decide to which of the two parties the several islands lying in the lakes, water communications and rivers, forming the said boundary, do respectively belong, in conformity with the true intent of the said treaty of peace of one thousand seven hundred and eighty-three; and to cause such parts of said boundary as require it to be surveyed and marked. The said Commissioners shall, by a report or declaration under their hands and seals, designate the boundary aforesaid, state their decision on the points thus referred to them, and particularize the latitude and longitude of the most northwestern point of the Lake of the Woods, and of such other parts of the said boundary as they may deem proper. And both parties agree to consider such designation and decision as final and conclusive. And in the event of the said two Commissioners differing, or both or either of them refusing, declining or wilfully omitting to act, such reports, declarations, or statements shall be made by them, or either of them, and such reference to a friendly sovereign or State shall be made in all respects as in the latter part of the fourth article is contained, and in as full a manner as if the same was herein repeated.

This article is given thus at length because the commissioners did disagree and made separate reports. The fourth article, mentioned in the quotation, provided, in very explicit terms, for arbitration under these conditions by some friendly foreign power, whose decision, based on the evidence submitted by the disagreeing commissioners, should be accepted as final and conclusive.

*Treaties and Conventions, Senate Ex. Doc., Second Session, 48th Congress, Vol. I, Pt. 2, p. 403.

VII.

CONVENTION OF 1818.

Within a year from the date of this treaty, overtures were made toward a further convention especially to treat of subjects of commerce and navigation. On May 22, 1818, the Secretary of State, Mr. John Quincy Adams, wrote to the American commissioners, giving them various instructions. Among other things he informed them that the British Government wanted to refer some of the subjects to commissioners, like those authorized by the Treaty of Ghent. One of these subjects was noted as follows:*

> . . . the boundary line from the northwest corner of the Lake of the Woods westward, which you remember was all but agreed upon, and went off upon a collateral incident at Ghent. . . .
> . . . As to the line from the Lake of the Woods, as some dissatisfaction has already been excited here by the expense occasioned by the two commissions already employed in settling the boundary, another commission, to draw a line through the depth of the deserts, and to an indefinite extent, would be still more liable to censure; besides, the apprehension which it might raise, that the issue of the commission would be to bring the British territory again in contact with the Mississippi.

On the 28th of July a more elaborate set of instructions was sent by the Secretary to the plenipotentiaries. The third heading was:† "3. Boundary, from the Lake of the Woods, westward." Under this title, a full history of all the previous diplomatic negotiations was given; then, continuing, Adams wrote:

> From the earnestness with which the British Government now return to the object of fixing this boundary, there is reason to believe that they have some other purpose connected with it, which they do not avow, but which in their estimation, gives it an importance not belonging to it, considered in itself. An attempt was at first made by them, at the negotiation of Ghent, to draw the boundary line from Lake Superior to the Mississippi.

It is not surprising that Mr. Adams suspected the motives of the British in seeking to settle this boundary, since he thought it was to go "through the depth of the deserts." The British seem to have been better informed.

*American State Papers, Vol. IV, p. 372.
†Ibid., p. 376.

The commissioners, in their letter accompanying the completed treaty, said* that the British had made an attempt to insert an article allowing them free access to, and navigation of, the Mississippi river; but that they would not consent to the article and the British abandoned it.

The article in this convention referring to the northwestern boundary is as follows:†

Art. 2. It is agreed that a line drawn from the most northwestern point of the Lake of the Woods, along the forty-ninth parallel of north latitude, or, if the said point shall not be in the forty-ninth parallel of north latitude, then that a line drawn from the said point due north or south, as the case may be, until the said line shall intersect the said parallel of north latitude, and from the point of such intersection, due west, along and with the said parallel, shall be the line of demarcation between the territories of the United States and those of His Britannic Majesty, and that the said line shall form the northern boundary of the said territories of the United States, and the southern boundary of the territories of His Britannic Majesty, from the Lake of the Woods to the Stony mountains.

It may as well be remarked here that the forty-ninth parallel, thus chosen, was supposed to have been laid down by the Treaty of Utrecht in 1713 as a boundary of Canada. This is erroneous. At that time this line was claimed by the Hudson Bay Company as its southern boundary; and certain matters concerning the boundaries in the New World were left to commissioners who met at Paris in 1719, and who were supposed to have agreed to boundaries. That is the only basis for the idea, which is made all the more vague and unfounded by the fact that the commissioners never agreed and never reported.

After this convention of 1818 we have for the first time the northern boundary of Minnesota completely defined; but it was only on paper, and partly in a very unsatisfactory way.

VIII.

WORK OF THE COMMISSION UNDER THE TREATY OF GHENT.

The commissioners appointed under the sixth and seventh articles of the Treaty of Ghent were Peter B. Porter for the United States and Anthony Barclay for the British govern-

*Ibid., p. 380.
†Ibid., p. 406.

ment. The sixth article referred to the boundary from the intersection of the St. Lawrence with the forty-fifth parallel to the head of Lake Huron. They made their decision and report on this part of the line on June 18th, 1822, and the expense of this part of their work was, in round numbers, one hundred thousand dollars ($100,000).* This it was which caused dissatisfaction and prompted Mr. Adams' caution to the plenipotentiaries of 1818 to appoint no more commissions.

The work being so far done, the commissioners proceeded to the execution of their duties under the seventh article. The treaty of 1783 said the line was to pass through Lake Superior northward of Isles Royale and Phelipeaux, and through Long lake to the most northwest point of the Lake of the Woods. The instructions of the commissioners were to determine and mark this line; but the difficulty lay in determining the actual location of Isle Phelipeaux and of Long lake. The American commissioner proposed† that the latter be determined at once, and suggested that it was the Pigeon river. The British commissioner objected on the ground that it could better be decided later, and proposed a survey of the route from the Pigeon river to the Lake of the Woods. The agents of the commissioners, with their surveyor and astronomers, were accordingly directed to proceed up the Pigeon river by joint order of the commissioners. The approach of winter interrupted their work and forced them to return. Thereupon Col. Delafield, the American agent, offered evidence to show that the Pigeon river was the "Long lake" mentioned in the treaty; and the American commissioner, Gen. Porter, again urged that it be thus decided. But the British commissioner refused a second time to settle the matter, and the next spring the surveyors, astronomers (of whom David Thompson was one), agents, and the secretary of the commission, Dr. John J. Bigsby, were sent out again with instructions to certainly finish the survey that season. This forced them to do their work rather hurriedly; but, nevertheless, no maps have yet been published which are so accurate as those then prepared. Such instructions were given, undoubtedly, because the House of Representatives had censured the great cost of the work so far, and urged an early completion. The

*American State Papers, Vol. V., pp. 50, 242.
†House Ex. Doc., 25th Cong., Second Session, Doc. No. 451.

British commissioner now announced that he was of the opinion that the bay and river St. Louis formed the true Long lake and proposed a survey of that route. Gen. Porter was surprised by this move, and promptly refused his sanction for the order for a survey of the St. Louis river. The British commissioner nevertheless gave the order in his own name alone. Gen. Porter thereupon affirmed that he had only offered the Pigeon river route as a compromise and that the proper route was by the Kaministiquia river, and in his turn ordered a survey of that water course.

The commissioners had previously disagreed over the possession of St. George's island in the Sault* rapids between lakes Huron and Superior. They now proceeded to run those portions of the line upon which they agreed, namely, from the head of Sault rapids through lake Superior to a point a short distance north and east of Isle Royale; and, later, when the surveyors had returned and reported, that part of the line extending from the Chaudière falls through Rainy lake and the Rainy river and thence through the Lake of the Woods to the most northwest point of the same. The American commissioner now brought forward his evidence in favor of locating Long lake on the Kaministiquia river as a lake sometimes called Dog lake. And he presented a pretty strong case, too. He brought forward a series of ten distinct maps, several of them being official, and all of them showing Long lake on the Kaministiquia river. These maps were all published from three months to a few years after the conclusion of the treaty of 1783, and some of them expressly stated that they gave the boundaries as decided upon in the recent treaty. He argued from the phrase "northward of the Isles Royal and Phelipeaux" that it would be unreasonable to go so far out of the way, if the line were then to turn abruptly southward, merely to give a few small and unimportant islands to the United States.

The British commissioner also presented a good case. He showed that the bay and estuary of the St. Louis river were the only waters anywhere near the western shore of Lake Superior which could properly from their shape be called "Long lake," and he brought forward two maps upon which

*Now commonly pronounced and spelled "Soo."

they were denominated "The Long Lake." Other lakes, he said, might occasionally be called "Long lake," but no other was distinctively known as "The Long Lake." By this route, as on the others, there was only one short divide—and that the Height of Land—between the waters of Lake Superior and those of the Lake of the Woods. Moreover, the portages were fewer, showing a better water communication.

There seemed to be no chance of an agreement until Gen. Porter, "notwithstanding the clear right of the Americans," for the sake of securing a decision offered to adopt the Pigeon river *water* course, provided the British commissioner would concede the American right to St. George's island and agree to the compromise.

The British commissioner made a counter proposal, as follows: He would compromise on the Pigeon river *portage* route, beginning at Grand Portage, and following the course taken by the traders across numerous portages, all of them going southerly, provided the American commissioner would yield St. George's island to the British.

Gen. Porter would not yield so much, and the British commissioner finally offered to begin the line at the Pigeon river, if the free and unrestricted use of the Grand Portage could be secured to subjects of both Powers on equal footing. Gen. Porter replied that, though the differences now were not material enough to defeat an agreement, yet he could not grant the use of the Grand Portage as proposed, since it was beyond his powers.

As neither commissioner would compromise any further, both made their reports, setting forth each one his own case. The actual facts as to the reports of these commissioners seem to be very generally unknown. In the notes* of the "Treaties and Conventions of the United States," it is stated that the line from Lake Superior to the Lake of the Woods was marked by the commissioners, but that "the line as marked was changed in part by the provisions of the second article of the Treaty of 1842." Now we know that this line was not marked, and was not even agreed upon, and therefore could not have been "changed in part."

*Treaties and Conventions, p. 1329.

But this idea that the commissioners did mark the line is very common!* And so people have wondered why the American commissioner allowed himself so often to be led off south from the true water course to the portage route. Some have even gone so far as to say that the British got the American commissioner drunk "at the portage south of Hunter's Island and carried him across."† This is, of course, sheer nonsense, as the commissioners never went over the routes, but sent their agents; and, moreover, the lines by the water course and the portage route were perfectly well known to both commissioners and were made the subject of controversy between them. It may be noted as an instance of the growth of legends, and, incidentally, of their unreliability.

IX.

WEBSTER-ASHBURTON TREATY OF 1842.

The Treaty of Ghent required that the reports of these commissioners be referred to some friendly sovereign or state as a final umpire, but this was never done.‡ On the contrary, the matter was allowed to hang fire for nearly twenty years, until Sir Robert Peel, the English prime minister, sent Lord Ashburton to this country to enter into negotiations, particularly on the boundaries, with Mr. Webster, then Secretary of State. The resulting treaty was avowedly a "give and take" transaction. It was not attempted to settle each question on its own merits, but one party yielded one point in return for a supposedly equivalent gain somewhere else. And thus it happened that, when the commissioners met, Lord Ashburton offered to yield St. George's island to the United States, provided Webster would agree that the boundary should follow the portage route westward from Lake Superior instead of the water courses. The formal propositions made seem to show that the Englishman was rather the more wily of the two; and, in this instance, at least, Mr. Webster agreed to His Lordship's first proposal practically without alteration.

Lord Ashburton, under date of July 16, 1842, wrote§ a short résumé of the work of the commissioners under the Treaty of

*Minn. Hist. Soc. Collections. Vol. VIII., p. 2.

†Hon. W. W. Pendergast, Minnesota State Superintendent of Public Instruction, told me this on the authority of Gen. Lewis E. Baker, State Tree and Forest Commissioner.

‡House Journal, 1823-4, p. 11.

§House Ex. Doc., 27th Congress, Second Session, Doc. No. 2.

Ghent, according to which there were, at that time, two points of difference, viz.: 1. As to the ownership of St. George's island. 2. As to the boundary from Lake Superior to the Lake of the Woods. Ashburton remarked: "The first point I am ready to give up to you, and you are no doubt aware that it is the only object of any real value in this controversy;" but two conditions were afterward tacked on, namely, common navigation of two channels at the time wholly belonging to the United States, one at the head of Lake St. Clair and the other in the St. Lawrence. He continued: "In considering the second point, it really appears of little importance to either party how the line be determined through the wild country between Lake Superior and the Lake of the Woods; but it is important that some line should be fixed and known." In further negotiations, Ashburton reiterated several times that this question was of very little importance—that the land in question was of no practical value—and Mr. Webster seems to have believed him; indeed, it is possible, though it seems to me improbable,* that he was sincere in belittling the value of the country.

After thus preparing the way for a favorable reception, Lord Ashburton said: "I would propose that the line be taken from a point about six miles south of Pigeon river, where the Grand Portage commences on the lake, and continued along the line of said portage, alternately by land and water, to Lac la Pluie,—the existing route by land and water remaining common to both parties. This line has the advantage of being known, and attended with no doubt or difficulty in running it."

Mr. Webster, in his reply of July 27th, offered to agree to the proposition of Lord Ashburton with the exception that the line is to begin at the mouth of Pigeon river. He defined the proposition quite fully, and his wording is exactly that which was finally adopted. In commenting on this proposition, the great orator said: "There is reason to think that Long lake mentioned in the treaty of 1783 meant merely the estuary of Pigeon river. . . . There is no continuous water communication between Lake Superior and the Lake of the Woods. . . . The broken and difficult nature of the

*That this country was known to many to be valuable appears in the President's message transmitting this treaty.

water communication . . . renders numerous portages necessary; and it is right that these water communications and these portages should make a common highway, where necessary, for the use of the subjects and citizens of both Governments."

Nothing further was done in the matter till the treaty was signed, as Lord Ashburton readily agreed to what was virtually his own proposition.

The portion of this treaty which concerns the subject before us is as follows:*

ARTICLE II. . . . thence, adopting the line traced on the maps by the Commissioners, thro' the river St. Mary and Lake Superior, to a point north of Ile Royale, in said lake, one hundred yards to the north and east of Ile Chapeau, which last-mentioned island lies near the northeastern point of Ile Royale, where the line marked by the Commissioners terminates; and from the last-mentioned point, southwesterly, through the middle of the sound between the Ile Royale and the northwestern main land, to the mouth of Pigeon River, and up the said river, to and through the north and south Fowl Lakes, to the lakes of the height of land between Lake Superior and the Lake of the Woods; thence, along the water communication to Lake Saisaginaga, and through that lake; thence, to and through Cypress Lake, Lac du Bois Blanc, Lac la Croix, Little Vermilion Lake, and Lake Namecan and through the several smaller lakes, straits, or streams, connecting the lakes here mentioned, to that point in Lac la Pluie, or Rainy Lake, at the Chaudière Falls, from which the Commissioners traced the line to the most northwestern point of the Lake of the Woods; thence, along the said line, to the said most northwestern point, being in latitude 49° 23′ 55″ north, and in longitude 95° 14′ 38″ west from the observatory at Greenwich; thence, according to existing treaties, due south to its intersection with the 49th parallel of north latitude, and along that parallel to the Rocky Mountains. It being understood that all the water communications and all the usual portages along the line from Lake Superior to the Lake of the Woods, and also Grand Portage, from the shore of Lake Superior to the Pigeon River, as now actually used, shall be free and open to the use of the citizens and subjects of both countries.

This again is a mere boundary on paper. How long it would have remained so it is hard to say; but, in 1870, it was incidentally discovered† by a corps of surveying engineers that, at Pembina, the supposed line was really more than 4,600 feet south of the true line, which is, of course, in latitude

*Treaties and Conventions, Sen. Ex. Doc., Second Session, 48th Congress, Vol, I., Part 2, p. 434.

†Congressional Globe, 1870-71, p. 582.

49° north. This brought the fact prominently before the government that the line had never been surveyed or marked, and, after President Grant had twice urged it in his annual messages, Congress authorized the appointment of a commission to survey and mark the line westward from the Lake of the Woods to the Rocky Mountains, in coöperation with a similar British commission. The surveyors set monuments along this line, and prepared maps and accurate descriptions. The monuments are mostly iron pillars, a mile apart, from the Lake of the Woods to the west boundary of Manitoba; and farther west the line is marked by stones and earth mounds. On May 29th, 1876, the maps and protocol were signed at Washington by representatives of both governments.

X.

PRESENT CONDITION OF THE BOUNDARY.

Since that date the northern boundary has been considered a closed question of diplomacy; but the newspaper clipping which is quoted at the beginning of this article, as well as the present actual condition of the boundary east of Rainy lake go far to warrant the opinion that serious complications will soon arise, and that skilled diplomacy will then be called upon to mark the boundary line by actual measurements on the ground, so that it will be known to which party the innumerable islands in the boundary waters belong. Think of a boundary line between two great nations which is no more definitely marked or described than would be done by saying it should pass through Lake Minnetonka! And yet our northern boundary from Lake Superior to Rainy lake is scarcely so well defined as that, and is not marked at all!

It is hard to understand why Mr. Webster, in the treaty of 1842, did not insist upon the line through the water courses which was clearly intended by the treaty of 1783.* Although there ought to be only one divide on the whole route, there are actually six. The most eastern is at the headwaters of the Pigeon river, where the route crosses to a lake emptying through the Arrow river, which latter stream, tributary to

*Minn. Hist. Soc. Collections, Vol. VIII., Part I: International Boundary, U. S. Grant, p. 4.

the lower part of the Pigeon river, affords the natural water communication and therefore ought to have been the boundary. The next is the Height of Land, the only divide which ought properly to be on the boundary. The third is at the east end of "Hunter's Island," between Saganaga lake and Cypress lake, and is about a quarter of a mile long. This little neck of land is all that prevents the so-called "Hunter's Island" from being a true island, since the waters of Saganaga lake flow continuously along the north side of the "island" and pass through Lac la Croix, into Namecan and Rainy lakes. The fourth and fifth divides are just south of the west end of Hunter's Island (or peninsula), and this is the only place where the boundary can be corrected to follow the water course and also coincide with all existing treaties.* There is no reason why this should not be done, but, as only about ten square miles would accrue to the United States, there is no probability of a change. The sixth and last divide is southward from the east end of Lac la Croix. It is possible that a little water at the highest stage of the lakes and streams in the spring flows over this divide, but the plain and natural water course is certainly the Namecan river which flows northward from Lac la Croix into Namecan lake.

The whole amount of land thus lost to the United States is slightly over one thousand square miles.† At the time of the Webster-Ashburton treaty, fifty years ago, one thousand square miles in this region was of very little value. But conditions have changed. The eastern end of the Vermilion iron range crosses Hunter's Island, and the timber of this region is fast becoming quite valuable.

At one other place, also, the boundary is probably not located in its proper place, and that is in the Lake of the Woods. The commissioners were in doubt as to what was the real "northwest point"—whether at Rat Portage or the place finally selected. But there is another point which is more properly the "northwest point," than either of these two. It is in a northwestern bay or arm of the Lake of the Woods which is called Lac Plat. The surveyors camped one day near the opening into this bay, but erroneously thought it to be a

*That is, assuming that the commonly accepted, but very doubtful, location of Cypress lake is correct.

†Minn. Hist. Soc. Collections, Vol. VIII., p. 5.

river. This error cost the United States about two hundred square miles of land and nearly as much water surface in the Lake of the Woods. This, however, is of no great value, as the land is reported to be, in general, very swampy.

With the mention of a little complication of boundary lines* this paper will close. The line passing through the Lake of the Woods goes into and along the bay of the Northwest Angle. Near the head of this long bay the line intersects the line surveyed "from the most northwest point due south," and then, abruptly turning north, it crosses the north and south line several times within a quarter of a mile, and finally bends off to the west for nearly half a mile, at the end of which distance it returns to the north and south line just at the northwest point where it ends. To whom do those little patches of swamp between the lines belong?

NOTE. — Subsequent to the completion of this paper and after its acceptance for the present publication, the author had an interview near Koochiching, on the Rainy river, with a party of Canadian surveyors of this boundary, as noted in the following letter:

Koochiching, Minn., July 27, 1896.

. . . The Canadian government has not waited for a joint survey to inform itself concerning the actual condition of the boundary; but it has quietly sent out a party of surveyors at its own expense to trace the line from Pigeon point to the Lake of the Woods. The work was ordered by the Commissioner on International Boundaries, and is in charge of A. J. Brabazon, for the past three years engaged on the Alaskan boundary survey, who is now on the way to Ottawa to report. He is satisfied that the Treaty of Washington is in agreement with the physical features.

ALEXANDER N. WINCHELL.

*See maps in the Surveyor General's Office, St. Paul, Minn.